
LOAN AGREEMENT
(Governmental Borrower)

Between the

NEBRASKA DEPARTMENT OF WATER, ENERGY, AND ENVIRONMENT

And

CITY OF LEXINGTON, NEBRASKA

NDWEE PROJECT NO. D311720

DATED AS OF _____

*****DRAFT COPY FOR REVIEW*****

PLEASE SEE EMAIL FOR MORE INFORMATION.

**ATTACHMENT E & ATTACHMENT F ARE NEEDED BEFORE
LOAN CAN BE SIGNED.**

**THIS DOCUMENT IS LOCKED, BUT COMMENTS CAN BE MADE USING
“REVIEW” RIBBON AND “NEW COMMENT” OPTIONS IN WORD.**

LOAN AGREEMENT
BETWEEN THE
NEBRASKA DEPARTMENT OF WATER, ENERGY, AND ENVIRONMENT
AND
THE CITY OF LEXINGTON, NEBRASKA
PROJECT NO. D311720

This LOAN AGREEMENT with SRF Number D311720 (hereinafter "Loan Agreement") is entered into by and between the State of Nebraska, acting by and through the Nebraska Department of Water, Energy, and Environment (hereinafter "NDWEE") and the City of Lexington, Nebraska (hereinafter "Borrower").

WITNESSETH THAT

WHEREAS, the federal Safe Drinking Water Act, including the Safe Drinking Water Amendments Act of 1996, and all amendment thereto (hereinafter "Federal Act") established a state revolving fund program; and

WHEREAS, to fund the state revolving fund program, the United States (US) Environmental Protection Agency (hereinafter "EPA") will make annual capitalization grants to the states under Catalog of Federal Domestic Assistance (CFDA) #66.468 for Safe Drinking Water State Revolving Funds, on the condition that each state provide an appropriate match for such state's revolving fund; and

WHEREAS, Nebraska Revised State Statute (Neb. Rev. Stat.) §71-5318 empowers the Director of the NDWEE to loan available funds in the Drinking Water Facilities Loan Fund (hereinafter "Fund") to borrowers pursuant to the Drinking Water State Revolving Fund Act (hereinafter "Act") and rules and regulations adopted under such Act; and

WHEREAS, under the Act, the Director of the NDWEE is given the responsibility for administration and management of the Loan Fund; and

WHEREAS, the Nebraska Investment Finance Authority (hereinafter "NIFA") is authorized under the Act and Neb. Rev. Stat. §58-201 et seq. to issue revenue bonds for the purpose of financing projects as defined under the Act, including to provide funds for the NDWEE to borrowers and satisfy the state match requirements of the Federal Act; and

WHEREAS, pursuant to such authorization, NIFA proposes to issue from time to time its Drinking Water State Revolving Loan Fund Revenue Bonds for the purpose of providing funds to the NDWEE to loan to persons owning or operating Public Water Systems in Nebraska to pay those eligible portions of the costs of acquiring, constructing, improving, repairing, rehabilitating or extending safe drinking water projects (as defined in the Act), in order to provide the state match requirements of the Federal Act; and

WHEREAS, the NDWEE may from time to time enter into a pledge agreement with NIFA (hereinafter "Pledge Agreement"), pursuant to which the NDWEE will pledge the interest portion of Loan Repayments (as defined herein) and certain other revenues to NIFA for the payment of the principal of, redemption premium, if any, and interest on Drinking Water State Revolving Fund Revenue Bonds which may be issued by NIFA from time to time; and

WHEREAS, the Borrower is an "Owner" as defined in Neb. Rev. Stat. §71-5316(7); and

WHEREAS, the project to be financed under this Loan Agreement and described in Exhibit 1 (hereinafter "Project") is an eligible project under the Act; and

WHEREAS, the project costs (as defined herein) are based upon estimates of the Borrower and at times during or at completion of construction the loan amount may be adjusted by the NDWEE pursuant to Section 2.01 of this Loan Agreement; and

WHEREAS, the Borrower is listed in the NDWEE Intended Use Plan; and

WHEREAS, the NDWEE has approved the Borrower's application for a loan from federal funds and the state match requirement if and when received by and made available to the NDWEE pursuant to the Federal Act and the Act to finance Project Costs; and

NOW, THEREFORE, for and in consideration of the award of this Loan Agreement by the NDWEE, the Borrower agrees to complete the Project and to perform under this Loan Agreement in accordance with the conditions, covenants, and procedures set forth below:

ARTICLE I

DEFINITIONS

Section 1.01. Definitions. The following terms as used in this Loan Agreement will, unless the context clearly requires otherwise, have the following meanings:

- (a) "Act" means the Drinking Water State Revolving Fund Act, Neb. Rev. Stat. §§71-5314 to 71-5327, as amended.
- (b) "Additional Revenue Obligation" means any obligation for the payment of money undertaken by the Borrower which is payable from or secured by a pledge of, or lien upon, the System Revenues incurred after the date of execution and delivery of this Loan Agreement, including any capital lease entered into by the Borrower the rentals of which are payable from, or secured by a pledge of or lien upon, System Revenues.
- (c) "Authorized Representative" means the person or persons authorized pursuant to a resolution or ordinance of the governing body of the Borrower to perform any act or execute any document relating to this Loan Agreement.
- (d) "Borrower" means the City of Lexington, Nebraska that is a party to and is described in the first paragraph of this Loan Agreement, and its successors and assignees.
- (e) "Combined Utilities Systems" means the facilities owned by the Borrower and consisting of the Sewer System, Water System, and Electric System, as now existing or hereafter extended and improved. These systems may also be referred to as Business-Type Activities by the Borrower's audit reports as noted in Attachment C, Financial Analysis of this Loan Agreement.
- (f) "Cut-off Date" means the date established by the NDWEE, prior to which, the Borrower will make the final disbursement request for eligible Project Costs.
- (g) "Disadvantaged business enterprise" or "DBE" means an entity owned or controlled by a socially and economically disadvantaged individual as described by Public Law 102-389 (42 U.S.C. 4370d) or an entity owned and controlled by a socially and economically disadvantaged individual as described by Title X of the Clean Air Act Amendments of 1990 (42 U.S.C. 7601 note); a Small Business Enterprise (SBE); a Small Business in a Rural Area (SBRA); or a Labor Surplus Area Firm (LSAF), a Historically Underutilized Business (HUB) Zone Small Business Concern, or a concern under a successor program.
- (h) "Drinking Water State Revolving Fund" or "DWSRF" means the Nebraska Drinking Water State Revolving Fund Act established pursuant to the Act and Regulations.
- (i) "Drinking Water System" means the structures, equipment, and processes to obtain source water, treat the source water, store water, distribute drinking water fit for human consumption, and dispose of any byproducts from the processes.

- (j) “Due Date” means the dates specified for payment of principal and interest on the Loan as specified in Section 2.06.
- (k) “Event of Default” means any occurrence or event specified in Article V of this Loan Agreement.
- (l) “Existing Revenue Obligation” means any obligation for a payment of money undertaken by the Borrower which is payable from or secured by a pledge of, or lien upon, the System Revenues existing or outstanding at the time of execution and delivery of this Loan Agreement by the Borrower, including any capital lease entered into by the Borrower the rentals of which are payable from, or secured by a pledge of or lien upon, System Revenues.
- (m) “Federal Act” means the Safe Drinking Water Act, et seq. as amended.
- (n) “Fund” means the Drinking Water Facilities Loan Fund established pursuant to the Act.
- (o) “GAAP” means generally accepted accounting principles as applicable to the Public Water System.
- (p) “Indebtedness” means any financial obligation of the Borrower for the repayment of borrowed moneys or credit extended, including, without duplication, this Loan, Revenue Obligations, general obligation bonds or notes, leases or lease-purchase agreements, or similar financial transactions.
- (q) “Initiation of Operation” means the date on which the Borrower places the Project in operation or the Project is capable of being placed in operation for the purposes for which it was planned, designed, and built.
- (r) “Intended Use Plan” means a document prepared annually by the NDWEE which identifies the intended use of all State Revolving Fund program funds.
- (s) “Late Payment” means any payment that is not received within fifteen days of the due date as established by this Loan Agreement.
- (t) “Lead Service Line” means a service line made of lead, which connects the water main to the building inlet. A lead service line may be owned by the water system, owned by the property owner, or both. A galvanized service line is considered a lead service line if it ever was or is currently downstream of any lead service line component. Goosenecks, pigtails, and connectors, whether standalone or connected to a lead service line, may also be included as a part of lead line service for replacement projects.
- (u) “Loan” means the loan made by the NDWEE to the Borrower to finance or refinance all or a portion of the Project Costs pursuant to this Loan Agreement.
- (v) “Loan Agreement” means this Loan Agreement, including the Attachments hereto, as it may be properly supplemented, modified or amended.
- (w) “Loan Amount” means the principal amount specified in Section 2.01 of this Loan Agreement and as amended which the NDWEE has agreed to disburse to the Borrower subject to the terms, provisions, and conditions of this Loan Agreement and the availability of State and Federal Funds.
- (x) “Loan Finalization Date” means the date established by this Loan Agreement in which the Loan Amount is considered finalized and no further disbursement can be made outside of the Loan Agreement being amended.
- (y) “Loan Repayments” means the payments of the Loan required to be made by the Borrower pursuant to Section 2.06 of this Loan Agreement.
- (z) “Loan Terms” means the terms as established by this Loan Agreement.

- (aa) "NDWEE" means the Nebraska Department of Water, Energy, and Environment established pursuant to Neb. Rev. Stat. §81-1501 et seq., as amended.
- (bb) "NIFA" means the Nebraska Investment Finance Authority, a public body politic and corporate and an instrumentality of the State, and its successors and assigns established pursuant to Neb. Rev. Stat. §58-201 et seq., as amended.
- (cc) "Note" means a promissory note of the Borrower with respect to the Loan in the form of Attachment F to this Loan Agreement.
- (dd) "Project" means an eligible item for funding under the Act and is as described in Exhibit 1 of this Loan Agreement.
- (ee) "Project Costs" means eligible costs or expenses necessary or incidental to the Project, which are directly attributable thereto and which in the determination of the NDWEE are eligible under the Federal Act, and the Act, and Regulations. Estimated Project Costs are described in Attachment B.
- (ff) "Public Water System" means a Public Water System, as defined in Neb. Rev. Stat. §71-5301(10a).
- (gg) "Regulations" means the Nebraska Administrative Code, Title 131, Rules and Regulations for the Wastewater Treatment Facilities and Drinking Water Construction Assistance Programs, and any amendments thereto promulgated by the NDWEE pursuant to the Act.
- (hh) "Retainage" means construction costs held back by the Borrower from the payments due to the contractor to assure satisfactory completion of the construction agreement.
- (ii) "Revenue Obligation(s)" means, without duplication, (i) the Loan; (ii) any Existing Revenue Obligation; and (iii) any Additional Revenue Obligation.
- (jj) "Sanitary Sewer Collection System" means the structures, equipment, and processes required to collect and transport sanitary sewer wastewater to the wastewater treatment facility.
- (kk) "SEC Rule" means Rule 15c2 12 adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as such rule may be amended from time to time or such other similar rule regarding disclosure of information in securities transactions.
- (ll) "State" means the State of Nebraska acting, unless otherwise specifically indicated, by and through the NDWEE and its successors and assignees.
- (mm) "System Revenues" means all revenues derived by the Borrower from the User Charge System.
- (nn) "Trustee" means the trustee under any trust indenture with respect to revenue bonds the proceeds of which are deposited in the Fund.
- (oo) "User Charge System" means the methodology used to assess user charge fee(s) for the users of a utility or utilities within the Borrower's jurisdiction. This includes the fees and charges for the use and services furnished by or through the Public Water System, or if applicable, a Combined Utilities System, to the Borrower and as defined herein of this Loan Agreement. Revenues shall include, without limitation:
 - (1) Receipts from all charges imposed upon users for service(s) provided; and
 - (2) Receipts from hookup fees, tap fees, capital facilities charges connected with the use or right to use the Public Water System, or, if applicable, right to use the Combined Utilities System, for any part thereof (specifically including the Project) whether any such receipts (as described herein of

the definition of User Charge System of this Loan Agreement) are directly received by the Borrower from customers or indirectly through interlocal or other agreements with other political subdivisions.

- (pp) "Wastewater Treatment Facility" or "Wastewater Treatment Works" means the structures, equipment, and processes required to treat domestic or industrial wastes and to discharge or dispose of the effluent and sludges.

