

(Published in *The Hillsboro Star Journal* on July 13, 2022)

ORDINANCE NO. 1355

AN ORDINANCE OF THE GOVERNING BODY OF THE CITY OF HILLSBORO, KANSAS, AUTHORIZING THE PURCHASE OF A HYDRO VACUUM EXCAVATION TRAILER, AUTHORIZING AND PROVIDING FOR THE EXECUTION OF A LEASE PURCHASE AGREEMENT, BY AND BETWEEN THE CITY OF HILLSBORO, AS LESSEE, AND THE MARION NATIONAL BANK, AS LESSOR, FOR THE PURPOSE OF PROVIDING THE NECESSARY FUNDS TO PAY THE COSTS OF SAID EQUIPMENT; AND PROVIDING FOR THE EXECUTION OF ALL ANCILLARY DOCUMENTS IN CONNECTION WITH SUCH FINANCING AND MAKING CERTAIN OTHER COVENANTS WITH RESPECT THERETO.

WHEREAS, under the Constitution and statutes of the State of Kansas, particularly K.S.A. 10-1116b and 10-1116c (the "Act"), the City of Hillsboro, Kansas (the "City") is empowered to enter into leases and lease-purchase agreements for the lease of real and personal property upon such terms and conditions as deemed necessary by the governing body of the City; and

WHEREAS, the governing body of the City finds it necessary and desirable to acquire a new Hydro Vacuum Excavation Trailer (the "Equipment") to further its governmental and public purposes, but does not have sufficient moneys on hand to purchase the Equipment; and

WHEREAS, in order to provide for the financing of the acquisition of the Equipment, the governing body has determined and hereby determines that it is in the best interest of the City that the City and Marion National Bank, Marion, Kansas (the "Lessor") enter into a Lease Purchase Agreement (hereinafter defined) to provide for the financing of the Equipment and for the leasing by the City from the Lessor of the Equipment; and

WHEREAS, the Lease Purchase Agreement does not involve the purchase or acquisition of land or buildings, and furthermore does not contain provisions for annual payments in excess of 3% of the total amount budgeted for expenditure by the City during the current year (excluding debt service); and

WHEREAS, the governing body hereby finds and determines that it is necessary to provide for the form, details and conditions of the financing and the documentation required to accomplish same, and to approve and authorize the execution of the Lease Purchase Agreement, and to make certain covenants and agreements in connection therewith.

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

SECTION 1. Authority to Acquire the Equipment. It is hereby found and determined to be necessary and desirable, and in the best interests of the City, to acquire the Equipment (as defined above).

SECTION 2. Authority for and Execution of Lease Purchase Agreement. It is hereby found, determined and declared to be necessary, and it is hereby authorized, ordered and directed that the City lease the Equipment from the Lessor; and that in connection therewith, the Mayor and City Clerk shall execute on behalf of the City an Equipment Lease/Purchase Agreement (the "Lease Purchase Agreement"), between the City, as lessee, and Lessor, as lessor, for the purpose of providing for the lease of the Equipment; said Lease Purchase Agreement to be in substantially the form as it is presented today with such minor corrections or amendments thereto as the Mayor of the City shall approve, which approval shall be evidenced by his execution thereof.

SECTION 3. Rental Payments. The Rental Payments required by the Lease Purchase Agreement shall be made from funds budgeted and appropriated for that purpose during the City's current budget year and other funds lawfully available to the City for such purpose, in accordance with the Lease Purchase Agreement, and as provided by law, and shall not be paid from any other moneys or sources (except to the extent paid from moneys attributable to proceeds from insurance policies, condemnation awards or awards resulting from defaults under certain circumstances).

SECTION 4. Non-Arbitrage Covenant. The City hereby covenants that so long as any of the Rental Payments remain outstanding and unpaid under the Lease Purchase Agreement, there will be no use made of the proceeds therefrom which, if such use had been reasonably expected on the date of execution and delivery, would have caused them 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 Rental Payments under the Lease Purchase Agreement remain outstanding and unpaid. The City hereby further covenants to take all such action in its power as may be required from time to time in order to assure the continued exclusion from gross income for the purpose of Federal income taxation of the interest component on the Rental Payments, 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 5. Designation as Qualified Tax-Exempt Obligation. The governing body of the City hereby designates the Lease Purchase Agreement a "qualified tax-exempt obligation" as defined in Section 265(b)(3) of the Code.

SECTION 6. Further Authority. The Mayor and City Clerk are hereby individually authorized, directed and empowered, acting jointly or singly, in the name of the City, to expend such funds and do or cause to be done all such further acts and things as they, acting jointly or singly, may deem necessary, advisable, convenient, or proper in connection with the execution and delivery of any such Lease Purchase Agreement and in connection with or incidental to the carrying of the same into effect, including without limitation the execution, acknowledgment, and delivery of such certificates of authority, incumbency certificates, acceptance certificates, receipts, bills of sale, and any and all certificates, instruments and documents which may be required by Lessor under or in connection with the Lease Purchase Agreement (including but not limited to the preparation and filing of Internal Revenue Service Form 8038-GC, or such other form or forms as may be required by the Internal Revenue Service in connection with the City's issuance of tax-exempt obligations).

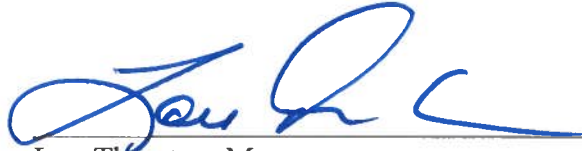
SECTION 7. Effective Date. This Ordinance shall be in force and take effect from and after its adoption and approval and publication once in the official newspaper of the City.

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PASSED, ADOPTED AND APPROVED by a majority vote of the governing body of the City of Hillsboro, Kansas this 5th day of July, 2022.



CITY OF HILLSBORO, KANSAS



Lou Thurston, Mayor

ATTEST:



Danielle Bartel, City Clerk