

(First Published in the Columbus Daily Advocate December 8, 2006)

ORDINANCE NO. 1204

**AN ORDINANCE AUTHORIZING THE EXECUTION OF A LOAN AGREEMENT BETWEEN COLUMBUS, 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 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 Agreement 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**, Columbus, Kansas (the "Municipality") is a municipality as said term is defined in the Loan Act which operates a sanitary sewer collection 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 proposed project consists of the repair and rehabilitation of portions of the existing sanitary sewer collection system in the approximate twenty-eight block East Town Area on the eastern limits of the City. Proposed improvements include the rehabilitation of replacement of approximately 1500 manholes, repair and replacement of approximately 9,775 linear feet of sewer piping by trenchless methods, re-connection of approximately 124 service taps and related site clearing and restoration. Also included is the installation of 600 linear feet of 10-inch pipe for a new outfall line from the East Town Area to Lift Station No. 2 (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 the loan; and

**WHEREAS**, KDHE has informed the Municipality that it has been approved for a loan in amount of not to exceed Seven Hundred Thousand Dollars [\$700,000] (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 COLUMBUS, 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 2, 2006, 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 City 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 City Attorney, 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 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 becomes 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 of 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 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 agreement, 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.

**PASSED** by the Governing Body of the City this 4th day of December, 2006, and approved by the Mayor.

  
JOHN BRASSART, MAYOR

ATTEST:

  
JANICE BLANCETT, CITY CLERK

(SEAL)