

ORDINANCE NO 1109

AN ORDINANCE AUTHORIZING THE EXECUTION OF A LOAN AGREEMENT BETWEEN DWIGHT, 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 purpose 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 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);

**WHEREAS, DWIGHT**, Kansas (the "Municipality") is a municipality as 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:

Distribution system replacement with approximately 4,700 linear feet of 6-inch PVC pipe, 7,600 linear feet of 4-inch PVC pipe, 3,200 linear feet of 2-inch PVC pipe, 8,500 linear feet of service pipe, 160 new meter settings, well house modifications, and all related appurtenances.

(the "Project"), and

**WHEREAS,** the Municipality has taken all steps necessary and has compiled 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 informed the Municipality that it has been approved for a loan in amount of not to exceed \$ 324,430 (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 DWIGHT, 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 as effective date of October 28, 2005, 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 established 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 Systems, (b) pay the principal of and interest on the Loan as and when the same becomes due, © 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 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 Systems, 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 volorem 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 confined 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 constructed 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 Council Grove Republican.

**PASSED BY THE GOVERNING BODY OF THE City of Dwight on December 21, 2005 and APPROVED** by the Mayor.

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Tony Reynoso, Mayor

ATTEST:

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Jean Peterson, City Clerk