

Date: _____

Amount: \$360,000.00

RURAL ECONOMIC DEVELOPMENT LOAN AGREEMENT

This Agreement dated as of the date first written above between **Dawson Area Development**, a corporation duly organized and existing under the laws of the State of Nebraska ("Borrower"), and **City of Lexington**, a Municipal Corporation ("Lender") sets forth the terms and understandings between the Borrower and Lender regarding a loan (the "Loan") the Lender is making to the Borrower pursuant to Section 313 of the Rural Electrification Act of 1936, as amended ("Act") and 7 CFR part 4280, Subpart A – Rural Economic Development Loan and Grant Programs ("Regulations").

The Lender, on behalf of Borrower, has filed an application and supporting material (collectively, the "Application Materials") with United States of America ("Government") requesting the Loan for promoting rural economic development.

Lender wishes to make the Loan to the Borrower with proceeds of a grant from the Government to finance Approved Purposes for the rural development project ("Project") as described and defined in the Letter of Conditions between the Government and the Lender dated June 13, 2012.

NOW, THEREFORE, in consideration of the mutual agreements herein contained, Lender and the Borrower agree as follows:

A. Loan Terms

1. Lender shall lend Three Hundred Sixty Thousand dollars (**\$360,000.00**) to the Borrower to be used solely to promote rural economic development as more particularly described in the Application Materials, as those materials may have been modified by the Letter of Conditions. Borrower shall be obligated to pay an administrative fee equal to zero percent (0%) per annum on the outstanding balance, during the term of the loan. This fee will be payable annually with the loan payment, and Lender will prepare an amortization schedule. The term of the loan will be 10 years, with 8 equal annual payments of \$45,000.00 commencing November 1, 2014, and the final installment on or before November 1, 2021 inclusive of the administrative fee (the "Loan").

2. The loan will be continuously secured by a Mortgage Lien on Real Estate (Legal Description: _____) to the lender.

3. Lender shall advance the proceeds of the Loan to the Borrower in a single lump sum of \$360,000.00, subject to submission by Borrower to Lender of evidence that the project is proceeding and expenditure of funds in the amount of the requested advance.

4. The Borrower shall repay the Loan in accordance with the note (as hereinafter defined) to be executed by the Borrower and made payable to Lender. The Borrower shall begin to repay the Loan on the date set forth in the Note and shall continue paying without interruption until all indebtedness associated with the Loan has been repaid in full on or before the final maturity date of the Note.

5. The Loan will not bear interest although indebtedness not paid when due will be subject to late charges, costs, and other charges as provided in the Note.

6. If the Borrower fails to satisfy all conditions, requirements, and terms prerequisite to the advance of the proceeds of the Loan from the Lender as set forth in this agreement on or before January 1, 2013 or such later date as the Lender and Government may approve in writing in furtherance of the purposes of the Act, the Loan committee shall be considered rescinded.

7. The Borrower will be responsible to reimburse Lender for its costs and expenses related to this transaction, and to obtain and pay for any and all appraisals, surveys, inspections, reports, title insurance, bank fees, etc related to the Project as may be required for Lender to meet its obligations to the Government.

B. Conditions. The obligation of Lender under this Agreement to consummate this transaction is subject to the following conditions:

1. Review and approval of all Loan documents by the Administrator of the REA or its representative;
2. Funding of the zero-interest grant by the Government to Lender;
3. Receipt by Lender of legal opinion from Borrower's Legal Counsel in a form and content satisfactory to Lender's Counsel;
4. Receipt by Lender of certified resolutions of Borrower's Board of Directors that approves the Loan and this transaction and authorizes an officer of the Borrower to execute all documents and to request in writing the advance of the Loan, and a certificate of authority in a form reasonably requested by Lender;

5. Receipt by Lender of the security instrument/collateral referenced in Section A hereof; and
6. Receipt of evidence satisfactory to the Lender that the Borrower has obtained or received binding commitments for supplemental financing of at least \$440,000.00 that is needed, in addition to the Loan proceeds, to ensure completion of the Project.

