

(Published at www.andoverks.com on January 20, 2024)

ORDINANCE NO. 1891

AN ORDINANCE AMENDING AND RESTATING ORDINANCE NO. 1691 OF
THE CITY OF ANDOVER, KANSAS.

WHEREAS, the governing body of the City of Andover, Kansas (the “City”) has heretofore by Ordinance No. 1076 adopted on June 15, 2000 and published in the City’s official newspaper as required by law on June 22, 2000, as amended and restated by (i) Ordinance No. 1442 adopted September 29, 2009 and published in the City’s official newspaper as required by law on October 2, 2009, and (ii) Ordinance No. 1480 adopted November 30, 2010 and published in the City’s official newspaper as required by law on December 3, 2010, and (iii) Ordinance No. 1691 adopted November 27, 2018 and published in the City’s official newspaper as required by law on December 1, 2018, established a written undertaking to function as a master undertaking for the benefit of the holders as well as the beneficial owners of all general obligation bonds and temporary notes issued by the City of Andover, purchased for public distribution by one or more underwriters, on or after July 3, 1995, as required to establish legal preconditions for sale of the Bonds and Notes through an underwriter or underwriters, under Section (b)(5)(i) of Securities and Exchange Commission (“SEC”) Rule 15c2-12 promulgated under the Securities Exchange Act of 1934, as amended; and

WHEREAS, the governing body of the City finds and determines it advisable to amend and restate Ordinance No. 1691 of the City.

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

Section 1. Amendment and Restatement of Ordinance No. 1691. The entirety of Ordinance No. 1691 is hereby amended and restated by replacing it with the following:

SECTION 1. This Ordinance establishes and constitutes a written undertaking which shall function as a master undertaking for the benefit of the holders as well as the beneficial owners of all general obligation bonds (the “Bonds”) and temporary notes (the “Notes”) issued by the City of Andover, (the “City” or the “Issuer”), purchased for public distribution by one or more underwriters, on or after August 18, 2003, as required to establish legal preconditions for sale of the Bonds and Notes through an underwriter or underwriters, under Section (b)(5)(i) of Securities and Exchange Commission (“SEC”) Rule 15c2-12 (the “Rule”) promulgated under the Securities Exchange Act of 1934, as amended. Capitalized terms used in this Ordinance, and not otherwise defined herein, shall have the meanings assigned to such terms in Section 4 hereof.

SECTION 2. The City, as issuer of the Bonds and Notes, undertakes to provide the following information, at the times and to the recipients as provided in Section 3 of this Ordinance:

- (i) Annual Financial Information
- (ii) Audited Financial Statements
- (iii) Reporting Event Notices

SECTION 3. So long as the Rule continues to require an undertaking to make ongoing disclosure as established herein, or performance of prior such undertakings, then, with respect to all of the Bonds and Notes issued subject to such requirements which remain Outstanding:

(A) The Issuer shall provide the Annual Financial Information on or before December 31 of each year (the "Report Date"), beginning in December, 2009, to the Municipal Securities Rulemaking Board ("MSRB"). The Issuer may adjust the Report Date if the Issuer changes its fiscal year by providing written notice of the change of fiscal year and the new Report Date to the MSRB; provided that the new Report Date shall be not more than 365 days after then end of the new fiscal year and provided further that the final Report Date relating to the former fiscal year and the initial Report Date relating to the new fiscal year shall not exceed one year in duration. It shall be sufficient if the Issuer provides to the MSRB the Annual Financial Information by specific reference to documents previously provided to the MSRB or filed with the Securities and Exchange Commission and, if such a document is a final official statement within the meaning of the Rule, available from the MSRB.

(B) The Issuer shall provide the Audited Financial Statements as part of the Annual Financial Information described in the preceding paragraph of this Section, when and if available.

(C) If a Reporting Event occurs, the Issuer shall provide a Reporting Event Notice to the MSRB in a timely manner not in excess of ten (10) business days after the occurrence of a Reporting Event. Each "Reporting Event Notice" shall be so captioned, and shall prominently state the date, title and CUSIP numbers of the Bonds or Notes to which the Reporting Event(s) covered by the Reporting Event Notice pertain(s).

(D) The Issuer shall provide timely notice of any failure by the Issuer to provide Annual Financial Information as required hereunder to the MSRB.

SECTION 4. The following are definitions of the capitalized terms used in this Ordinance and not otherwise defined elsewhere in this Ordinance:

"Adverse Tax Opinion" means adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the security, or other material events affecting the tax status of the security.

“Annual Financial Information” means the Issuer’s Audited Financial Statements and Operating Data.

“Audited Financial Statements” means the City’s annual financial statements, prepared using accounting practices prescribed by the State according to the Kansas Municipal Accounting and Audit Guide to demonstrate compliance with the “Cash Basis” and budget laws of the State and audited as required or permitted by the laws of the State according to auditing standards generally accepted in the United States, and the standards applicable to financial audits in *Government Auditing Standards*, issued by the Comptroller General of the United States.