ARTICLE II

LOAN CONDITIONS AND TERMS

Section 2.01. Amount of the Loan. Subject to all of the terms, provisions, and conditions of this Loan Agreement, and subject to the availability of state and federal funds, the NDWEE will loan an amount not to exceed one million dollars (\$1,000,000) to the Borrower to pay a portion of the Project Costs described in Attachment B hereto.

(a) Loan Forgiveness.

- (1) The total award of all Loan Forgiveness cannot exceed seventy-five percent of the total amount of eligible Project Costs.
- (2) Loan Forgiveness. This Loan Agreement includes DWSRF Loan Forgiveness of up to 60% of the eligible Project Costs, up to a ceiling of six hundred thousand dollars (\$600,000).
- (3) Lead Service Line Mechanical Inventory Grant. This Loan Agreement can include a DWSRF Lead Service Line Mechanical Inventory Grant of up to 10% of the eligible Project Costs, up to a ceiling of one hundred thousand dollars (\$100,000).
- (4) All Loan Forgiveness shall be effective only upon the completion of the Project in accordance with this Loan Agreement, including compliance with the requirements of the DWSRF, as determined by the NDWEE and Initiation of Operation. The amount of such Loan Forgiveness shall be stated on the final Attachment A repayment schedule prepared by the NDWEE following disbursement of the full Loan Amount and Initiation of Operation.

The final actual amount of the Loan and any Loan Forgiveness may be reduced without revision of any other terms, provisions, or conditions of this Loan Agreement, other than adjustment by the NDWEE to the final repayment schedule in Attachment A hereto, to reflect reductions in the estimated or actual total Project Costs as impacted by opening of bids for construction, change orders, final actual costs, and prepayments.

The Borrower must make provisions for the payment of all costs of the Project exceeding the Loan Amount. The NDWEE may provide supplemental loan funds through a separate Loan Agreement. Receipt of any supplemental loan funds is dependent on availability of unobligated funds in the Fund and any obligation of additional funds to this Project is at the sole discretion of the NDWEE with such revised or additional terms, conditions, and covenants as the NDWEE may require.

Section 2.02. Term of the Loan. The Borrower agrees to fully repay the Loan with interest on the date of Initiation of Operation or to begin repayment of principal and interest on the Loan within one (1) year from the date of Initiation of Operation, but no later than three (3) years from the date of the Loan, whichever occurs first, and to repay such Loan in full no later than forty (40) years from Initiation of Operation and to pay all principal, interest, administrative fees, and penalty fees when due. The Borrower shall provide the NDWEE no less than 60 days written notice of its intent to repay the Loan all or in part on the date of the Initiation of Operation.

Section 2.03. Interest Rate. The interest rate on this Loan is determined by the NDWEE pursuant to Regulations and the Intended Use Plan and is applied to outstanding principal. The interest rate on this Loan is 0.0% per annum (calculated on the basis of a year equaling 360 days made up of 12 months of 30 days each) to be paid pursuant to Section 2.06 of this Loan Agreement.

Section 2.04. Administrative Fee. The administrative rate on this Loan is determined by the NDWEE pursuant to Regulations and the Intended Use Plan and is applied to outstanding principal. The Borrower shall pay to the NDWEE, or at the direction of the NDWEE, to the NIFA or the Trustee, an annual administrative fee of 0.0% per annum (calculated on the basis of a year equaling 360 days made up of 12 months of 30 days each) to be paid pursuant to Section 2.06 of this Loan Agreement.

Section 2.05. Disbursement of Loan. Until the date of Loan Finalization, the Borrower may request disbursement of the loan pursuant to the following conditions:

- (a) Upon receipt of a disbursement request for work completed accompanied by any certification from the Borrower required by the NDWEE, the NDWEE shall make progress disbursements as established by Section 2.01 of this Loan Agreement that correspond to such request of the Loan Amount to be used by the Borrower for Project Costs. The Borrower may obtain a copy of the disbursement record upon request to the NDWEE. Each disbursement shall be Automated Clearing House (ACH) by the State of Nebraska and shall be equal to that portion of the unobligated principal amount incurred to the date of the request for disbursement from the Borrower.
- (b) Minimum Disbursement Percentage. The minimum amount of a disbursement request that is not a final request must be at least 5% of the total loan amount of this Loan Agreement or \$150,000, whichever is the lesser, or the NDWEE may choose not to process the request.
- (c) Submitted requests for disbursement must be supported by the following: (i) proper invoices for Project Costs; (ii) a certificate of the Authorized Representative to the effect that all representations made in this Loan Agreement remain true as of the date of the request and that no adverse developments affecting the financial condition of the Borrower or its ability to complete the Project or to repay the Loan have occurred since the date of this Loan Agreement; and (iii) other documentation acceptable to and approved by the NDWEE.
- (d) The Borrower may request disbursement of the Loan Amount for eligible Project Costs, when such Project Costs have been incurred and are due and payable to project contractors. However, actual payment of such Project Costs by the Borrower is not required as a condition of a disbursement request. Any Retainage withheld by the Borrower corresponding to the progress payment made to any contractor will be withheld by the NDWEE until such Retainage is either reduced or released to the contractor by the Borrower.
- (e) The Borrower shall submit a draft of the operation and maintenance manual for the Project to the designated Engineering Section at NDWEE before disbursements exceed 75% of the Project Costs. The Borrower shall submit a final operation and maintenance manual to the designated Engineering Section at NDWEE and receive approval before disbursements exceed 95% of the Project Costs or final disbursement, whichever comes first.
- (f) If a request for disbursement is not received by the NDWEE within eighteen (18) months from either the effective date of this Loan Agreement or the last disbursement request, the NDWEE may finalize, close, or terminate this agreement pursuant to Section 6.12 of this Loan Agreement.
- (g) The NDWEE may finalize, close, or terminate this agreement pursuant to Section 6.12 of this Loan Agreement should the following disbursement milestones not be met:

- (1) Twenty percent of agreement funds by July of 2029; or
- (2) Forty percent of agreement funds by July of 2030; or
- (3) Sixty percent of agreement funds by July of 2031; or
- (4) Eighty percent of agreement funds by July of 2032.

Section 2.06. Loan Payments.

- (a) Principal and Interest Payments. The Borrower shall pay to the NDWEE, or at the direction of the NDWEE, to the NIFA or the Trustee, on or before the due dates specified below, but only from the sources specified in Section 3.02 hereof, appropriate installments of principal and interest until all principal and interest due on the Loan to the NDWEE has been paid in full. Installments of principal, interest, and administrative fees shall be paid semiannually on December 15 and June 15 of each year in accordance with the Loan Repayment Schedule in Attachment A; provided that, following the receipt of the Initiation of Operation date and the final disbursement of Loan proceeds to the Borrower, a revised Attachment A shall be prepared by the NDWEE to establish the final debt service schedule based upon the parameters described in the projected Attachment A. Such revised final Attachment A thereafter shall be deemed to be incorporated herein by reference and made a part hereof and shall supersede and replace the projected Attachment A.

The NDWEE will send the Borrower an invoice 30 days prior to the due date of each payment. When a Loan disbursement occurs after invoices are mailed, the NDWEE will include adjustments for interest and fee charges on the next semiannual invoice.

- (b) Optional Prepayment of the Loan.

- (1) If the Borrower is receiving Loan Forgiveness, the Borrower may not prepay the Loan in whole or in part within ten (10) years of the date of this Loan Agreement. After the ten years, the Borrower may prepay the Loan together with any accrued interest in whole or in part without penalty upon giving no less than 60 days written notice to the NDWEE of its intent to prepay.
- (2) If the Borrower is not receiving Loan Forgiveness, the Borrower may prepay the Loan together with any accrued interest in whole or in part at any time without penalty upon giving no less than 60 days written notice to the NDWEE of its intent to prepay.
- (3) Once the Borrower is able to prepay the loan, the Borrower may make a partial prepayment of the Loan Amount only if the prepayment amount is greater than the lesser of 10% of the outstanding amount of the Loan, or fifty thousand dollars (\$50,000). The NDWEE shall prepare a new Loan Repayment Schedule to revise Attachment A following receipt of any partial prepayment of the Loan and such revised Attachment A thereafter shall be deemed to be incorporated herein by reference and made a part hereof and shall supersede and replace Attachment A.

- (c) Mandatory Prepayment of Loan. If the Borrower receives a grant from any source for any portion of the Project Costs for which a portion of the Loan Amount has been disbursed and is outstanding under this Loan Agreement, the Borrower must notify the NDWEE immediately and such portion of the Loan Amount shall become immediately due and payable.

- (d) Delinquent Payment Penalty and Penalty Interest. Payments may be considered delinquent by the NDWEE if not received within 15 days of the due date and for any such delinquent payment, the Borrower agrees to pay a 5% administrative penalty of said delinquent payment. In addition, the Borrower agrees to pay penalty interest on any such delinquent payment at the rate of 1% per month of the amount of such delinquent payment from and after the due date until it is paid. Failure to pay any payment or other charges due within sixty days of the date due will result in the Borrower's account to be considered a

delinquent account, subject to State of Nebraska action pursuant to the provisions of Article V of this Agreement.

Section 2.07. Project Schedule. The Borrower agrees to perform steps of the Project in accordance with the following projected schedule of milestone dates:

- (a) Construction Start – May 2026
- (b) Substantial completion of construction – November 2029
- (c) Initiation of Operation – December 2029

Section 2.08. Disadvantaged Business Enterprises. The Borrower hereby agrees to the following:

- (a) To comply with the requirements of the EPA's Disadvantaged Business Enterprise (DBE) Program for procurement activities under assistance agreements, contained in 40 CFR, Part 33, and, to the fullest reasonable extent possible, ensure that at least ten percent will be made available to Disadvantage Business Enterprises for the Project;
- (b) To make the following good faith efforts whenever procuring construction, equipment, services, and supplies:
 - (1) Ensure DBEs are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. This includes placing DBEs on a solicitation list and soliciting them whenever they are potential sources;
 - (2) Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of 30 calendar days before the bid proposal closing date;
 - (3) Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs. This includes dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process;
 - (4) Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually;
 - (5) Use the services and assistance of the Small Business Administration and the Minority Business Development Agency of the Department Commerce; and
 - (6) If the prime contractor awards subcontracts, require the prime contractor to take the steps in paragraphs (1) through (5) of this section.

Section 2.09. Borrower's Drinking Water Use Ordinances and User Charge Systems.

- (a) The Borrower agrees to obtain approval from the NDWEE of its User Charge System, and to adopt and implement any necessary changes before the Project is placed in operation.
- (b) The Borrower agrees that it shall not modify, amend, make additions to, or deletions from its Public Water System Ordinance or User Charge System without the consent of the NDWEE during the term of the Loan Agreement; with the exceptions of the following changes:

- (1) Any increase in rates and charges necessary or deemed necessary by the governing body of the Borrower in order to comply with the provisions of this Loan Agreement, the Public Water System Ordinance, or any ordinance and other agreement pursuant to which any Revenue Obligations have been issued, and for which the revenues of the User Charge Systems have been pledged;
or
- (2) Any increase deemed necessary by the governing body of the Borrower in order to permit the issuance of or provide for the payment of Additional Revenue Obligations.

Section 2.10. Other Conditions and Terms.

- (a) Engineering Services. The Borrower shall provide and maintain competent and adequate engineering supervision and resident inspection during construction.
- (b) Construction Agreement Award. The Borrower shall obtain the NDWEE concurrence and authorization of the construction agreement. For the purposes of this Loan Agreement, the Project is deemed to be complete on the date of the last Lead Service Line or Galvanized Requiring Replacement service line replaced that brings total disbursed funds equal to the Loan Amount.
- (c) Initiation of Operation. The Engineering Section at the NDWEE shall provide written notification to the NDWEE of the date of Initiation of Operation of the Project. On failure of the Engineering Section to set an acceptable Initiation of Operation date the NDWEE will look at the construction record or placement into service date and set the Initiation of Operation date.
- (d) Construction Completion. The Borrower shall provide written notification to the NDWEE of the construction completion date of the Project.
- (e) Capacity Development. The Borrower agrees to maintain a system of records for annual review and reporting of technical, managerial, and financial capacity of the Public Water System to demonstrate continued compliance with the requirements of the Nebraska Safe Drinking Water Act as provided under Nebraska Administrative Code, Title 179 – Public Water Systems, and the requirements of an operating permit, as issued by the NDWEE. The Borrower agrees to make any necessary system changes to achieve an acceptable Public Water System Capacity Survey assessment; acceptable, as determined by the NDWEE prior to final disbursement of loan proceeds, and to maintain that acceptable assessment level status during the period of repayment.
- (f) Contractor's Security. The Borrower agrees to require any contractor of the Project to post separate performance and payment bonds or other security approved by the NDWEE in the amount of the bid but as it applies to the amount of Project work that is assigned, performed, and completed before additional Project work is assigned.
- (g) Certified Operator. The Borrower agrees to provide a certified operator pursuant to Nebraska Administrative Code, Title 179 – Public Water Systems, Chapter 2, Regulations Governing Public Water Supply Systems.
- (h) Site Title and Easements. The Borrower must certify that site title, including all easements and rights of way necessary to allow construction of the Project, has been obtained prior to award of the construction contract (i.e., all real property has been acquired, *bona fide* options have been taken or formal condemnation proceedings have been initiated for necessary real property).
- (i) Contractor's Payments. The Borrower agrees to make prompt payment to its contractor(s) of sums due for construction and to retain only such amounts as may be justified by specific circumstances and provisions of the construction agreement.