C. Affirmative Covenants. Borrower agrees as follows:

1. Borrower shall execute and deliver its promissory note (the "Note") to the Lender in the form attached hereto as Exhibit A and incorporated herein by this reference in order to evidence its obligation to repay the Loan by the terms of this Agreement, the Letter of Conditions, and the Note. The Borrower shall pay all indebtedness evidenced by the Note in the manner and at the times described herein and therein.
2. Borrower shall promptly use the proceeds of the Loan only in the manner and exclusively for the purposes set forth in the Application Materials as previously approved by the Government and in accordance with Letter of Conditions, this Agreement, and the Regulations (as they may be amended from time to time). No changes may be made in the foregoing without the prior written approval of the Government. Until disbursed by the Borrower for authorized Loan purposes, the Borrower shall deposit the Loan proceeds in a separate bank account which is fully insured by the Federal Deposit Insurance Corporation (FDIC).
3. Borrower shall make all payments on the Note by using an automated clearing house (ACH) system or, if notified by Lender in writing to do so, any other reasonable method of payment specified by Lender. Specific instructions for using ACH will be provided by the Lender.
4. Borrower shall deliver to Lender, and shall maintain a copy at its premises, a certified list of expenditures and attachments as described in this section for review by Lender and Government representatives, auditors or others conducting a review or audit for the Borrower and the expenditure of the proceeds of the Loan. The Borrower shall also submit a duplicate certified list of expenditures and attachments as described in this section to the Government for its files.
 - a. Borrower shall provide an itemized list to the Lender, with attached invoices, receipts, bills of sale, and other evidence representing the items shown on the list that shows the expenditures made on the Project for Approved Purposes using the proceeds of the Loan, with a signed certification from an authorized officer of the Borrower to the effect "I certify that the proceeds of the rural economic development loan from City of Lexington (Lender) were expended on approved

purposes as shown on this list and the attached invoices, receipts, bills of sale, and other evidence represent items shown on the list.”

- b. Invoices, receipts, bills of sale, and other evidence must at least total the amount of funds that have been provided to the Borrower using the proceeds of the Loan; the certified list must be provided upon completion of the Project or within one year of the date of the first advance of funds to the borrower, whichever occurs first. If all funds have not been expended by the first advance of funds, the Borrower must provide to the Lender a certified list current expenditures and a projected schedule of the expenditures to be incurred in the upcoming year. Upon completion of the Project, the Borrower must provide to the Lender a final certified list of the expenditures including the attachments.
- c. Borrower shall expend the Loan funds within two years of the date of the first advance of funds to the Borrower, or by such later date as the Government may approve in writing in furtherance of the purposes of the Act. The Borrower shall return to the Lender all funds it provided from the proceeds of the Loan that have not been expended by the second anniversary of the date of the advance of funds to the borrower, or by such later date as the Government has approved, as a prepayment on the Note.

5. Borrower shall submit a duplicate certified listing of the expenditures and attachments to the Government for its files. The Borrower shall permit Lender and its agents to inspect and copy its records about the Project during regular business hours, and shall permit Representatives of the Government to inspect the Project itself during regular business hours.

6. Borrower shall permit Lender to monitor performance to ensure that objectives proposed in the Application Materials are being achieved. Beginning one year from the date of advance of Loan proceeds to the Borrower and concluding three years from the date of advance or upon completion of the Project as proposed in the Application Materials, whichever date occurs later, the Borrower shall submit a project performance report to the Lender on an annual basis. The Project performance report shall describe: (i) the actual accomplishments of the Project, setting forth the number and types of jobs created and retained; (ii) the impact of the Project on the economy and quality of life of the rural community; (iii) reasons why any projections or objectives as proposed in the Application Materials were not met, and (iv) any problems, delays, or adverse conditions which have occurred, or are anticipated, which may affect the attainment of overall objectives of the Project. This disclosure shall be accompanied by a statement of the action taken or planned to resolve the delays, problems or adverse conditions. Upon completion of the Project or three years from the date of advance, whichever occurs later, the Borrower shall provide a final written

performance report, accompanied by color photographs, including negatives or slides, documenting the overall accomplishments of the Project.

7. Borrower shall immediately notify the Lender in writing of the closure of operations of the Borrower, the transfer of operations by the Borrower from the original project site described in the Application Materials, or the institution of bankruptcy proceedings involving the Borrower.

8. Borrower shall comply with the Regulations, as they may be amended from time to time, including, without limitation, any Federal regulations or Federal statutes which the Regulations identify as being applicable to activities contemplated by the Application Materials or this Agreement.

9. Borrower shall provide to the Government and Lender, upon completion of the Project, a management representation letter certifying to the statements in Exhibit B of this Agreement.

