

**ORDINANCE NO. 388**

**AN ORDINANCE AUTHORIZING THE EXECUTION OF A SECOND AMENDMENT TO THE LOAN AGREEMENT BETWEEN BASEHOR, 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

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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** Basehor, 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 items is defined in the Loan Act; and

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

This project includes five separate contracts. One contract is to construct a new interceptor, pump station and force main. Construction costs for the pump station include extending electrical service to the site. One contract is for infiltration/inflow sewer rehabilitation to the existing collection system. The major contract is for construction of a new 0.569MGD capacity activated sludge plant with UV disinfection facilities, new headworks with odor control system, one aeration basin, two clarifiers, an aerated sludge holding tank, and waste sludge thickening and dewatering on a belt press with ultimate disposal to a solid waste landfill. The new treatment plant is the first phase of a regional facility planned with an ultimate capacity of 2.275 MGD. Construction costs for the new treatment plant include extending potable water, electrical, and natural gas services to the site. Sludge removal from the existing wastewater treatment lagoons (to be abandoned) is also included. There is a separate pre-purchase contract to be negotiated for the major equipment items of the wastewater treatment facility. Another contract involves construction of a new interceptor sewer to serve the Briarwood benefit district and other areas tributary to the interceptor (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 an amount not to exceed Nine Million Five Hundred Thousand Dollars (\$9,500,000) (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 Second Amendment to the Loan 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 BASEHOR, 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 December 1, 2000, 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 the 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.

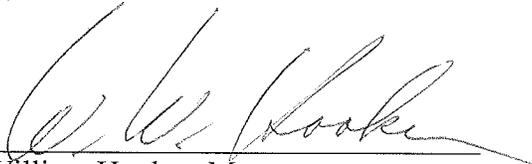
In accordance with the Loan Act, the obligations under the Loan and the Second Amendment to the Loan Agreement shall not be included within any limitation on the bonded indebtedness of the Municipality.

**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.

**PASSED** by the governing body of the City on the 20 day of May, 2002 and **APPROVED** by the Mayor.

  
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William Hooker, Mayor

Attest:

  
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Mary Ann Mogle, City Clerk

Approved as to Form Only:

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