- (j) Bid Solicitation. The Borrower agrees to notify the NDWEE of its intent to solicit bids for the project and to request the latest State Revolving Fund Federal Assurance Packet from the NDWEE. The Borrower agrees to follow the directions in the packet and to include and insert all the required information, text, documents, and other items into the bid solicitation in accordance with the packet.
- (k) Debarment or Suspension. The Borrower acknowledges that doing business with any party that has been declared ineligible to receive federal contracts may result in an event of default, disallowance of federal funds under this Loan Agreement, and may also result in suspension or debarment under 40 CFR Part 32. Instructions for finding the federal list of current companies declared ineligible can be found at the following website: <https://www.dol.gov/agencies/ofccp/debarred-list>.
- (l) Other Federal Requirements. The Borrower agrees to comply with other applicable Federal Requirements in Attachment D hereto.
- (m) Project Sign. If requested by the NDWEE, the Borrower agrees to display a project sign created by the NDWEE. The displaying of a project sign may include both physical displays and digital displays. This can include, but not be limited to, a physical board provided by the NDWEE to be displayed at a designated site, digital graphic to be posted on a Borrower's website, or image and text to be posted in a newsletter, community notice, or newspaper. The NDWEE will provide instructions for displaying the Project Sign.
- (n) Employment under Public Contracts, LB 403. The Borrower agrees to comply with the provisions of Legislative Bill 403, approved by the Governor on April 8, 2009. The following language is required and will be included in all agreements made with contractors and is a pass-through requirement for his or her subcontractors.

"The Contractor is required and hereby agrees to use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program authorized by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. 1324a, known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee. If the Contractor is an individual or sole proprietorship, the following applies: 1. The Contractor must complete the United States Citizenship Attestation Form, available on the Department of Administrative Services website at www.das.state.ne.us; 2. If the Contractor indicates on such attestation form that he or she is a qualified alien, the Contractor agrees to provide the US Citizenship and Immigration Services documentation required to verify the Contractor's lawful presence in the United States using the Systematic Alien Verification for Entitlements (SAVE) Program; and, 3. The Contractor understands and agrees that lawful presence in the United States is required and the Contractor may be disqualified or the contract terminated if such lawful presence cannot be verified as required by Neb. Rev. Stat. §4-108."

- (o) Wage Rate Requirements. By accepting this contract, the contractor acknowledges and agrees to the terms provided in the Davis Bacon Related Acts Requirements for Contractors and Subcontractors Under EPA Grants (<https://www.epa.gov/grants/contract-provisions-davis-bacon-and-related-acts>).

Davis-Bacon prevailing wage requirements will apply to the construction, alteration, and repair of a public building or public work, or building or work carried out in whole or in part with assistance made available by this Loan Agreement. For wages that require a Davis-Bacon prevailing wage, the Borrower certifies compliance with the following:

(1) Obtaining a Wage Determination.

- (i) Wage Determinations for Soliciting. The Borrower is responsible for and shall obtain the wage determinations for the locality of the project prior to issuing requests for bids, proposals, quotes, or other methods for soliciting contracts for the project (hereinafter

“soliciting”). These wage determinations will be incorporated into solicitations and any subsequent contracts. Prime contract must contain a provision requiring that subcontractors follow the wage determinations incorporated into the prime contract.

1. Monitoring for Current Wage Determinations During Solicitation Period. While the solicitation remains open, the Borrower shall monitor <https://sam.gov/> weekly to ensure that the wage determinations contained in the solicitation remain current. The Borrower shall amend the solicitation if the Department of Labor issues a modification to the wage determinations more than ten (10) days prior to the closing date for the solicitation.
 2. Monitoring for Current Wage Determinations After Closing Date. Unless extended in writing by the NDWEE, if the Borrower does not award the contract within ninety (90) days of the closing date for the solicitation, the Borrower shall monitor <https://sam.gov/> on a weekly basis for any modifications or supersedes the Department of Labor makes on the wage determinations contained in the solicitation and shall amend the solicitation.
 - (ii) Wage Determinations for Non-Published Solicitations. If the Borrower issues a task order, work assignment, or similar instrument to an existing contractor, or ordering instrument, rather than by publishing a solicitation, the Borrower shall insert the appropriate wage determinations from <https://sam.gov/> into the ordering instrument.
 - (iii) Verification of Wage Determinations Inclusion. The Borrower shall review all contracts and subcontractors and verify that all contracts include the applicable wage determinations.
 - (iv) Issuance of Revised Wage Determinations. The Department of Labor may issue a revised wage determination applicable to a Borrower’s contract after the award of a contract or the issuance of an ordering instrument if the Department of Labor determines that the Borrower has failed to incorporate a wage determination or has used a wage determination that clearly does not apply to the contract or ordering instrument. If this occurs, the Borrower shall either: i) terminate the contract or ordering instrument and issue a revised solicitation, or ii) incorporate the Department of Labor’s wage determination retroactive to the beginning of the contract or ordering instrument by change order. All contractors must be compensated for any increases in wages resulting from the use of the Department of Labor’s revised wage determination.
- (2) NDWEE Federal Assurance Package. Before soliciting, The Borrower agrees to contact the NDWEE for the most recent applicable NDWEE Federal Assurance Package and to incorporate the package into the solicitation documents. If the Borrower has failed to incorporate the most recent applicable NDWEE Federal Assurance Package, the Borrower shall either: i) terminate the contract or ordering instrument and issue a revised solicitation, or ii) incorporate the NDWEE Federal Assurance Package by change order.
- (3) Contract and Subcontract Provisions. The Borrower shall insert in full for any contract entered into for the actual construction, alteration, and/or repair, including painting and decorating, of a public building or public work, or building, or work as defined by the NDWEE, the required clauses as listed in most recent applicable NDWEE Federal Assurance Package.
 - (i) Unlisted Classifications. The Borrower shall require that any class of laborers or mechanics, including helpers, which is not listed in the applicable wage determination and which is to be employed under the contract shall be classified in conformance with the wage determinations in accordance with procedures established within the NDWEE Federal Assurance Package.

- (ii) Weekly Payroll Review and Certifications. The Borrower shall monitor, collect, and review weekly payrolls for each week in which any contract work is performed and provide written confirmation in a form satisfactory to the NDWEE indicating whether or not the project is in compliance with the Davis-Bacon prevailing wage requirements.
 - (iii) Withholding Payments. The Borrower shall, upon written request by authorized representatives of the NDWEE, the EPA, or of the Department of Labor, withhold or cause to be withheld from a contractor under this Loan Agreement or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the EPA may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.
- (4) Contract Provisions for Contracts in Excess of \$100,000. All contracts in an amount in excess of \$100,000 must comply with the Contract Work Hours and Safety Standards Act, 40 U.S.C. 3701 et seq., as amended. The Borrower shall insert in full for any contract in excess of \$100,000 the required clauses as listed in the most recent applicable NDWEE Federal Assurance Package. In addition:
- (i) Withholding Payments. The Borrower, upon written request by authorized representatives of the NDWEE, the EPA, or of the Department of Labor, shall withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as determined by the NDWEE.
 - (ii) Maintaining of Payroll and Records. The Borrower shall insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Borrower shall insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the NDWEE, EPA and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.
- (5) Compliance Verification.
- (i) Interview Requirement. The Borrower shall periodically interview a sufficient number of employees entitled to Davis-Bacon prevailing wages to verify that contractors and/or subcontractors are paying the appropriate wages. All interviews must be conducted in confidence. The Borrower must use Standard Form 1445 or equivalent documentation to memorialize the interviews. Copies of Standard Form 1445 are available from the EPA upon request.

- (ii) Interview Frequency. The Borrower shall establish and follow an interview schedule based on its assessment of the risks of noncompliance with the Davis-Bacon prevailing wage requirements posed by contractors or subcontractors and the duration of the contract or subcontract. The Borrower must conduct more frequent interviews if the initial interviews or other information indicated that there is a risk that the contractor or subcontractor is not complying with Davis-Bacon prevailing wages. The Borrower shall immediately conduct interviews in response to an alleged violation of the prevailing wage requirements. All interviews shall be conducted in confidence.
 - (iii) Interview Spot Checks. The Borrower shall periodically conduct spot checks of a representative sample of weekly payroll data to verify that contractors or subcontractors are paying the appropriate wage rates. The Borrower shall establish and follow a spot check schedule based on its assessment of the risks of noncompliance with Davis-Bacon prevailing wages posed by contractors or subcontractors and the duration of the contract or subcontract. The Borrower must conduct more frequent spot checks if the initial spot check or other information indicates that there is a risk that the contractor or subcontractor is not complying with Davis-Bacon prevailing wage. In addition, during the examinations the Borrower shall verify evidence of fringe benefit plans and payments thereunder by contractors and subcontractors who claim credit for fringe benefit contributions.
 - (iv) Review of Apprentices and Trainees. The Borrower shall periodically review contractor's and subcontractor's use of apprentices and trainees to verify registration and certification with respect to apprenticeship and training programs approved by either the Department of Labor, or a state, as appropriate, and that contractors and subcontractors are not using disproportionate numbers of, laborers, trainees and apprentices. These reviews shall be conducted in accordance with the schedules for spot checks and interviews described in Section 2.10(o)(5)(ii through iii) of this Loan Agreement.
- (6) Potential Violations. The Borrower must immediately report potential violations of the Davis-Bacon prevailing wage requirements to the NDWEE, EPA, and to the appropriate Department of Labor Wage and Hour District Office listed at <https://www.dol.gov/agencies/whd/contact/local-offices>.
- (p) Human Trafficking. Under the requirements of Section 106 of the Trafficking Victims Protection Act of 2000, as amended, the following provisions apply to this award:
- "The Municipality, its employees, sub-recipients under this award, and sub-recipients' employees may not engage in severe forms of trafficking in persons during the period of time that the award is in effect; procure a commercial sex act during the period of time that the award is in effect; or use forced labor in the performance of the award or sub-awards under the award."
- (q) American Iron and Steel (AIS) Products. Use of Loan funds for partial or full payment of the construction, alteration, maintenance, and repair of "Public Water Systems", as defined by the Federal Act, must be constructed pursuant to Public Law 113-76, et seq., as amended, which includes American Iron and Steel Act (AIS) requirements. The Borrower agrees to be responsible for and to comply with all American Iron and Steel conditions and requirements pursuant to the American Iron and Steel Act and agrees to provide written certification of such compliance to the NDWEE after construction completion.
 - (r) State Cybersecurity. If the Borrower's network or information system is connected to EPA networks for the purpose of transferring data using systems other than the Environmental Information Exchange Network, or EPA's Central Data Exchange, the Borrower agrees that when collecting and managing environmental data for this Project, the Borrower will protect the data by following all applicable state law cybersecurity requirements. Prior to collecting, managing, or transferring any environmental data, the Borrower agrees to contact the EPA and the assigned EPA Project Officer, notifying the NDWEE when they have done so, and work with the EPA to ensure that any connections between the Borrower's

network or information system and EPA networks used by the Borrower to transfer data under this Loan Agreement are secure.

- (s) Loan Finalization Date. This Loan Agreement will be considered finalized either upon the date the NDWEE processes the final disbursement request by the Borrower or twelve (12) months following receipt of the written notification of the construction completion pursuant to Section 2.10(d) of this Loan Agreement, whichever occurs first.
- (t) Build America Buy America. Use of Loan funds for partial or full payment of the construction, alteration, maintenance, and repair of Public Water Systems, as defined by the Federal Act, must be constructed pursuant to Public Law 117-58, 135 Stat. 429, 70901-70927, et seq., as amended, which includes Build America Buy America Act (hereinafter BABA) requirements. The Borrower agrees to be responsible for and to comply with all BABA conditions and requirements pursuant to the BABA Act and agrees to provide written certification of such compliance to the NDWEE, or any party designated by the NDWEE, after construction completion unless i) the Borrower has requested and obtained a waiver from the NDWEE, or any party designated by the NDWEE, pertaining to the Project or the Project is otherwise covered by a general applicability waiver; or ii) all contributing Agencies to the Project that require BABA compliance have advised the Borrower in writing that BABA requirements are not applicable to the Project.

