

(Published in *The Herington Times* on January 11, 2018)

**ORDINANCE NO. 1798**

**AN ORDINANCE AUTHORIZING THE EXECUTION OF A LOAN AGREEMENT BETWEEN HERINGTON, KANSAS AND THE STATE OF KANSAS, ACTING BY AND THROUGH THE KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT FOR THE PURPOSE OF OBTAINING A LOAN FROM THE KANSAS PUBLIC WATER SUPPLY LOAN FUND FOR THE PURPOSE OF FINANCING A PUBLIC WATER SUPPLY PROJECT; ESTABLISHING A DEDICATED SOURCE OF REVENUE FOR REPAYMENT OF SUCH LOAN; AUTHORIZING AND APPROVING CERTAIN DOCUMENTS IN CONNECTION THEREWITH; AND AUTHORIZING CERTAIN OTHER ACTIONS IN CONNECTION WITH THE LOAN AGREEMENT.**

**WHEREAS**, the Safe Drinking Water Act Amendments of 1996 [PL 104-182] to the Safe Drinking Water Act (the "Federal Act") established the Drinking Water Loan Fund to assist public water supply systems in financing the costs of infrastructure needed to achieve or maintain compliance with the Federal Act and to protect the public health and authorized the Environmental Protection Agency (the "EPA") to administer a revolving loan program operated by the individual states; and

**WHEREAS**, to fund the state revolving fund program, the EPA will make annual capitalization grants to the states, on the condition that each state provide a state match for such state's revolving fund; and

**WHEREAS**, by passage of the Kansas Public Water Supply Loan Act, K.S.A. 65-163d *et seq.*, as amended (the "Loan Act"), the State of Kansas (the "State") has established the Kansas Public Water Supply Loan Fund (the "Revolving Fund") for purposes of the Federal Act; and

**WHEREAS**, under the Loan Act, the Secretary of the Kansas Department of Health and Environment ("KDHE") is given the responsibility for administration and management of the Revolving Fund; and

**WHEREAS**, the Kansas Development Finance Authority (the "Authority") and KDHE have entered into a Pledge Agreement (the "Pledge Agreement") pursuant to which KDHE agrees to enter into Loan Agreements with Municipalities for public water supply projects (the "Projects") and to pledge the Loan Repayments (as defined in the Pledge Agreement) received pursuant to such Loan Agreements to the Authority; and

**WHEREAS**, the Authority is authorized under K.S.A. 74-8905(a) and the Loan Act to issue revenue bonds (the "Bonds") for the purpose of providing funds to implement the State's requirements under the Federal Act and to loan the same, together with available funds from the EPA capitalization grants, to Municipalities within the State for the payment of Project Costs (as said terms are defined in the Loan Act); and

**WHEREAS**, Herington, Kansas (the "Municipality") is a municipality as said term is defined in the Loan Act which operates a water system (the "System"); and

**WHEREAS**, the System is a Public Water Supply System, as said term is defined in the Loan Act; and

**WHEREAS**, the Municipality has, pursuant to the Loan Act, submitted an Application to KDHE to obtain a loan from the Revolving Fund to finance the costs of improvements to its System consisting of the following:

Replace Water Treatment Plant

(the "Project"); and

**WHEREAS**, the Municipality has taken all steps necessary and has complied with the provisions of the Loan Act and the provisions of K.A.R. 28-15-50 through 28-15-65 (the "Regulations") applicable thereto necessary to qualify for the loan; and

**WHEREAS**, KDHE has informed the Municipality that it has been approved for a loan in amount not to exceed \$3,409,000.00 (the "Loan") in order to finance the Project; and

**WHEREAS**, the governing body of the Municipality hereby finds and determines that it is necessary and desirable to accept the Loan and to enter into a loan agreement and certain other documents relating thereto, and to take certain actions required in order to implement the Loan Agreement.

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

**Section 1. Authorization of Loan Agreement.** The Municipality is hereby authorized to accept the Loan and to enter into a certain Loan Agreement, with an effective date of November 6, 2017, with the State of Kansas acting by and through the Kansas Department of Health and Environment (the "Loan Agreement") to finance the Project Costs (as defined in the Loan Agreement). The Mayor and Clerk are hereby authorized to execute the Loan Agreement in substantially the form presented to the governing body this date, with such changes or modifications thereto as may be approved by the Mayor and the Municipality's legal counsel, the Mayor's execution of the Loan Agreement being conclusive evidence of such approval.