10. This Loan is subject to the nondiscrimination provisions of Title VI of the Civil Rights Act of 1964, as amended; section 504 of the Rehabilitation Act of 1973, as amended; the Age Discrimination Act of 1975; as amended; and Executive order 11246, Equal Employment Opportunity, as amended by Executive order 11375, Amending Executive Order 11246, Relating to Equal Employment Opportunity. Borrower shall comply with all such requirements in addition to the specific requirements set forth in the Regulations.

11. All facilities of the Project that are open to the public or in which physically handicapped persons may be employed shall be designed, constructed, and/or altered to be readily accessible to, and usable by handicapped persons, and comply with all applicable federal, state, and local laws and regulations.

12. If the Project is in an area subject to flooding, flood insurance must be provided by the Borrower to the extent available and required by law, covering all buildings, machinery, equipment, fixtures and furnishings contained in the buildings.

13. Borrower must certify that it will establish and make a good faith effort to maintain a drug-free workplace program in accordance with federal and state law and regulations.

14. Borrower must comply with, and provide certification with respect to, federal law related to debarment and suspension, and deliver to Lender a duly executed copy of a certification form substantially similar to that attached to this Agreement as Exhibit C, with respect to the Borrower and any lower tier subsidiaries of the Borrower.

15. Borrower shall comply with all federal law and regulations related to restrictions on lobbying, and file a certifications statement regarding the use of federal appropriated funds to lobby the Executive and Legislative branches of the Government, and to file a disclosure form if engaged in these activities using unappropriated funds.

D. Negative Covenant

Borrower shall not enter into or request Lender to approve any agreements which would permit third parties to fund, develop, manage, own, lease or operate the Project in a manner that would violate the Regulations, this Agreement, or the Letter of Conditions if the Borrower were to undertake such activity in its own name.

E. Representations and Warranties

Borrower represents and warrants that on and as of the date first set forth above:

1. Borrower has been duly incorporated and validly existing as a corporation in good standing under the laws of the State of Nebraska with the corporate power and authority to perform its obligations under this Agreement, the Letter of Conditions, the Note, and the Regulations.

2. This Agreement, the Letter of Conditions and the Note have been duly authorized, executed and delivered by the Borrower and such documents constitute the legal and binding agreements of the Borrower, enforceable against the Borrower in accordance with their respective terms, subject to: (i) applicable bankruptcy, reorganization, insolvency, moratorium and other laws of general application relating to or affecting creditors' rights generally, and: (ii) the application of general principles of equity regardless of whether such enforceability is considered in a proceeding in equity or at law.

3. The execution or the delivery by the Borrower of this Agreement, the Letter of Conditions, and the Note; the consummation of the transactions contemplated herein or therein; and the fulfillment by the Borrower of the terms hereof or thereof, do not conflict with or violate, result in a breach of or constitute a default under any term or provision of the articles of incorporation or by-laws of the Borrower or any law or regulation or any order now applicable to the Borrower of any court, regulatory body having jurisdiction over the Borrower, or the terms of any indenture, deed of trust, mortgage, note, note agreement or instrument to which the Borrower or any of its properties is bound. The Borrower has not received any notice from any other party to any of the foregoing that a default has occurred or that any event or condition exists that with the giving of notice or lapse of time or both would constitute such a default.

4. No approval, authorization, consent, order, registration, filing, qualification, license or permit of or with any state or Federal court or governmental agency or body having jurisdiction over the Borrower is required by the Borrower for the consummation by the Borrower of the transactions contemplated by this

Agreement, the Letter of Conditions, and the Note except such as have been obtained.

5. There is no pending or threatened action, suit or proceeding before any court or governmental agency, authority or body or any arbitrator concerning the Borrower, this Agreement, the Letter of Conditions, or the Note which, if adversely determined, would have a material adverse effect on the Borrower's ability to perform its obligations under this Agreement, the Letter of Conditions, or the Note.

6. All information, reports and other papers and data furnished to the Lender by the Borrower concerning the application of the Loan were, at the time the same were so furnished, complete and correct in all material respects to the extent necessary to the Lender and the Government a true and accurate knowledge of the subject matter and no document furnished or other written statement made to the Lender in connection with the Loan contains any untrue statement of a fact material to the financial condition of the Borrower or the Project or omits to state such a material fact necessary in order to make the statements contained therein not misleading.