When applicable (e.g., unless eligible for a waiver, etc.), all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States per the following:

- (1) All iron and steel used in the project are produced in the United States. This means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States; and
- (2) All manufactured products used in the project are produced in the United States. This means the manufactured product was manufactured in the United States, and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55% of the total cost of all components of the manufactured product, unless another standard that meets or exceeds this standard has been established under applicable law or regulations for determining the minimum amount of domestic content of the manufactured product; and
- (3) All construction materials are manufactured in the United States. This means that all manufacturing processes for the construction material occurred in the United States.

The Borrower agrees to comply with all record keeping and reporting requirements under all applicable legal authorities, including any reports required by the NDWEE, the EPA, or any party designated by the NDWEE or EPA, such as performance indicators of program deliverables, information on costs and project progress. The Borrower understands that: i) each contract and subcontract related to the Project is subject to audit by appropriate federal and state entities; and ii) failure to comply with the applicable legal requirements and this Loan Agreement may result in a default hereunder subject to the conditions pursuant to Article V of this Loan Agreement and other remedial actions.

The BABA requirements do not supersede the American Iron and Steel requirement and both provisions still apply and work in conjunction.

- (u) Prohibition on Certain Telecommunication and Video Surveillance Services or Equipment. The Borrower agrees to comply with the regulations of 2 CFR 200.216, *Prohibition on certain telecommunication and video surveillance services or equipment*, and section 889 of Public Law 115-232. The Borrower shall prohibit procuring (enter into, extend, or renew contracts) or obtaining equipment, systems, or services that use "covered telecommunications equipment or services" identified in the regulations as specified by this section as a substantial or essential component of any system, or as critical technology as part of any

system for the Project. This prohibition extends to Borrowers and their subrecipients (i.e. Consulting Engineers, contractors, etc.) that “uses any equipment, system, or service that uses covered telecommunications equipment or services” as a substantial or essential component of any system, or as critical technology as part of any system. Certain equipment, systems, or services, including equipment, systems, or services produced or provided by entities subject to the prohibition are recorded in the System for Award Management exclusion list (<https://sam.gov/content/exclusions>).

- (v) Lead Service Lines. Use of funds for lead service lines shall be eligible pursuant to the Infrastructure Investment and Jobs Act (Public Law No. 117-58) and the Federal Act. In addition, the Borrower agrees to the following:
- (1) The project and use of funds will be for lead service line replacement projects and associated activities directly connected to the identification, planning, design, and replacement of lead service lines. Costs associated with non-lead service lines are ineligible; and
 - (2) Lead service lines will be replaced in their entirety and cannot be partially replaced, unless a portion of the line has already been replaced or is concurrently being replaced with another funding source; and
 - (3) The Borrower agrees to provide documentation established by the Department of compliance with full lead line service replacement to the Department for review and approval at the time lead service line replacement project is initiated.
- (w) Lead Service Line Notification Due Dates. The disbursement of all funds is contingent upon the Borrower performing all needed Lead Service Line Notification activities per the requirements of the Federal Act, and if provided, in accordance with the reporting template provided by the NDWEE Drinking Water Monitoring and Compliance section. That shall be done prior to the dates detailed in the Federal Act, or before disbursements exceed 95% of Project Costs, whichever comes first.

ARTICLE III

REPRESENTATION AND COVENANTS OF THE BORROWER

Section 3.01. Representations of the Borrower. The Borrower represents as follows:

- (a) Organization and Authority.
- (1) The Borrower is a village, town, city, district, association, or other public body created by or pursuant to the constitution and statutes of the State of Nebraska.
 - (2) The Borrower has full legal right and authority and has all necessary licenses and permits required as of the date hereof (or is in the process of obtaining all necessary licenses and permits that will be required, but are not required to be in place as of the date hereof) to own, operate and maintain its Public Water System, to carry on its activities relating thereto, to execute and deliver this Loan Agreement, to undertake and complete the Project, and to carry out and consummate all transactions contemplated by this Loan Agreement.
 - (3) The proceedings of the Borrower’s governing body conducted to approve this Loan Agreement and authorizing its execution, issuance, and delivery on behalf of the Borrower, and authorizing the Borrower to undertake and complete the Project, have been duly and lawfully convened and conducted and the resolution of the Borrower’s governing body approving such matters has been duly and lawfully adopted.

- (4) This Loan Agreement has been duly authorized, executed, and delivered on behalf of the Borrower, and constitutes the legal, valid, and binding obligation of the Borrower enforceable in accordance with its terms.
- (b) Full Disclosure. To the best knowledge of the Borrower, there is no fact that the Borrower has not disclosed to the NDWEE in writing on the Borrower's application for the Loan or otherwise anything that materially adversely affects or that will materially adversely affect the properties, activities of its Public Water System, or the ability of the Borrower to make all Loan Repayments and otherwise observe and perform its duties, covenants, obligations and agreement under this Loan Agreement.
- (c) Non-Litigation. There is no controversy, suit or other proceeding of any kind pending, or to the best knowledge of the Borrower, threatened questioning, disputing or affecting in any way the: (i) legal organization of the Borrower or its boundaries; (ii) the right or title of any of its officers to their respective offices; (iii) the legality of any official act taken in connection with obtaining the Loan; (iv) the constitutionality or validity of the indebtedness represented by the Loan Agreement; (v) any of the proceedings had in relation to the authorization or execution or the pledging of the revenues stated in Section 2.09 and Section 3.02 of this Loan Agreement; or (vi) the ability of the Borrower to make all Loan Repayments or otherwise observe and perform its duties, covenants, obligations and agreements under this Loan Agreement.
- (d) Compliance with Existing Laws and Agreements. The authorization, execution and delivery of this Loan Agreement by the Borrower, and the performance by the Borrower of its duties, covenants, obligations, and agreements thereunder will not result in any breach of any existing law or agreement to which the Borrower is a party.
- (e) No Defaults. No event has occurred and no condition exists that would constitute an Event of Default. The Borrower is not in violation of any agreement which would materially adversely affect the ability of the Borrower to make all Loan Repayments or otherwise observe and perform its duties, covenants, obligations, and agreements under this Loan Agreement.
- (f) Governmental Consent. The Borrower has obtained all permits and approvals required to date under this Loan Agreement (or is in the process of obtaining all permits and approvals that will be required, but are not required to be in place as of the date hereof) for the undertaking or completion of the Project and the financing or refinancing thereof. The Borrower has complied with, or expects to comply with, all applicable provisions of law requiring any notification, with any governmental body or officer in connection with this Loan Agreement or with the undertaking or completion of the Project and the financing or refinancing thereof.
- (g) Compliance with the Law. The Borrower:
- (1) Is in compliance with all laws, ordinances, governmental rules and regulations to which it is subject, including, without limitation, any public hearing or public notice requirements or environmental review requirements contained in the Regulations, with which the failure to comply would materially adversely affect the ability of the Borrower to conduct its activities, enter into this Loan Agreement or undertake or complete the Project; and
 - (2) Has obtained, or expects to obtain, all licenses, permits, franchises or other governmental authorizations presently necessary for the ownership of its property which, if not obtained, would materially adversely affect the ability of the Borrower to complete the Project.
- (h) Use of Loan Proceeds. The Borrower will apply the proceeds of the Loan as described in Article II of this Loan Agreement:

- (1) To finance or refinance a portion of the Project Costs; and
 - (2) Where applicable, to reimburse the Borrower for a portion of the Project Costs, which portion was paid or incurred in anticipation of reimbursement by the NDWEE and is eligible for such reimbursement pursuant to the Regulations. All of such costs constitute Project Costs for which the NDWEE is authorized to make loans to the Borrower pursuant to the Act and the Regulations.
- (i) Project Costs. The Borrower certifies that the Project Costs, as listed in Attachment B, are reasonable and accurate estimations and, upon direction of the NDWEE, will supply the same with a certificate from its engineer stating that such costs are reasonable and accurate estimations, taking into account investment income, if any, to be realized during the course of construction of the Project and other money that would, absent the Loan, have been used to pay the Project Costs.

Section 3.02. Particular Covenants of the Borrower.

(a) Dedicated Source of Revenue for Repayment of the Loan. The Borrower hereby pledges to the NDWEE, and grants a lien to the NDWEE on, the User Charge System as the dedicated source of revenue for the repayment of the Loan. The pledge herein provided for is made in accordance with and under the terms of Ordinance No. 2482 and is secured on a parity with the pledge made under the ordinances described herein. The Borrower shall fix, establish, maintain and collect such rates, fees, and charges for the use and services furnished by or through the Borrower's Combined Utilities Systems including all improvements and additions hereafter constructed or acquired by the Borrower, as will provide revenues sufficient to (i) pay the cost of the operation and maintenance, and replacement of the Combined Utilities Systems, (ii) pay at least 110% of the principal of and interest on the Loan as and when the same become due, and (iii) pay all other amounts due at any time under this Loan Agreement. The lien of the NDWEE on the revenues of the Borrower's Combined Utilities System, shall be on a parity with the lien on such revenues of the Borrower's outstanding Combined Utilities System Revenue Obligations issued pursuant to Ordinance No. 2482, of the Borrower's now outstanding and any additional Combined Utilities System revenue bonds or other revenue bonds hereafter issued on parity with such outstanding revenue bonds. The Borrower hereby expressly reserves the right to issue Revenue Obligations on parity with the lien described in this Loan Agreement and the other outstanding Revenue Obligations, provided, the Borrower complies with the covenants contained in this Subsection 3.02(a). These revenues shall be collected and maintained in separate accounts or ledgers for the operation and maintenance costs and for principal and interest payments on the Loan. The funds in such accounts or ledgers shall be restricted for their intended use, and the Loan obligation shall be reported on the financial statements of the Borrower. The Borrower agrees to develop a User Charge System based on actual or estimated use of Combined Utilities Systems services, providing that each user or user class pay its proportionate share of operation and maintenance (including replacement) costs within the Borrower's service area, based on each users demand or potential demand for service and to conduct at least a biennial review of adequacy of the user charge rates. The Borrower agrees the initial financial analysis performed by the NDWEE in Attachment C is a reasonable estimate of the Project Costs, of the financial condition of the Borrower in relation to this Project, and of the user charges necessary at the time of initiation of operation of the Project. The NDWEE may review this information annually to ensure the Borrower's compliance with the Loan conditions and update Attachment C to reflect any changes.

(b) Performance Under Loan Agreement. The Borrower agrees:

(1) They are in compliance with the following federal regulations and will be subject to:

- i. Civil Rights Act of 1964, 42. U.S.C. 2000d, et seq., as amended;
- ii. Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, et seq., as amended; and
- iii. Age Discrimination Act of 1975, 42 U.S.C. 6102, et seq., as amended.

- (2) To comply with all applicable State and federal laws, rules, and regulations in the performance of this Loan Agreement (including, but not limited to the federal crosscutting items set forth on Attachment D of this Loan Agreement, and other NDWEE Regulations); and
 - (3) To cooperate with the NDWEE in the observance and performance of the respective duties, covenants, obligations, and agreements of the Borrower and the NDWEE under this Loan Agreement.
- (c) Completion of Project and Provision of Moneys Therefore. The Borrower agrees:
- (1) To exercise its best efforts in accordance with prudent public water supply utility practice to complete the Project and to so accomplish such completion on or before the estimated Project completion date set forth in Article II hereto; and
 - (2) To provide from its own financial resources all moneys, in excess of the total amount of proceeds it receives pursuant to this Loan Agreement, required to complete the Project.
 - (3) At the completion of the Work (e.g., the LSL Replacement at a Residential Property, etc.), the City and/or its Contractor shall remove from the Site and adjacent areas all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration in the use of the loan funds.
- (d) Delivery of Documents. Concurrently with the delivery of this Loan Agreement (as previously authorized and executed) at the loan closing, the Borrower will cause to be delivered to the NDWEE each of the following items:
- (1) Counterparts of this Loan Agreement (as previously executed by parties hereto);
 - (2) Copies of the ordinances and/or resolutions of the governing body of the Borrower authorizing the execution and delivery of this Loan Agreement certified by an Authorized Representative;
 - (3) An Opinion of the Borrower's Counsel substantially in the form of Attachment E hereto;
 - (4) An executed Note (or other evidence of indebtedness) evidencing the Borrower's obligations under this Loan Agreement in the form of Attachment F;
 - (5) An executed certificate of the Borrower in the form of Attachment G hereto; and
 - (6) Such other certificates, documents, opinions, and information as the NDWEE may require.
- (e) Operation and Maintenance of Public Water System. The Borrower agrees that it shall operate in accordance with Nebraska Administrative Code, Title 179 – Public Water Systems, Chapter 22, and ensure the following:
- (1) At all times operate the properties of its Public Water System in an efficient manner; and
 - (2) Maintain its Public Water System, making all necessary and proper repairs, renewals, replacements, additions, betterments, and improvements necessary to maintain its system in good repair, working order and operating condition.
- (f) Disposition of Public Water System. The Borrower covenants that it intends to own and operate the Project at all times during the term of the Loan. The Borrower does not know of any reason why the Project will not be so used in the absence of:

- (1) Supervening circumstances not anticipated by the Borrower at the time of the Loan;
- (2) Adverse circumstances beyond the control of the Borrower; or;
- (3) Obsolescence of such insubstantial parts or portions of the Project as may occur as a result of normal use thereof.