“Bankruptcy Event” means bankruptcy, insolvency, receivership or similar event of the Issuer. For the purposes of this definition, the Bankruptcy Event is considered to have occurred when any of the following occur: the appointment of a receiver, fiscal agent or similar officer for the Issuer in a proceeding under the U.S. Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the Issuer, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the Issuer.

“Beneficial Owner” means any person which (a) has the power, directly or indirectly, to vote or consent with respect to, or to dispose of ownership of, any Bonds or Notes (including persons holding Bonds or Notes through nominees, depositories or other intermediaries), or (b) is treated as the owner of any Bonds or Notes for federal income tax purposes.

“Financial Obligation” means a (i) debt obligation; (ii) derivative instrument entered into in connection with or pledged as security or a source of payment for an existing or planned debt obligation; or (iii) guarantee of (i) or (ii). The term Financial Obligation shall not include municipal securities as to which a final official statement has been provided to the Municipal Rulemaking Board consistent with the SEC Rule.

“Merger Event” means the consummation of a merger, consolidation, or acquisition involving the Issuer or the sale of all or substantially all of the assets of the Issuer, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms.

“MSRB” means that Municipal Securities Rulemaking Board, including specifically its Electronic Municipal Market Access (“EMMA”) system and any successors or assigns at <http://www.emma.msrb.org>.

“Obligated Person” means an obligated person as defined in the SEC Rule.

“Operating Data” means the operating data specifically included and set forth within the Issuer’s Comprehensive Annual Financial Report, prepared in accordance with the standards established by the Governmental Accounting Standards Board, which shall contain at a minimum the data included in the Comprehensive Annual Financial Report attached to the applicable final official statement for such Bonds or Notes.

“Outstanding” when used with reference to any of the Bonds or Notes shall mean, as of a particular date, all Bonds or Notes theretofore authenticated and delivered under one or more Ordinances of the City, except: (i) Bonds or Notes theretofore canceled by the Fiscal Agent (as defined in the Ordinance(s) authorizing the issuance of such Bonds or Notes) or delivered to such Fiscal Agent for cancellation; (ii) Bonds or Notes for which payment or redemption moneys or Government Securities (as defined in the Ordinance(s) authorizing the issuance of such Bonds or Notes) or both, in the necessary amounts have been deposited with the Fiscal Agent or other such depository as provided in the Ordinance(s) authorizing the issuance of such Bonds or Notes, in trust for the Owners thereof (whether upon or prior to maturity or the Redemption Date(s) of such Bonds or Notes); or (iii) Bonds or Notes in exchange for or in lieu of which refunding Bonds or Notes have been authenticated and delivered pursuant to the terms of (and within the meaning of) the appropriate Ordinance(s).

“Owner(s)” shall mean, when used with respect to any Bond or Note, the person in whose name the Bond or Note is registered, as shown upon the registration books maintained by the Fiscal Agent(s) designated in the Ordinance(s) authorizing the issuance of such Bonds or Notes and shall include any Beneficial Owners.

“Participating Underwriter” shall mean any of the original underwriters of the Bonds or Notes required to comply with the Rule in connection with the offering of the Bonds or Notes.

“Redemption Date(s)” shall mean, when used with respect to any Bond or Note(s), the date(s) established as such in the Ordinance(s) authorizing the issuance of such Bonds or Notes.

“Reporting Event” means any of the following events with respect to any of the Outstanding Bonds or Notes: (i) principal and interest payment delinquencies; (ii) non-payment related defaults, if material; (iii) unscheduled draws on debt service reserves reflecting financial difficulties; (iv) unscheduled draws on credit enhancements reflecting financial difficulties; (v) substitution of credit or liquidity providers, or their failure to perform; (vi) Adverse Tax Opinions; (vii) modifications to rights of security holders, if material; (viii) note or bond calls, if material, and tender offers; (ix) defeasances; (x) release, substitution, or sale of property securing

repayment of the securities, if material; (xi) rating changes; (xii) Bankruptcy Events; (xiii) Merger Events, if material; (xiv) appointment of a successor or additional trustee or the change of name of a trustee, if material; (xv) Incurrence of a Financial Obligation of an Obligated Person, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a Financial Obligation of an Obligated Person, any of which affect security holders, if material; and (xvi) Default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a Financial Obligation of an Obligated Person, any of which reflect financial difficulties.

“Reporting Event Notice” means written or electronic notice of a Material Event.

“SEC Rule” means the Securities and Exchange Commission Rule 15c2-12 under the Securities Exchange Act of 1934, as amended (17 CFR §240. 15c2-12).

SECTION 5. Unless otherwise required by law, the City shall transmit all information required hereunder, including notices and filings, in such electronic format and accompanied by such identifying information at <http://www.emma.msrb.org> or such other internet site, all as required by the MSRB.