7. Borrower has reviewed the Regulations and understands and accepts the requirements which the Regulations impose upon it.

8. Borrower does not expect or intend the Project to result primarily in the transfer of any existing employment or business activity from one area to another.

F. Default.

1. Upon the occurrence of an event of default as defined in this Agreement, the holder of the Note may declare all or any portion of the indebtedness arising under this Agreement, including indebtedness evidenced by the Note, to be immediately due and payable and may proceed to enforce its rights under this Agreement, the Letter of Conditions, and the Note.

2. As use in this Agreement, the term "event of default" shall mean the occurrence of any of the following:

a. any installment is not paid within 60 days of the date which it is required to be made, whether by acceleration or otherwise;

b. failure, inability or unwillingness of the Borrower to carry out or comply with, or cause to be carried out or complied with, the specific undertakings described in the Application Materials as approved by the Lender or the Government in the Letter of Conditions;

c. any representation or warranty made by the Borrower herein, in the Application Materials, in the Letter of Conditions or in any certificate or report furnished by or on behalf of the Borrower about any of the

foregoing shall prove to be false, incomplete or incorrect in any material respect;

- d. Default shall be made in the due observance or performance of any of the covenants, conditions or agreements of the Borrower, and such default shall continue for 30 days after written notice specifying such default and requiring the same to be remedied shall have been given to the Borrower by the holder of the Note;
- e. Commencement of a case in bankruptcy by or against the Borrower;
- f. Application for appointment of a receiver for, making a general assignment for the benefits or creditors by, or insolvency of the Borrower, or;
- g. Violation of the Regulations in any material respect, by officers, directors, employees or agents of the Borrower, and such violation shall continue for a period of 30 days without being rectified to the satisfaction of the Lender or the Government after written notice specifying such default and requiring the same to be rectified has been given by the Lender to the Borrower.

G. Miscellaneous

1. Every right or remedy herein conferred upon or reserved to the holder of the Note shall be cumulative and shall be in addition to every other right and remedy now or hereafter existing at law or in equity, or by statute or regulation.
2. The invalidity of any one or more phrases, clauses, sentences, paragraphs or provisions of this Agreement shall not affect the remaining portions hereof.
3. This Agreement may be amended only in a written instrument executed by both Borrower and Lender, which amendment has been submitted in advance to the review and approval by the Government and approved in advance by the Government.
3. This Agreement is entered into between the parties concerning a zero interest loan which the Government is making to the Lender pursuant to § 313 of the Rural Electrification Act of 1936, as amended, to promote rural economic development and job creation projects. Accordingly, so long as Lender shall, under the terms of this Agreement, be the holder of the Note, this Agreement, the Letter of Conditions and the Note shall each be governed by and construed in accordance with the laws of the United States and the regulations that govern §313 of the Rural Electrification Act of 1936, as amended.

DISCLAIMER OF ORAL AGREEMENTS: NOTICE TO BORROWER

A credit agreement must be in writing to be enforceable under Nebraska law. To protect Borrower and the Lender from any misunderstandings or disappointments, any contract, promise, undertaking, or offer to forebear repayment of money or to make any other financial accommodation in connection with this loan of money or grant or extension of credit, or any amendment of, cancellation of, waiver of, or substitution for any or all of the terms or provisions of any instrument or document executed in connection with this loan of money or grant or extension of credit, must be in writing to be effective.

IN WITNESS WHEREOF, Dawson Area Development, as Borrower, has caused this Loan Agreement to be signed in its name and its corporate seal to be hereunto affixed and attested by its duly authorized officers thereunto, and Lender has caused this Loan Agreement to be duly executed in its behalf, all as of the day and year first written above.