The Borrower shall not sell, lease, abandon or otherwise dispose of all or substantially all of its Public Water System except on 90 days' prior written notice to the NDWEE and, in any event, shall not sell, lease, abandon or otherwise dispose of the same unless the Borrower shall in accordance with Section 4.02 hereof assign this Loan Agreement and its rights and interests hereunder to the purchaser or lessee of the Public Water System and such purchaser or lessee shall assume all duties, covenants, obligations and agreements of the Borrower under this Loan Agreement. In no event shall the Borrower sell, lease, abandon, or otherwise dispose of the Public Water System to any person or entity other than a municipal corporation or other political subdivision of the State of Nebraska, or any combination thereof, that has legal authority to own or operate the Public Water System.

Before any proposed disposition of the Public Water System can be made, the Borrower shall provide the NDWEE, and NIFA if NIFA is an assignee of the Note, with an opinion of a nationally recognized bond counsel that such proposed disposition is permitted by the provisions of this subparagraph, and, further, that such disposition shall not endanger the exclusion from gross income for federal income tax purposes of the interest on any bonds issued to fund deposits into the Loan Fund, nor shall it relieve the Borrower of its duties, covenants, obligations and agreements under this Loan Agreement.

- (g) Records and Accounts. The Borrower shall maintain accurate records and accounts in accordance with generally accepted accounting principles, including principles relating to the reporting of infrastructure assets for its Public Water System's Records (the "System Records"), which shall be separate and distinct from its other records and accounts (the "General Account"). The System Records and General Accounts shall be made available for inspection upon request by the NDWEE at any reasonable time. The Borrower shall, upon written request by the NDWEE during the term of the Loan, engage an independent auditor to conduct an audit of the project's financial records in accordance with generally accepted government auditing standards. The Borrower shall provide the NDWEE a copy of the audit report, provided such audit shall not be due to the NDWEE sooner than 210 days following the close of the fiscal year, or years, identified in the request for audit. In the event that during the period in which the Project financed by this Loan Agreement is under construction, and the Borrower expends, for any purpose, total federal funds in excess of seven hundred fifty thousand dollars (\$1,000,000) during the Borrower's fiscal year, then the Borrower shall, irrespective of any request from the NDWEE, provide the NDWEE a copy of the Single Audit made on the Borrower's General Accounts performed by an independent auditor required in such cases by 2 CFR Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. In the sole discretion of the NDWEE, any requirement herein to perform and/or provide an audit at the request of the NDWEE may be waived by the NDWEE on the basis of the Borrower's receipt of an audit waiver received from some other government agency and accurately acknowledging the Borrower's obligation to the NDWEE under this Loan or for any other reason acceptable to the NDWEE.
- (h) Inspections; Information. The Borrower shall permit the EPA, the NDWEE, and any party designated by the NDWEE to examine, visit, and inspect, at any and all reasonable times, the property, if any, constituting the Project, and to inspect and make copies of any accounts, books, and records, including (without limitation) its records regarding receipts, disbursements, contracts, investments, and any other matters relating thereto and to its financial standing, and shall supply such reports and information as the EPA and the NDWEE may reasonably require in connection therewith.
- (i) Financial Information. The Borrower specifically agrees to provide to the NDWEE a reasonable number of copies of such financial information and operating data of the Borrower and the Public Water System and

the prompt notification of the occurrence of certain material events, to the extent necessary for the NDWEE to comply with its continuing disclosure obligations set forth in the SEC Rule. Such financial information shall be prepared in accordance with GAAP. Such financial information and operating data, if requested, shall be supplied within 210 days after the end of its fiscal year. If audited financial information will be prepared, but is not available within 210 days of the end of the appropriate Borrower's fiscal year, unaudited financial information shall be provided to the NDWEE pending receipt of audited financial information. For purposes of this paragraph, "material event" shall mean:

- (1) Principal and interest payment delinquencies on any Indebtedness;
 - (2) Non payment related defaults in agreements authorizing any Indebtedness;
 - (3) Rating changes on any Indebtedness;
 - (4) Adverse tax opinions or events affecting the tax exempt status of any Indebtedness; or
 - (5) Unscheduled draws on debt service reserves or credit enhancements on any Indebtedness reflecting financial difficulties.
- (j) Insurance. The Borrower will carry and maintain such reasonable amount of all risk insurance on all properties and all operations of the Public Water System as would be carried by similar sized municipal operators of Public Water System, insofar as the properties are of an insurable nature. The Borrower also will carry general liability insurance in amounts not less than the maximum liability of a governmental entity for claims arising out of a single occurrence, as provided by the Nebraska Political Subdivisions Tort Claims Act (Neb. Rev. Stat. §§13-901 to 13-928), or other similar future law.
- (k) Continuing Representations. The representations of the Borrower contained herein shall be true at the time of the execution of this Loan Agreement and at all times during the term of this Loan Agreement.
- (l) Notice of Material Adverse Change. The Borrower shall promptly notify the NDWEE of any material adverse change in the activities, prospects, or condition (financial or otherwise) of the Borrower's Public Water System, in accordance with the provisions of Sections 3.02(g) and 3.02(i) of this Loan Agreement, or in the ability of the Borrower to make all Loan Repayments and otherwise observe and perform its duties, covenants, obligations and agreements under this Loan Agreement.
- (m) Additional Covenants and Requirements. If necessary in connection with the making of the Loan Agreement, additional covenants and requirements, if any, are hereby incorporated with their inclusion to Attachment I, Other Documents.

ARTICLE IV

ASSIGNMENT

Section 4.01. Assignment and Transfer by the NDWEE. The Borrower hereby approves and consents to any assignment or transfer of this Loan Agreement that the NDWEE deems necessary in connection with the operation and administration of the Fund. The Borrower hereby specifically approves the assignment and pledging of the interest portion of the Loan Repayments to NIFA.

Section 4.02. Assignment by the Borrower. This Loan Agreement may not be assigned by the Borrower for any reason, unless the following conditions shall be satisfied:

- (a) The NDWEE shall have approved said assignment in writing;
- (b) The assignee is a village, town, city, district, association, county, or other public body created by or pursuant to State law of the State of Nebraska or any combination thereof, that has legal authority to own or operate the Public Water System;
- (c) The assignee shall have expressly assumed in writing the full and faithful observance and performance of the Borrower's duties, covenants, and obligations under this Loan Agreement; provided, however, such assignment shall not relieve the Borrower of its duties, covenants, and obligations under this Loan Agreement;
- (d) The assignment will not adversely impact the NDWEE's ability to meet its duties, covenants and obligations under any Pledge Agreement as determined in writing by the NDWEE;
- (e) The assignment will not adversely affect the exclusion from gross income for federal tax purposes of the interest on any bonds issued by NIFA to fund deposits into the Loan Fund; and
- (f) The Borrower shall provide the NDWEE, and NIFA if NIFA is an assignee of the Note, with:
 - (1) An opinion of a qualified attorney satisfactory to the NDWEE that each of the conditions set forth in subparagraphs Section 4.02(b) and (c) above has been met; and
 - (2) An opinion of nationally recognized bond counsel satisfactory to the NDWEE that the condition set forth in subparagraph Section 4.02(e) above has been met.

ARTICLE V

EVENTS OF DEFAULT AND NONCOMPLIANCE

Section 5.01. Event of Default. Event of Default means: (i) any violation or noncompliance by the Borrower of any of the provisions of this Loan Agreement; (ii) violation or noncompliance by the Borrower of any provision of federal, state, or local regulations or requirements; (iii) failure by the Borrower to pay when due any Loan Payment pursuant to Section 2.06 of this Loan Agreement and for such payment to be considered delinquent by the NDWEE; and (iv) a default under the terms of any Revenue Obligation and other parity obligation allowing any holder of such obligation the right to exercise any remedies against the Borrower.

Section 5.02. Notice of Default.

- (a) If an Event of Default shall occur and is discovered by the Borrower, the Borrower shall give the NDWEE prompt telephonic notice of the Event of Default. Such telephonic notice shall be immediately followed by written notice of such Event of Default given in the manner as established by Section 6.03 of this Loan Agreement.
- (b) If an Event of Default shall occur and is discovered by the NDWEE, the NDWEE shall give the Borrower and the NIFA prompt telephonic notice of the occurrence of such Event of Default. Such telephonic notice shall be immediately followed by written notice from the NDWEE to the Borrower of such Event of Default given in the manner as established by Section 6.03 of this Loan Agreement.

Section 5.03. Remedies on Default.

- (a) Whenever an Event of Default shall have occurred and be continuing, the NDWEE or the Borrower shall have the right to take whatever action at law or in equity may appear necessary or desirable to collect the amounts then due and to become due or to enforce the performance and observance of any obligation or

agreement of the Borrower (including, without limitation, withholding remaining Loan disbursements, cancellation of this Loan Agreement and acceleration of the remaining scheduled principal payments set forth on Attachment A, or such other remedies provided to the NDWEE in the Act and the Regulations).

- (b) If the Borrower fails to make any payment of principal and interest, administrative fee, late fee, or penalty interest imposed pursuant to this Loan Agreement within 60 days of the due dates specified in Section 2.06 of this Agreement, the payment shall be deducted from the amount of aid to municipalities to which the Borrower is entitled under Neb. Rev. Stat. §72-1503. Such amount shall be paid directly to the Fund.

Section 5.04. Expenses. Upon the occurrence of an Event of Default, and to the extent permitted by law, the Borrower shall, on demand, pay to the NDWEE the reasonable fees and expenses incurred by the NDWEE in the collection of Loan Repayments or any other sum due hereunder or in the enforcement of performance or observation of any other duties, covenants, obligations, or agreements of the Borrower contained herein. Upon request by the Borrower, the NDWEE shall provide copies of statements evidencing the fees and expenses for which the NDWEE is requesting payment.

Section 5.05. Application of Moneys. Any moneys collected by the NDWEE pursuant to Section 5.03 or 5.04 hereof shall be applied;

- (a) First, to pay administrative fees on the Loan as the same becomes due and payable;
- (b) Second, to pay interest on the Loan as the same becomes due and payable;
- (c) Third, to pay principal due and payable on the Loan;
- (d) Fourth, to pay expenses owed by the Borrower pursuant to Section 5.04 hereof; and
- (e) Fifth, to pay any other amounts due and payable hereunder as such amounts become due and payable. To the extent that the NDWEE's right to receive Loan Repayments is on a parity of lien basis with the lien of Existing Revenue Obligations or Additional Revenue Obligations on the Borrower's System Revenues, such moneys shall be applied pro rata to all such obligations.

Section 5.06. No Remedy Exclusive; Waiver; Notice. No remedy herein conferred upon or reserved to the parties hereto is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Loan Agreement or now or hereafter existing at law or in equity. The parties hereto, in good faith, shall exercise such remedies with due diligence in a timely manner, however, no delay or omission to exercise any right, remedy or power accruing upon any Event of Default shall impair any such right, remedy or power or shall be construed to be a waiver thereof, but any such right, remedy or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the parties hereto to exercise any remedy reserved to them in this Article, it shall not be necessary to give any notice, other than such notice as may be required in this Article V.

Section 5.07. Retention of Rights. Notwithstanding any assignment or transfer of this Loan Agreement pursuant to the provisions hereof, or anything else to the contrary contained herein, the parties hereto shall have the right upon the occurrence of an Event of Default to take any action, including (without limitation) bringing an action against the defaulting party at law or in equity, as such party may, in its discretion, deem necessary to enforce the obligations of the defaulting party pursuant to this Loan Agreement.