**Section 2. Establishment of Dedicated Source of Revenue for Repayment of Loan.** Pursuant to the Loan Act, the Municipality hereby establishes a dedicated source of revenue for repayment of the Loan. In accordance therewith, the Municipality shall impose and collect such rates, fees and charges for the use and services furnished by or through the System, including all improvements and additions thereto hereafter constructed or acquired by the Municipality as will provide System Revenues (as defined in the Loan Agreement) sufficient to (a) pay the cost of the operation and maintenance of the System, (b) pay the principal of and interest on the Loan as and when the same become due, (c) pay all other amounts due at any time under the Loan Agreement, and (d) pay the principal of and interest on Additional Revenue Obligations (as defined in the Loan Agreement) as and when the same become due; provided, however, the pledge of the System Revenues contained herein and in the Loan Agreement (i) shall be subject to reasonable expenses of operation and maintenance of the System, and (ii) shall be junior and subordinate in all respects to the pledge of System Revenues to any Additional Revenue Obligations. In the event that the System Revenues are insufficient to meet the obligations under the Loan and the Loan Agreement, the Municipality shall levy ad valorem taxes without limitation as to rate or amount upon all the taxable tangible property, real or personal, within the territorial limits of the Municipality to produce the amounts necessary for the prompt payment of the obligations under the Loan and Loan Agreement. In accordance with the Loan Act, the obligations under the Loan and the Loan Agreement shall not be included within any limitation on the bonded indebtedness of the Municipality.

**Section 3. Further Authority.** The Mayor, Clerk and other City officials and legal counsel 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, and 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 4. Governing Law.** The Ordinance and the Loan Agreement shall be governed exclusively by and construed in accordance with the applicable laws of the State of Kansas.

**Section 5. Effective Date.** This Ordinance shall take effect and be in full force from and after its passage by the governing body of the City and publication in the official City newspaper.

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**PASSED** by the governing body of the City on January 2, 2018 and signed and **APPROVED** by the Mayor.

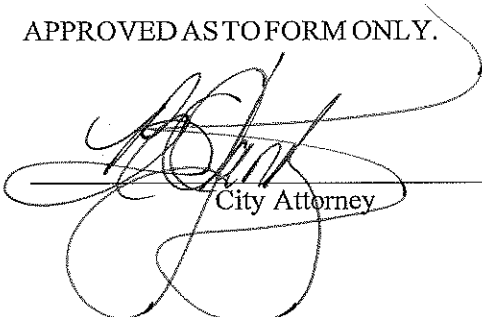
(SEAL)

  
\_\_\_\_\_  
Kat Souza, Mayor

ATTEST:

  
\_\_\_\_\_  
Clerk

APPROVED AS TO FORM ONLY.

  
\_\_\_\_\_  
City Attorney

*EXHIBIT G*

**FORM OF OPINION OF MUNICIPALITY'S COUNSEL**

January 2, 2018

Kansas Development Finance Authority  
Topeka, Kansas

The Kansas Department of Health and  
Environment, acting on behalf of  
The State of Kansas  
Topeka, Kansas

Re: Loan Agreement effective as of November 6, 2017, between the Kansas Department of Health and Environment ("KDHE"), acting on behalf of the State of Kansas (the "State"), and Herington, Kansas (the "Municipality")

I have acted as counsel to the Municipality in connection with the authorization, execution and delivery of the above referenced Loan Agreement (the "Loan Agreement"). In my capacity as counsel to the Municipality, I have examined original or certified copies of minutes, ordinances of the Municipality and other documents relating to the authorization of the Project, the authorization, execution and delivery of the Loan Agreement, and the establishment of a Dedicated Source of Revenue (as defined in the Loan Agreement) for repayment of the Loan evidenced by the Loan Agreement. Capitalized terms used herein and not otherwise defined herein shall have the meanings assigned thereto in the Loan Agreement.

In this connection, I have examined the following:

- (a) an executed or certified copy of the Loan Agreement;
- (b) proceedings adopted or taken by the Municipality to authorize and approve the Project to be constructed with the proceeds of the Loan evidenced by the Loan Agreement;
- (c) Ordinance #1798 of the Municipality (the "Ordinance") adopted on January 2, 2018, and other proceedings of the Municipality taken and adopted in connection with the authorization, execution and delivery of the Loan Agreement, and the establishment of a Dedicated Source of Revenue for repayment of the Loan evidenced by the Loan Agreement; and

- (d) such other proceedings, documents and instruments as I have deemed necessary or appropriate to the rendering of the opinions expressed herein.