SECTION 6. This Ordinance, or any provision hereof, shall be subject to nullification and repeal in the event that the Issuer first delivers to the MSRB an opinion of nationally recognized bond counsel to the effect that those portions of the Rule that require this Undertaking as a condition for particular underwriter conduct, or any such provision, are invalid, have been repealed retroactively or otherwise do not apply to the Bonds or Notes. This Ordinance may be amended without the Consent of the Owner(s) of any Bonds or Notes, following the delivery by the Issuer to the MSRB of the proposed amendment and the opinion of nationally recognized bond counsel to the effect that such amendment, and giving effect thereto, will be in compliance with the Rule, as amended and officially interpreted.

SECTION 7. Any failure by the Issuer to perform its obligations under this Ordinance shall not constitute an “Event of Default” or “Default” within the meaning of any Ordinance(s) authorizing the issuance of any Bonds or Notes, and the rights and remedies provided to Owners of the Bonds or Notes under such Ordinance(s) upon the Occurrence of such a “Default” Or such an “Event of Default” shall not apply to any such failure. The sole remedy under this Ordinance in the event of any failure of the Issuer to comply with this Ordinance shall be an action to compel performance.

SECTION 8. If any of the foregoing provisions or terms of this Ordinance, or any application thereof, is held invalid, the invalidity shall not affect other applications of the provisions or terms of this Ordinance which reasonably can be given effect without the invalid provision or term or the application thereof, and to this end, the provisions of this Ordinance are declared to be severable.

SECTION 9. None of the provisions of this Ordinance are in any way intended to impose upon, or result in an assumption by, the Issuer or any of its officers, agents or

employees, of any special duty or any civil law duty of care as to which any breach or alleged breach thereof could give rise to any claim for damages in tort, and the Issuer expressly disclaims any such duty or responsibility for damages, including (but not limited to) any direct, indirect, special or consequential damages. The provisions of this Ordinance shall not, in any way, create liability or a basis for liability on the part of the Issuer or any officer, agent or employee thereof for any damages that result from failure of the Issuer to timely perform any portion, provision, term or condition of the written undertaking on its part established herein, or for any damages that result from reliance upon any provision of this Ordinance, or any administrative decision lawfully made thereunder. However, nothing in this subsection shall operate or be construed to limit the rights of any Owner of any Bond or Note to seek enforcement of the undertakings herein expressed through proceedings for a decree of specific performance in equity.

SECTION 10. The Issuer may, from time to time, appoint or engage a Dissemination Agent to assist it in carrying out its obligations under this Ordinance and may discharge any such Agent, with or without appointing a Successor Dissemination Agent.

SECTION 11. This Ordinance shall inure solely to the benefit of the Issuer, the Participating Underwriters and the Owners from time to time of the Bonds and Notes and shall create no rights in any other person or entity.

Section 2. Amending Ordinance. Except to the extent specifically amended hereby, Ordinance No. 1691 shall remain in full force and effect.

Section 3. Effective Date. This Ordinance shall take effect and be in full force from and after its adoption by the governing body of City of Andover, Kansas and its publication in the official newspaper of the City.


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PASSED, APPROVED AND ADOPTED by the governing body of the City of Andover,
Kansas this 9th day of January, 2024.

[seal]



CITY OF ANDOVER, KANSAS

By 
Ronnie Price, Mayor

ATTEST:

By 
Dana Engstrom, City Clerk

EXCERPT OF MINUTES

The governing body of the City of Andover, Kansas met at the normal meeting place in the City on January 9, 2024, at 7:00 p.m., with the Mayor Ronnie Price presiding, and the following members of the governing body present:

Mayor Price, Council Members: Berry, Hamilton, Warrington, Ocadiz, Wemmer, and Henry

and the following members absent:

None

Thereupon, and among other business, there was presented to the governing body an Ordinance entitled:

AN ORDINANCE AMENDING AND RESTATING ORDINANCE NO. 1691 OF THE CITY OF ANDOVER, KANSAS.

Thereupon, the Ordinance was considered and discussed; and on motion of Council Member Henry, seconded by Council Member Warrington, the Ordinance was adopted by a majority vote of all members present.

Thereupon, the Ordinance having been adopted by a majority vote of the members of the governing body, it was given No. 1891, and was directed to be signed by the Mayor and attested by the City Clerk; and the City Clerk was directed to cause the publication of the Ordinance one time as set forth therein and required by law.

CITY CLERK'S
CERTIFICATION OF EXCERPT OF MINUTES

I hereby certify that the foregoing is a true and correct Excerpt of the Minutes of the proceedings at the January 9, 2024 meeting of the governing body of the City of Andover, Kansas.

[seal]



A handwritten signature in cursive script, appearing to read "Dana Engstrom", written over a horizontal line.

Dana Engstrom, City Clerk