Section 5.08. Violation of Loan Agreement Provisions. Violation or noncompliance of any of the provisions of this Loan Agreement by the Borrower, or failure of the Borrower to complete and maintain the Project in the manner proposed by the Borrower, and approved by the NDWEE may result in a cancellation of this Loan Agreement, and a demand that any outstanding balance of principal, interest, and administrative fees and any other amounts due under this Loan Agreement be paid immediately.

ARTICLE VI

MISCELLANEOUS

Section 6.01. Hold Harmless Agreement. The State of Nebraska and the NDWEE, and the officers, agents, and employees of each, shall have no responsibility or liability for the construction, operation and maintenance of the Project. The Borrower shall be responsible for such construction, operation and maintenance of the Project and shall assume responsibility for all Project Costs and any claims, demands, damages, losses, costs, expenses, or liability accruing or resulting to any and all contractors, subcontractors, employees, and any other person, firm, or corporation furnishing or supplying services, materials, or supplies in connection with construction of the Project, and for any and all claims, demands, damages, losses, costs, expenses, or liability occurring or resulting to any person, firm or corporation, as a result of or incident to, either in whole or in part, whether directly or indirectly, the construction, or the operation of the Project.

Section 6.02. Waivers. Any waiver at any time of rights or duties under this Loan Agreement shall not be deemed to be a waiver of any subsequent right or duty under this Loan Agreement.

Section 6.03. Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when hand delivered or mailed by registered or certified mail, postage prepaid, to the Borrower and the NDWEE at the following addresses:

(a) BORROWER

City of Lexington
406 East 7th St.
P.O. Box 70
Lexington, NE 68850-0070
Phone: (308) 324-2341

(b) NDWEE

Nebraska Department of Water, Energy, and Environment
245 Fallbrook Blvd., Suite 100
Lincoln, NE 68521
Phone: (402) 471-2186

All notices given by registered or certified mail as aforesaid shall be deemed duly given as of the date they are so mailed. Any of the foregoing parties may designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent, by notice in writing given to the others.

Section 6.04. Amendments, Supplements and Modifications. This Loan Agreement may not be amended, supplemented, or modified except in writing signed by the NDWEE and the Borrower.

Section 6.05. Severability. In the event any provision of this Loan Agreement shall be held illegal, invalid, or unenforceable by any court of competent jurisdiction, such holding shall not invalidate, render unenforceable or otherwise affect any other provision hereof.

Section 6.06. Binding Effect. This Loan Agreement shall inure to the benefit of and shall be binding upon the NDWEE and the Borrower and their respective successors and assigns.

Section 6.07. Execution in Counterparts. This Loan Agreement may be executed in several counterparts, each of which shall be deemed to be an original and all of which shall constitute but one and the same instrument.

Section 6.08. Governing Law and Regulations. This Loan Agreement shall be governed by and construed in accordance with the laws of the State of Nebraska, including the Act and the Regulations which are, by this reference thereto, incorporated herein as a part of this Loan Agreement.

Section 6.09. Consents and Approvals. Whenever the written consent or approval of the State shall be required under the provisions of this Loan Agreement, such consent or approval may only be given by the NDWEE.

Section 6.10. Further Assurances. The Borrower shall, at the request of the NDWEE, authorize, execute, acknowledge, and deliver such further resolutions, conveyances, transfers, assurances, financing statements, and other instruments as may be necessary or desirable for better assuring, conveying, granting, assigning, and confirming the rights, security interests and agreements granted or intended to be granted by this Loan Agreement.

Section 6.11. Notice to Trustee. Upon assignment of the Note to NIFA which may occur from time to time and thereafter, the NDWEE shall deliver a notice of this Loan in the form prescribed by NIFA, and other pertinent information relating thereto, to the Trustee for any bonds of NIFA issued to fund deposits into the Fund.

Section 6.12. Finalizing, Closing, and Termination of the Loan Agreement. The NDWEE reserves the right to finalize and close, or terminate this Loan Agreement for cause at any point during the term of the loan. Before any action is taken, the NDWEE shall give no less than 30 days written notice of the NDWEE's intent to the Borrower. Following the final disbursement of Loan proceeds to the Borrower, the NDWEE shall revise Attachment A. Such revised Attachment A shall be deemed to be incorporated herein by reference and made a part hereof and shall supersede and replace Attachment A.

Section 6.13. Electronic Signature. The NDWEE and the Borrower hereby approve the usage of electronic signatures pursuant to Neb. Rev. Stat. §86-611 and Nebraska Administrative Code, Title 437, Digital Signatures Act.

- (a) Attachment F – Promissory Note of the CITY OF LEXINGTON of this Loan Agreement may not be electronically signed and must be signed physically by the authorized signatories. The Borrower agrees that prior to electronically signing this Loan Agreement, Attachment F has been physically signed and provided to the NDWEE.

Section 6.14. Effective Date. This Loan Agreement shall become effective upon the latter date of the following two signatures:

IN WITNESS THEREOF, the parties hereto have caused this Loan Agreement to be executed and delivered as of the date set forth below.

CITY OF LEXINGTON, NEBRASKA

NEBRASKA DEPARTMENT OF WATER,
ENERGY, AND ENVIRONMENT

By _____ (printed name)	By _____ (printed name)
DRAFT: PLEASE DO NOT SIGN THIS SECTION. THIS SECTION WILL BE SIGNED ELECTRONICALLY THROUGH DOCUSIGN.	
_____ (signature) Title _____ Mayor	_____ (signature) Title _____ Director
Date _____	Date _____

INDEX OF ATTACHMENTS

Exhibit 1 -	Project Description
Attachment A -	Loan Repayment Schedule
Attachment B -	Project Costs and Projected Outlay Schedule
Attachment C -	Financial Analysis
Attachment D -	List of Federal Laws and Authorities
Attachment E -	Borrower's Counsel's Opinion
Attachment F -	Promissory Note
Attachment G -	Certificate
Attachment H -	Additional Documents

EXHIBIT 1

PROJECT DESCRIPTION

The project to be funded by this DWSRF financing is for the replacement of known existing lead service lines and may also include mechanical inventory efforts (e.g., potholing, hydro-vacuum excavations, service line resistivity testing, etc.). The project includes all related work, land testing, construction change orders, and engineering fees.

ATTACHMENT A

LOAN REPAYMENT SCHEDULE

Payments are due on June 15 and December 15 of each year. Interest and Administrative fees shall accrue at the applicable rate as established by Section 2.03 and Section 2.04 of this Loan Agreement and repayments of such accrued interest and administrative fees will be repaid after the effective date of this Loan Agreement. A commencement of principal repayment is estimated to start on December 15, 2028 (as established by Section 2.02 of this Loan Agreement wherein repayment must begin within one (1) year from the date of Initiation of Operation, but no later than three (3) years from the date of the Loan, whichever occurs first).

Amounts due will be invoiced on or about May 15 and November 15 of each year for each six-month payment period ending on the set interest payment date. Interest and Administrative fee accruing on principal amounts drawn after the invoicing date are to be included with the next invoice.

The Amortization Schedule included in Attachment A is a projected schedule based upon estimated principal repayment start and full distribution of funds and is subject to change pending date of Initiation of Operation and final principal amount disbursed. Interest and Administrative fees accruing before the first principal repayment that is not reflected on the following draft amortization schedule will be billed and paid in accordance with the NDWEE's procedures.

Following the receipt of Initiation of Operation date and the final disbursement of Loan proceeds to the Borrower, a revised final Attachment A shall be prepared by the NDWEE to establish the final debt service schedule based upon the following parameters set forth below. Such revised final Attachment A thereafter shall be deemed to be incorporated herein by reference and made a part hereof and shall supersede and replace the projected Attachment A.

The final Loan Repayment Schedule shall be calculated by the NDWEE based on the following parameters:

- (1) Final principal amount of Loan;
- (2) Amount of Loan Forgiveness, if any;
- (3) Interest rate as set forth in Section 2.03;
- (4) Administrative fee rate as set forth in Section 2.04;
- (5) Installments of principal, interest, and fees on each June 15 and December 15 payment date shall:
 - a. Begin no later than one year after the Initiation of Operation, or three years from the effective date of this Loan Agreement, whichever occurs first; and
 - b. End on the last repayment which must be paid no later than forty (40) years from the date of either (i) one year after the Initiation of Operation, or (ii) three years from the effective date of this Loan agreement, whichever occurs first; and
- (6) Amortization of principal to achieve level payments of principal and interest (not taking into account the administrative fee payment pursuant to Section 2.04).

ATTACHMENT B

PROJECT COSTS

<u>COST CLASSIFICATION</u>	<u>ESTIMATED TOTAL COST</u>
1) Administrative and legal expenses	
2) Land, structures, right-of-ways, appraisals, etc.	
3) Relocation expenses and payments	
4) Architectural and engineering fees	
5) Project inspection fees	\$ 10,000
6) Site work, demolition and removal	
7) Construction	\$ 900,000
8) Equipment	
9) Miscellaneous	
10) SUBTOTAL (sum of lines 1-9)	\$ 910,000
11) Contingencies	\$ 90,000
12) SUBTOTAL (sum of lines 10-11)	\$ 1,000,000
Less project (program) income	
TOTAL PROJECT COSTS (line 12 minus 13)	\$ 1,000,000
<u>SOURCE OF FUNDS</u>	
LSLR DWSRF Loan (Principal)	\$ 400,000
LSLR DWSRF Loan Forgiveness	\$ 490,000
LSLR DWSRF Historical Loan Forgiveness	\$ 110,000
LSLR DWSRF Mechanical Inventory Grant	*Up to \$100,000
TOTAL PROJECT ASSISTANCE	\$ 1,000,000

Funds shall be made only to owners of eligible systems for eligible projects pursuant to the Safe Drinking Water Act.

OUTLAY SCHEDULE

	2026 ESTIMATED OUTLAY	2027 ESTIMATED OUTLAY	2028 ESTIMATED OUTLAY	2028 ESTIMATED OUTLAY
January	\$ -	\$ -	\$ -	\$ -
February	\$ -	\$ -	\$ -	\$ -
March	\$ -	\$ 20,000.00	\$ 20,000.00	\$ 20,000.00
April	\$ -	\$ 20,000.00	\$ 20,000.00	\$ 20,000.00
May	\$ -	\$ 30,000.00	\$ 30,000.00	\$ 20,000.00
June	\$ -	\$ 50,000.00	\$ 50,000.00	\$ 50,000.00
July	\$ 50,000.00	\$ 50,000.00	\$ 50,000.00	\$ 50,000.00
August	\$ 30,000.00	\$ 50,000.00	\$ 50,000.00	\$ 50,000.00
September	\$ 30,000.00	\$ 50,000.00	\$ 50,000.00	\$ 20,000.00
October	\$ 30,000.00	\$ 40,000.00	\$ 40,000.00	\$ 10,000.00
November	\$ -	\$ -	\$ -	\$ -
December	\$ -	\$ -	\$ -	\$ -
ANNUAL TOTAL:	\$ 140,000	\$ 310,000	\$ 310,000	\$ 240,000
TOTAL OUTLAY:	\$			1,000,000

ATTACHMENT C

FINANCIAL CAPABILITIES ANALYSIS

The City of Lexington, NE has requested DWSRF funding assistance of \$1,000,000 to finance the replacement of approximately 180 lead service lines in the City. The City of Lexington is eligible for up to 60% DWSRF Loan Forgiveness and up to 10% DWSRF Inventory Grant, if needed out of the SRF SFY 2025 IUP Program.

An abbreviated financial analysis is presented. The documents reviewed and used to complete this analysis are:

1. Audit reports of the City of Lexington for the years 2021 through 2023;
2. Water Pre-application for State Assistance; and
3. Miscellaneous correspondence from City of Lexington in project file.

Analysis of the Water Utility:

The City of Lexington manages and operates a public water system and utilizes water user rates as their user charge system. Table 1 displays the City of Lexington general gross profit of their revenue and expenses from the operation of their user charge system.

**Table 1
User Charge System Summary**

Year	Revenue (includes interest income)	Expenses (excludes depreciation)	Gross Profit (Revenue minus Expenses)
2021	\$1,770,148	\$1,407,036	\$363,112
2022	\$1,857,165	\$1,388,945	\$468,220
2023	\$1,856,080	\$1,299,114	\$556,966

The City of Lexington manages their water system utility which generates revenue by assessing use fees on the residents and businesses in Lexington. The revenue stream goes towards paying for the operation and maintenance expenses incurred to operate the water utility. The water use revenues will be used to pay the debt service due to the proposed water utility loan. The water system utility ran an operating surplus in 2021 through 2023, as shown in Table 1.