In this connection, I have reviewed such documents, and have made such investigations of law, as deemed relevant and necessary as the basis for the opinions hereinafter expressed.

Based upon the foregoing, it is my opinion, as of the date hereof, that:

1. The Municipality is a municipal corporation duly created, organized and existing under the laws of the State.
2. The Municipality operates a Public Water Supply System, as said term is defined in the Loan Act.
3. The Project has been duly authorized by the Municipality.
4. The Municipality has all requisite legal power and authority to, and has been duly authorized under the terms and provisions of the Ordinance to, execute and deliver, and perform its obligations under, the Loan Agreement.
5. The Loan Agreement has been duly authorized, executed and delivered by the Municipality and constitutes a valid and binding agreement of the Municipality enforceable in accordance with its terms, subject as to enforcement of remedies to any applicable bankruptcy, reorganization, insolvency, moratorium or other similar laws affecting creditors' rights heretofore or hereafter enacted, and subject further to the exercise of judicial discretion in accordance with general principles of equity. In rendering this opinion I have assumed due authorization, execution and delivery of the Loan Agreement by the State, acting by and through KDHE.
6. By adopting the Ordinance, the Municipality has duly authorized the Dedicated Source of Revenue for repayment of the Loan to be made pursuant to the Loan Agreement.
7. To the best of my knowledge, the execution and delivery of the Loan Agreement by the Municipality will not conflict with or result in a breach of any of the terms of, or constitute a default under, any ordinance, indenture, mortgage, deed of trust, lease or other agreement or instrument to which the Municipality is a party or by which it or any of its property is bound or any of the rules or regulations applicable to the Municipality or its property or of any court or other governmental body.

Very truly yours,

*EXHIBITH*

**MUNICIPALITY'S NOTICE ADDRESS**

City of Herington  
Attn: City Manager  
PO Box 31  
Herington, Kansas 67449





**EXHIBIT F**

**FORM OF MUNICIPALITY ORDINANCE**

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**EXCERPT OF MINUTES OF A MEETING  
OF THE GOVERNING BODY OF  
THE CITY OF HERINGTON, KANSAS  
HELD ON JANUARY 2, 2018**

The Governing Body of the City met in regular session at the usual meeting place in the City, at 6:00 P.M., the following members being present and participating, to-wit:

Mayor Kat Souza, Commissioner Mark Hager, Commissioner Michelle Stanford, Commissioner Dave Jones, and Commissioner Sarah Nistler

Absent: None

A quorum was already established and the meeting was in session.

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(Other Proceedings)

Thereupon, there was presented an Ordinance entitled:

**AN ORDINANCE AUTHORIZING THE EXECUTION OF A LOAN AGREEMENT BETWEEN HERINGTON, KANSAS AND THE STATE OF KANSAS, ACTING BY AND THROUGH THE KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT FOR THE PURPOSE OF OBTAINING A LOAN FROM THE KANSAS PUBLIC WATER SUPPLY LOAN FUND FOR THE PURPOSE OF FINANCING A PUBLIC WATER SUPPLY PROJECT; ESTABLISHING A DEDICATED SOURCE OF REVENUE FOR REPAYMENT OF SUCH LOAN; AUTHORIZING AND APPROVING CERTAIN DOCUMENTS IN CONNECTION THEREWITH; AND AUTHORIZING CERTAIN OTHER ACTIONS IN CONNECTION WITH THE LOAN AGREEMENT.**

Thereupon, Commissioner Dave Jones moved that said Ordinance be passed. The motion was seconded by Commissioner Michelle Stanford. Said Ordinance was duly read and considered, and upon being put, the motion for the passage of said Ordinance was carried by the vote of the Governing Body, the vote being as follows:

Yes: 5

No: 0

Thereupon, the Mayor Kat Souza declared said Ordinance duly passed and the Ordinance was then duly numbered Ordinance No. 1798 and was signed and approved by the Mayor and attested by the Clerk.

The Clerk was directed to publish the Ordinance one time in the official newspaper of the City.

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(SEAL)

Brenda Wildman Clerk