**Dawson Area Development
Borrower**

by: _____
Jen Wolf, Executive Director

[Title]

(SEAL)

Attest: _____
Secretary

**City of Lexington
Lender**

by: _____
Joe Peplitsch, City Manager

SCHEDULE OF EXHIBITS

- Exhibit A: Promissory Note
- Exhibit B: AD 1048 – Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transaction

Exhibit A

PROMISSORY NOTE

LOAN AMOUNT: \$360,000.00

For value received, Dawson Area Development, (Borrower) a corporation duly organized and existing under the laws of the State of Nebraska, promises to pay to the order of the City of Lexington, (Lender) a Municipal Corporation, at the times and in the manner hereinafter provided, the sum of *Three Hundred Sixty Thousand Dollars (\$360,000.00)* without interest in annual installments of *Forty-five Thousand dollars and 00 hundredths (\$45,000.00)* on the first last day of the month beginning *November 1, 2014* and continuing on the first day of November each year thereafter until the principal sum stated above has been paid in full or November 1, 2021 whichever first occurs. Borrower shall have the right to prepay the obligation set forth in this note in whole or in part at any time without penalty; provided, however, that in the event of a partial prepayment, the Borrower shall be obligated to continue making regular and uninterrupted annual payments for the amount and on the annual payment date specified in this note so long as any portion of the loan remains unpaid.

This Note is given in accordance with, and is required by, the terms and conditions of a certain Rural Economic Development Loan Agreement between Lender and Borrower dated as of _____, 2012 (the "Loan Agreement"), and evidences indebtedness created by a grant made by to Lender from the Government pursuant to Section 313 of the Rural Electrification Act of 1936, as amended, for the purpose of promoting rural economic development and job creation projects. Accordingly, this Note shall be governed by and construed in accordance with the laws of the United States and the regulations that govern Section 313 of the Rural Electrification Act of 1936, as amended. All capitalized terms which are not otherwise defined herein shall have the meaning ascribed to such term in the Loan Agreement.

Demand, presentment, protest, notice of protest, and notice of dishonor are hereby waived.

The Borrower shall pay a penalty on any payment not made within 60 days of the date it becomes due as originally scheduled or otherwise. The penalty shall be computed on the payment from the due date at a rate equal to the rate of the current value of funds to the United States Treasury as prescribed and published by the Secretary of the Treasury in the Federal Register and the Treasury Fiscal Requirements Manual Bulletins annually or quarterly, as the case may be, in accordance with 31 U.S.C. Section 3715(e)(2), not to exceed six percent a year on the amount due on a debt that is delinquent for more than 90 days. This charge shall accrue from the date of delinquency.

Amounts received on account of indebtedness evidenced by this note shall be applied as follows: first to expenses, costs and penalties; second to interest payments which are past due; third to principal that is past due; and fourth to principal installments not yet due.

Upon the occurrence of an event of default as defined below, the holder of this note may declare all or any portion of the note to be immediately due and payable. An "Event of default" means: 1) any principal installment is not paid within 60 days of the

date which it is required to be made; 2) failure, inability or unwillingness of the Borrower to carry out or comply with, or cause to be carried out or complied with, the specific undertakings described in the Application Materials approved by the holder of this Note or the Government in the Letter of Conditions; 3) any representation or warranty made by the Borrower herein, in the Application Materials, in the Letter of Conditions, Loan Agreement, or in any certificate or report furnished by or on behalf of the Borrower about any of the foregoing that proves to be false, incomplete or incorrect in any material respect; 4) default in the observance or performance of any of the covenants, conditions or agreements of the Borrower or the Regulations that govern this loan that continues for 30 days after written notice if the default has been given to the Borrower by or on behalf of the holder of the Note; 5) commencement of a case in bankruptcy by or against the Borrower; 6) application for appointment of a receiver form, making a general assignment for the benefit of creditors by, or insolvency of the Borrower; or 7) violation of the Regulations in any material respect, by officers, directors, employees or agents of the Borrower, and such violation shall continue for a period of 30 days without being rectified to the satisfaction of Lender or the Government after written notice specifying such default and requiring the same to be rectified has been given by the Lender to the Borrower.

DISCLAIMER OF ORAL AGREEMENTS: NOTICE TO BORROWER

A credit agreement must be writing to be enforceable under Nebraska law. To protect Borrower and the Lender from any misunderstandings or disappointments, any contract, promise, undertaking, or offer to forebear repayment of money or to make any other financial accommodation in connection with this loan of money or grant or extension of credit, or any amendment of, cancellation of, waiver of, or substitution for any or all of the terms or provisions of any instrument or document executed in connection with this loan of money or grant or extension of credit, must be in writing to be effective.

IN WITNESS WHERE the Borrower has caused this note to be executed in its corporate name and its corporate seal to be hereunto affixed and attested by its duly authorized officers, all as of this ____ day of _____, 2012.

DAWSON AREA DEVELOPMENT

President

Secretary

(SEAL)