As of 9/30/2023, the long-term liabilities for business-type activities are listed below:

1. As of September 30, 2023, the City of Lexington had a balance of \$930,000 on a Series 2018 Combined Utilities Revenue Refunding Bond with interest rates of 1.85 percent to 2.90 percent, increasing over the life of the bond, with a final maturity in October 2026.
2. As of September 30, 2023, the City of Lexington had a balance of \$1,115,000 on a Series 2020 Combined Utilities Revenue Bond with interest rates of 1.3 percent to 2.4 percent, increasing over the life of the bond, with a final maturity in November, 2034.

The City is eligible for a 40-year DWSRF loan at a per annum interest rate of 0.0 percent plus an annual 0.0 percent administrative fee on the outstanding principal amount. The DWSRF offers loan funding assistance of \$1,000,000 minus \$600,000 in loan forgiveness and up to \$100,000 in inventory grant assistance, if needed, for a principal amount of \$400,000. An annual debt service of \$10,000 plus the DWSRF contract required 10% coverage or \$1,000 for delinquency or loss of users, as shown in Table 2, totals \$11,000 for the first-year debt service, which includes the 10% coverage. Principal and Interest repayments of SRF loans are protected by intercept statute Neb. Rev. Stat. §75-1503, which allow the Department to recover delinquent loan payments by intercepting state funds that are paid to the City of Lexington.

Table 2
DWSRF Loan # D311720: \$1,000,000 Total Loan, less Loan Forgiveness of \$600,000 for a total Principal Loan of \$400,000.

DWSRF Loan Term (Years)	Interest Rate	Admin Fee	Estimated First Year Payment	First Year Payment + 10% Coverage
40	0.0%	0.0%	\$10,000	\$11,000

The revenues from the City of Lexington water system utility will be dedicated to repaying the loan. The number of users is estimated at 3,301 total connections. The current water user charge is a base charge of \$20.50 for the first 5,000 gallons of water used, plus an additional usage charge of \$1.05 per 1,000 gallons over that amount. The estimated current monthly water bill for 5,000 gallons usage would be \$20.50. Based solely upon the projected users for the City, the user charges estimated to increase by \$0.28 per user, per month is recommended for proper debt coverage to service the SRF loan. The new average user rate is estimated to be \$20.78 per month, or \$249.36 annually. A final assessment of revenues and costs will be analyzed to determine the actual user charge adjustment as necessary.

The projected monthly water rate is \$20.78 per month, or \$249.36 annually. This projected household water rate total is 0.39% of the City of Lexington median household income of \$63,939 and is below EPA's 2.5% upper level of water rate affordability.

ATTACHMENT D

LIST OF FEDERAL LAWS AND AUTHORITIES

ENVIRONMENTAL:

- Archeological and Historic Preservation Act of 1974, Pub. L. 93-291, 16 U.S.C. §469a-1
- Clean Air Act, PL 95-95, as amended, 42 U.S.C. 7506(c)
- Coastal Barrier Resources Act, PL 97-348, 96 Stat. 1653, 16 U.S.C. 3501 et seq.
- Coastal Zone Management Act of 1972, PL 92-583, as amended, 16 U.S.C. §1451 et seq.
- Endangered Species Act, PL 93-205, as amended, 16 U.S.C. 1531 et seq.
- Essential Fish Habitat Consultation Process Under the Magnuson-Stevens Fishery Conservation and Management Act, PL 94-265, as amended, 16 U.S.C. §1801 et seq.
- Executive Order 11988, Floodplain Management, as amended; Executive Order 12148, as amended
- Executive Order 11990, Protection of Wetlands, as amended; Executive Order 12608, as amended
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, as amended
- Farmland Protection Policy Act, PL 97-98, 7 U.S.C. §4201 et seq.
- National Environmental Policy Act, PL 91-190, 42 U.S.C. §4321 et seq.
- National Historic Preservation Act of 1966, PL 89-665, as amended, 16 U.S.C. §740 et seq.
- Safe Drinking Water Act, as amended, PL 92-523, as amended, 42 U.S.C. 300f et seq.
- U.S. Fish and Wildlife Service National Wetlands Inventory
- Wild and Scenic Rivers Act, PL 90-542, as amended, 82 Stat. 913, 16 U.S.C. §1271 et seq.

ECONOMIC:

- Demonstration Cities and Metropolitan Development Act of 1966, PL 89-754, as amended, 42 U.S.C. §3331 et seq.
- Executive Order 12549, Debarment and Suspension, as amended
- Executive Order 13202, as amended; Executive Order 13208, as amended
- Section 306 of the Clean Air Act and Section 508 of the Clean Water Act, including Executive Order 11738, Administration of the Clean Air Act and the Federal Water Pollution Control Act, with Respect to Federal Contracts, Grants, or Loans, as amended
- Uniform Relocation and Real Property Acquisition Policies Act of 1970, PL 91-646, as amended, 42 U.S.C. §§4601-4655

SOCIAL LEGISLATION:

- Age Discrimination Act of 1975, PL 94-135, 42 U.S.C. §6102
- Department of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, PL 102-389
- Executive Order 11246, Equal Employment Opportunity, as amended
- Executive Orders 11625, 12138, and 12432 Women's and Minority Business Enterprise, as amended
- Section 129 of the Small Business Administration Reauthorization and Amendment Act of 1988, PL 100-590
- Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §794
- Section 13 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. §1251
- Title VI of the Civil Rights Act of 1964, PL 88-352, 42 U.S.C. §200d

MISCELLANEOUS AUTHORITY:

- Nebraska Drinking Water State Revolving Loan Fund #FS - 997805

**The list of Federal Laws and Authorities is based upon the EPA's listing of "Additional information on Cross-Cutting Federal Authorities" (http://water.epa.gov/grants_funding/dwsrf/xcuts.cfm) and the EPA's "Cross-Cutting Federal Authorities: A Handbook on Their Application in the Clean Water and Drinking Water State Revolving Fund Programs" (October 2003; <https://www.epa.gov/sites/default/files/2015-08/documents/crosscutterhandbook.pdf>) as of October 12, 2015. This list is subject to change based upon the federal authorities of the EPA.*



March 24, 2026

Nebraska Department of Water, Energy, and Environment
Post Office Box 98922
Lincoln, NE 68509-8922
Attention: State Revolving Fund Program

To the Nebraska State Revolving Fund:

I have acted as Bond Counsel in connection with the execution and delivery by City of Lexington (the "Borrower"), of an Agreement for Loan No. D311720 (the "Loan Agreement") between the Borrower and the Nebraska Department of Water, Energy, and Environment ("NDWEE") and the issuance of a promissory note (the "Note") by the Borrower to the NDWEE. All terms used in this opinion letter and not defined shall have the meanings given to them in the Loan Agreement.

In this connection, I have examined the following:

- (a) Certified copies of Ordinance No. 2482 of the City of Lexington, Nebraska;
- (b) An executed counterpart of the Loan Agreement;
- (c) The executed Note; and
- (d) Such other documents as I deemed relevant and necessary in rendering this opinion.

As to questions of fact material to my opinion, I have relied upon the certified proceedings and other certifications of public officials furnished to me without undertaking to verify the same by independent investigation.

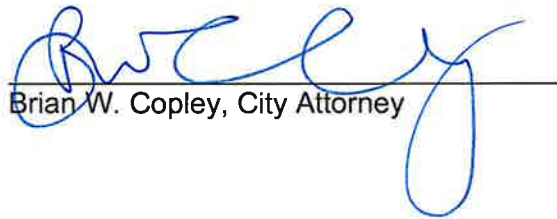
Based upon the foregoing I am of the opinion that:

1. The Borrower is a City duly organized and validly existing under the laws of the State of Nebraska.
2. The Borrower is a governmental unit, as such term is used in Section 141(b)(6) of the Internal Revenue Code of 1986, as amended.
3. The Borrower has the power and authority to enter into the Loan Agreement, to issue the Note, to borrow the entire principal amount provided for in Section 2.01 of the Loan Agreement (the "Principal Amount") and to perform its obligations under the Loan Agreement and the Note.
4. The Loan Agreement and the Note have been duly authorized, executed and delivered by the Borrower and are, and would be if the entire Principal Amount were advanced to the Borrower pursuant to the Loan Agreement on the date of this opinion, valid and legally binding special obligations of the Borrower, payable solely from the sources provided therefor in the Loan Agreement, enforceable in accordance with their respective terms, except to the extent that the

enforceability thereof may be limited by laws relating to bankruptcy, insolvency or other similar laws affecting creditors' rights generally and general principles of equity.

5. Pursuant, where applicable, to Nebraska Revised State Statutes §§18-1803 through 18-1805; §§31-732, 31-739, and 31-740, and all other applicable statutes governing eligible municipalities, the Loan Agreement creates a valid lien on the funds pledged by the Borrower pursuant to Section 3.02 of the Loan Agreement for the security of the Loan Agreement and the Note and no other debt of the Borrower is secured by a superior lien on such funds.
6. The Borrower has obtained or made all approvals, authorizations, consents, or other actions of, and filings, registrations, or qualifications with, the Borrower or any other government authority which are legally required to allow the Borrower to enter into and perform its obligations under the Loan Agreement and the Note and borrow the full Principal Amount pursuant to the Loan Agreement and the Note.

Very truly yours,



Brian W. Copley, City Attorney

ATTACHMENT F
PROMISSORY NOTE OF THE CITY OF LEXINGTON, NEBRASKA

(continued)

Complete this section upon assignment of this Note to the NIFA.

Pursuant to the Pledge Agreement dated as of _____ as amended (the "Pledge Agreement"), by and between the NDWEE and the Nebraska Investment Finance Authority ("NIFA"), and the _____ dated as of _____, as supplemented and amended, by and between NIFA _____, as trustee (the "Trustee"), the NDWEE hereby assigns, grants and conveys any and all of the NDWEE's rights, title and interest in this Note to NIFA, except as provided in the Pledge Agreement, and NIFA hereby assigns such rights, title and interest to the Trustee and any successor Trustee.

Attested by: _____ NEBRASKA INVESTMENT FINANCE AUTHORITY
By _____ (printed name) By _____ (printed name)

Note For Borrower:

If there are no comments or corrections to be made to Attachment F: Promissory Note, please print the prior page sign, date, and seal (if applicable). Then mail in to:

Title _____ Nebraska Department of Environment & Energy Title _____ Director
Date _____ ATTN: SRF PROGRAM – Steve McNulty Date _____
245 Fallbrook Blvd., Suite 100
Lincoln, NE 68521

Please leave this second page of Attachment F blank. This page only needs to be completed if the Nebraska Investment Finance Authority (NIFA) is appointed as a Trustee to the project.

ATTACHMENT G

CERTIFICATE OF THE CITY OF LEXINGTON

The following certifications are made in connection with the Agreement for Loan No. D311720 (the "Loan Agreement") between the Nebraska Department of Water, Energy, and Environment ("NDWEE") and the City of Lexington, Nebraska (the "Borrower") for the purpose of establishing compliance by the Borrower with requirements for the maintenance of the tax exemption of interest on any bonds (the "Bonds") which may be from time to time issued by the Nebraska Investment Finance Authority ("NIFA") to provide funds for deposit in the Fund (as defined in the Loan Agreement).

WHEREFORE, the undersigned hereby certifies on behalf of the Borrower to the NDWEE, the NIFA and any trustee for the Bonds, as follows:

1. The undersigned is authorized to make the following certifications on behalf of the Borrower.
2. The Borrower represents that it reasonably expects that the design and construction of the Project, as defined in this Loan Agreement, will commence within the stated Project Schedule established by Section 2.07 of this Loan Agreement and that the design and construction of the Project will proceed with due diligence thereafter to completion.
3. The proceeds of the loan pursuant to the Loan Agreement will be used for the project identified in Exhibit 1 of this Loan Agreement. There will be no Agreements for the use of the facility or Project other than Agreement on a rate scale basis. Specifically, the Borrower represents that there will be no Agreements for use of the Project that will require a non-governmental unit to make payments to the Borrower without regard to actual use of the Project.

Signed and dated as of _____.

City of Lexington, Nebraska

DRAFT: PLEASE DO NOT SIGN THIS SECTION. THIS SECTION WILL BE SIGNED ELECTRONICALLY THROUGH DOCUSIGN.

