

(Published in Butler County Times Gazette on June 8, 2019)

ORDINANCE NO. 2150

AN ORDINANCE AUTHORIZING THE EXECUTION OF THE SECOND AMENDMENT TO THE LOAN AGREEMENT BETWEEN AUGUSTA, 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 WATER POLLUTION CONTROL REVOLVING FUND FOR THE PURPOSE OF FINANCING A WASTEWATER TREATMENT 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 SECOND AMENDMENT TO THE LOAN AGREEMENT.

WHEREAS, the Federal Water Quality Act of 1987 (the "Federal Act") established revolving fund program for public wastewater treatment systems to assist 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 Water Pollution Control Revolving Fund Act, K.S.A. 65-3321 through 65-3329, inclusive (the "Loan Act"), the State of Kansas (the "State") has established the Kansas Water Pollution Control Revolving 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 wastewater treatment 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, Augusta, Kansas (the "Municipality") is a municipality as said term is defined in the Loan Act which operates a wastewater collection, pumping, and treatment system (the "System"); and

WHEREAS, the System is a public Wastewater Treatment Works, 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:

The project includes the rehabilitation of approximately 3,900 linear feet of sewer line within Basin A of the city in approximately 14 different segments using CIPP lining and dig and replace the sewer pipes (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. 28-16-110 to 28-16-138 (the "Regulations") applicable thereto necessary to qualify for an amendment to the loan; and

WHEREAS, KDHE has informed the Municipality that it has been approved for a loan in amount of not to exceed One Million Four Hundred Forty Seven Thousand Eight Hundred Dollars [\$1,447,800] (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 Second Amendment to the Loan Agreement and to enter into a Second Amendment to the Loan Agreement and certain other documents relating thereto, and to take certain actions required in order to implement the Second Amendment to the Loan Agreement.

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

Section 1. Authorization of the Second Amendment to the Loan Agreement. The Municipality is hereby authorized to accept the Loan and to enter into a certain Second Amendment to the Loan Agreement, with an effective date of May 30, 2019, with the State of Kansas acting by and through the Kansas Department of Health and Environment (the "Second Amendment to the Loan Agreement") to finance the Project Costs (as defined in the Second Amendment to the Loan Agreement). The Mayor and Clerk are hereby authorized to execute the Second Amendment to 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 City Attorney, the Mayor's execution of the Second Amendment to 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 or 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 amounts which are 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, and (c) pay all other amounts due at any time under the Loan Agreement; provided, however, no lien or other security interest is granted by the Municipality to KDHE on the System Revenues under this Agreement. 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 Second Amendment to 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 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.

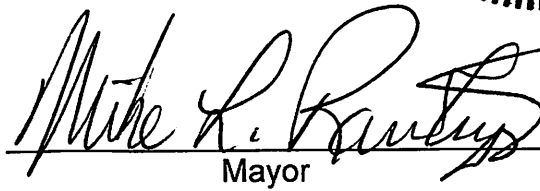
Section 4. Governing Law. The Ordinance and the Second Amendment to the Loan Agreement shall be governed exclusively by and construed in accordance with the applicable laws of the State of Kansas.

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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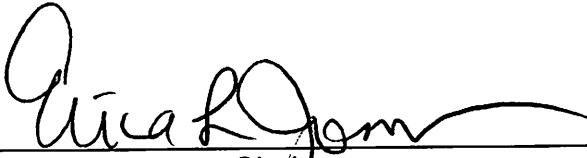
PASSED by the governing body of the City on June 3, 2019 and signed and **APPROVED** by the Mayor.





Mayor

ATTEST:



Clerk

APPROVED AS TO FORM ONLY.



City Attorney



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EXHIBIT G

FORM OF OPINION OF MUNICIPALITY'S COUNSEL

June 3, 2019

Kansas Development Finance Authority
Topeka, Kansas

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

Re: Second Amendment to the Loan Agreement effective as of May 30, 2019, between the Kansas Department of Health and Environment ("KDHE"), acting on behalf of the State of Kansas (the "State"), and Augusta, Kansas (the "Municipality")

I have acted as counsel to the Municipality in connection with the authorization, execution and delivery of the above referenced Second Amendment to the Loan Agreement (the "Second Amendment"). 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 Second Amendment to the Loan Agreement, and the establishment of a Dedicated Source of Revenue (as defined in the Second Amendment to the Loan Agreement) for repayment of the Loan evidenced by the Second Amendment to the Loan Agreement. Capitalized terms used herein and not otherwise defined herein shall have the meanings assigned thereto in the Second Amendment to the Loan Agreement.

In this connection, I have examined the following:

- (a) an executed or certified copy of the Second Amendment to 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 Second Amendment to the Loan Agreement;
- (c) Ordinance No. 2150 of the Municipality (the "Ordinance") adopted on June 3, 2019, and other proceedings of the Municipality taken and adopted in connection with the authorization, execution and delivery of the Second Amendment to the Loan Agreement, and the establishment of a Dedicated Source of Revenue for repayment of the Loan evidenced by the Second Amendment to the Loan Agreement; and

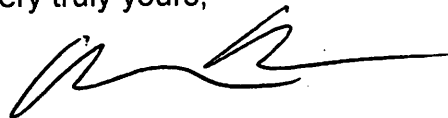
- (d) such other proceedings, documents and instruments as I have deemed necessary or appropriate to the rendering of the opinions expressed herein.

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 Wastewater Treatment Works, 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 Second Amendment to the Loan Agreement.
5. The Second Amendment to 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 Second Amendment to the Loan Agreement by the State, acting by and through KDHE.
6. The Municipality has duly authorized the Dedicated Source of Revenue for repayment of the Loan to be made pursuant to the Second Amendment to the Loan Agreement.
7. To the best of my knowledge, the execution and delivery of the Second Amendment to 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,

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke at the end.