Date _____

ATTACHMENT H

ADDITIONAL DOCUMENTS

Attachment H.01 – Loan Forgiveness Form

Attachment H.02 – Ordinance #2482

Attachment H.01

LOAN FORGIVENESS AGREEMENT FORM

PART I

SRF LOAN FORGIVENESS AWARD

Pursuant to Neb. Rev. Stat. §71-5322(9) et. Seq., as amended, the NDWEE hereby offers the following Loan Forgiveness to the Borrower for the project as established by this Loan Agreement:

- (1) Loan Forgiveness of up to 60% of eligible SRF project costs of this Loan Agreement, not to exceed six hundred thousand dollars (\$600,000).
- (2) Lead Service Line Mechanical Inventory Grant. This Loan Agreement includes DWSRF Lead Service Line Mechanical Inventory Grant of up to 10% of the eligible Project Costs, up to a ceiling of one hundred thousand dollars (\$100,000).

This Loan Forgiveness is offered concurrent with this Loan Agreements Funds. Eligibility for such funds is made in accordance with the Federal Act, the state Act, Regulations, and the annual Intended Use Plan.

PART II

LOAN FORGIVENESS CERTIFICATION

If the Borrower is receiving Loan Forgiveness Funds, the Borrower certifies that as a condition of receipt of state allocations under this Loan Agreement, the following information is accurate and the Borrower agrees to the following statements and stipulations:

- (1) The Borrower is not considered a privately owned entity;
- (2) The Borrower has demonstrated serious financial hardship through the assessment and processes established in the related NDWEE's State Fiscal Year's (SFY) Intended Use Plan;
- (3) The Borrower's Median Household Income (MHI) as listed in the NDWEE's SFY's Intended Use Plan at the time of signing of this Loan Agreement is less than 120% of the State's MHI for that SFY.
- (4) The total amount of Loan Forgiveness cannot exceed 60.0% of eligible SRF project cost of this Loan Agreement and cannot exceed a maximum of \$600,000.

PART III

LOAN FORGIVENESS CONDITIONS

- (1) The total award of all Loan Forgiveness cannot exceed seventy-five percent of the total amount of eligible Project Costs.
- (2) Application and distribution of all Subsidies will be done pursuant to the terms as established by the Loan Agreement.
- (3) The total subsidy amount may be changed by the NDWEE if the eligible project amount changes due to the project costs.
- (4) Violation or noncompliance of this Loan Agreement will result in annulment of all Loan Forgiveness and a demand that any disbursed Loan Forgiveness funds be returned to the State of Nebraska immediately.

- (5) If a Borrower receives any funding from any other funding source for costs paid for by this Loan Agreement, it will result in annulment of Loan Agreement Funds to the extent these costs are covered by the other funding. The Borrower will promptly notify the NDWEE and promptly repay loan and Loan Forgiveness funds issued by the NDWEE to the extent these costs are covered by the other funding.
- (6) Notice of annulment of any Loan Forgiveness shall be by registered mail, return receipt requested.
- (7) Additional changes to the Subsidies not specified in the stipulations herein shall be made through the amendment procedure as established by this Loan Agreement.

PART IV

ACCEPTANCE

In accepting this award, the Borrower agrees that:

- (1) The undersigned represents that they are duly authorized to act on behalf of the City of Lexington, Nebraska;
- (2) The award is subject to the applicable provisions of §71-5322 et. seq., as amended, the Federal Act, and Regulations, and that acceptance of any payments constitutes an agreement by the Borrower that the amounts, if any, found by the state to have been overpaid, shall be refunded or credited in full to the State of Nebraska; and
- (3) If the Borrower receives funding from any source for any portion of the Project Costs for which a portion of the Loan Amount and Loan Forgiveness have been disbursed and is outstanding under this Loan Agreement, the recipient will notify the NDWEE immediately and such portion of the Loan Amount and Loan Forgiveness amount shall become immediately due and payable.

IN WITNESS THEREOF, the parties hereto agree to the information and stipulations herein.

CITY OF LEXINGTON, NEBRASKA

NEBRASKA DEPARTMENT OF WATER,
ENERGY, AND ENVIRONMENT

By _____ <small>(signature)</small>	By _____ <small>(signature)</small>
Title _____ <small>Mayor</small>	Title _____ <small>Director</small>
Date _____	Date _____

DRAFT: PLEASE DO NOT SIGN THIS SECTION. THIS SECTION WILL BE SIGNED ELECTRONICALLY THROUGH DOCUSIGN.

ORDINANCE NO. 2482

AN ORDINANCE AUTHORIZING AND PROVIDING FOR THE ISSUANCE OF A COMBINED UTILITIES REVENUE BOND, 2026 SERIES, OF THE CITY OF LEXINGTON, NEBRASKA, IN THE AGGREGATE PRINCIPAL AMOUNT OF NOT TO EXCEED ONE MILLION FIVE THOUSAND DOLLARS (\$1,005,000) IN THE FORM OF A PROMISSORY NOTE ISSUED TO EVIDENCE INDEBTEDNESS TO THE NEBRASKA DEPARTMENT OF WATER, ENERGY, AND ENVIRONMENT; APPROVING THE FORM OF SAID BOND (ISSUED AS A SINGLE PROMISSORY NOTE) AND RELATED LOAN AGREEMENT; DIRECTING THE APPLICATION OF THE PROCEEDS OF SAID BOND; PRESCRIBING THE FORM AND CERTAIN TERMS AND DETAILS OF SAID BOND AND AUTHORIZING THE OFFICERS OF THE CITY TO SET CERTAIN TERMS AND DETAILS OF SAID BONDS; PLEDGING AND HYPOTHECATING THE REVENUE AND EARNINGS OF THE SEWER, WATER AND ELECTRIC SYSTEMS OWNED BY THE CITY FOR THE PAYMENT OF SAID BONDS AND INTEREST THEREON; ESTABLISHING THE TERMS UPON WHICH ADDITIONAL BONDS OF EQUAL LIEN UPON REVENUES MAY BE ISSUED; PROVIDING FOR THE ISSUANCE AND SALE OF SAID BOND; AUTHORIZING THE DELIVERY OF SAID BOND TO THE NEBRASKA DEPARTMENT OF WATER, ENERGY, AND ENVIRONMENT; DETERMINING THAT INTEREST ON SAID BOND SHALL NOT BE EXCLUDABLE FROM GROSS INCOME FOR PURPOSES OF FEDERAL INCOME TAXATION; PROVIDING FOR THE DISPOSITION OF THE PROCEEDS OF SAID BOND AND ORDERING THE ORDINANCE PUBLISHED IN ELECTRONIC FORM.

BE IT ORDAINED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF LEXINGTON, NEBRASKA:

Section 1. The Mayor and Council of the City of Lexington, in the State of Nebraska (the "City") hereby find and determine:

(a) The City owns and operates its own sewage disposal plant and sanitary sewer system (as now existing or hereafter extended and improved, the "Sewer System"), waterworks plant and water system (as now existing or hereafter extended and improved, the "Water System") and electric light and power distribution system (as now existing or hereafter extended and improved, the "Electric System") (the Sewer System, the Water System and the Electric System, together with any additions, extensions and improvements thereto hereafter constructed or acquired, are herein referred to as the "Combined Utilities"), all of which are hereby determined to be revenue producing facilities under the provisions of Sections 18-1803 to 18-1805, R.R.S. Neb., as amended;

(b) The Nebraska Department of Water, Energy, and Environment ("NDWEE") has approved a project of the City for its Water System and connections thereto including the replacement of known existing lead service lines and may also include mechanical inventory efforts as more fully described in the proposed agreement with NDWEE entitled "Loan Agreement Between the Nebraska Department of Water, Energy, and Environment and City of Lexington, Nebraska, NDWEE Project No. D311720" (the "NDWEE Agreement") presented herewith, together with related appurtenant water system facilities and improvements and improvements related to such replacement, which has been designated as Project No. D311720 (the "Project"); and NDWEE has agreed to lend from monies to the City in the total principal amount of not to exceed \$1,005,000, and in connection with such loan has agreed to accept one or more bonds payable from the revenues of the Combined Utilities;

(c) The City has heretofore issued and outstanding the following revenue bonds which are a lien upon and secured by a pledge of the revenue and earnings of the Combined Utilities:

Promissory Note issued to the Nebraska Department of Environmental Quality on April 29, 2013, issued pursuant to Ordinance No. 2327 (the "2013 Ordinance") in the principal amount of up to Four Million Seven Hundred Fifty Thousand Dollars (\$4,750,000) (the "2013 Note");

Combined Utilities Revenue Refunding Bonds, 2018 Series, date of original issue – September 28, 2018, issued pursuant to Ordinance No. 2410 (the "2018 Ordinance") in the original principal amount of One Million Eight Hundred Fifty Thousand Dollars (\$1,850,000) (the "2018 Series Bonds").

Combined Utilities Revenue Bonds, 2020 Series, date of original issue – February 5, 2020, issued pursuant to Ordinance No. 2424 (the "2020 Ordinance") in the original principal amount of One Million Three Hundred Seventy Thousand Dollars (\$1,370,000) (the "2020 Series Bonds").

Promissory Note issued to the Nebraska Department of Environment and Energy on September 2, 2021, issued pursuant to Ordinance No. 2436 (the "2021 Ordinance") in the principal amount of up to Ten Million Three Hundred Five Thousand Dollars (\$10,305,000) (the "2021 Note").

The 2013 Note, the 2018 Series Bonds, the 2020 Series Bonds, and the 2021 Note represent the only presently-outstanding indebtedness of the City for which the revenues and earnings of the Combined Utilities have been pledged. The 2013 Note, the 2018 Series Bonds, the 2020 Series Bonds, the and the 2021 Note are to remain outstanding after the issuance of the 2026 Series Note (as defined herein) and are sometimes referred to herein as the "Outstanding Bonds." The 2013 Ordinance, the 2018 Ordinance, the 2020 Ordinance, and the 2021 Ordinance are sometimes referred to herein as the "Outstanding Bond Ordinances."

(d) The Outstanding Bond Ordinances permit the issuance of "Additional Bonds" secured on an equal basis with the Outstanding Bonds upon compliance with the following conditions is permitted by :

- 1) Such Additional Bonds shall be issued only pursuant to an ordinance which shall provide for an increase in the monthly credits into the Combined Utilities Revenue Bond Payment Account in amounts sufficient to pay, when due, the principal of and interest on the Outstanding Bonds, any Additional Bonds then outstanding and the proposed Additional Bonds.
- 2) The City shall have complied with the following requirement (as one permitted alternative):

The Net Revenues derived by the City from its Combined Utilities for the fiscal year next preceding the issuance of the Additional Bonds (determined in accordance with the definition of such term set forth in the Outstanding Bond Ordinances including, if applicable, a determination made for any period when financial statements have not yet been completed and reported on) shall have been at least equal to 1.20 times the Maximum Annual Debt Service (taking into consideration and excluding from debt service any Applicable Debt Service

Reserve Transfer for any series of bonds) of the Outstanding Bonds and any Additional Bonds, all as then outstanding, and of the proposed Additional Bonds.

(e) With respect to said conditions and covenants contained in the Outstanding Bond Ordinances, the following determinations are hereby made:

- 1) The "Net Revenues" of the Combined Utilities as defined in the Outstanding Bond Ordinances, as shown in the City's audit report as conducted by independent certified public accountants for the fiscal year ended September 30, 2024, were not less than \$3,383,000, and the City Treasurer has indicated that the unaudited financial information for the fiscal year ended September 30, 2025, will not result in Net Revenues less than \$3,000,000;
- 2) The Maximum Annual Debt Service on the Outstanding Bonds and the 2026 Series Note shall not be more than \$1,100,000;
- 3) Said "Net Revenues" exceed 1.20 times said "Maximum Annual Debt Service" of the Outstanding Bonds, and of the proposed 2026 Series Note.
- 4) All conditions required by the Outstanding Bond Ordinances precedent to the issuance of the 2026 Series Note as "Additional Bonds" of equal priority and on a parity with the Outstanding Bonds do exist and have happened.

(f) For the purposes of financing the Project and pursuant to Sections 18-1803 to 18-1805 R.R.S. Neb., as amended, it is necessary and advisable for the City to issue its combined utilities revenue bond in the form of and evidenced by a single promissory note (the "2026 Series Note") in the principal amount of not to exceed \$1,005,000, and enter into the NDWEE Agreement in connection therewith. All conditions, acts and things required by law to exist or to be done precedent to the issuance of the 2026 Series Note and entry into the NDWEE Agreement as provided for in this Ordinance do exist and have been done and performed in regular and due time and form as required by law.

Section 2. In addition to the definitions provided in parentheses elsewhere in this Ordinance, the following definitions of terms shall apply, unless the context shall clearly indicate otherwise:

- (a) The term "Applicable Debt Service Reserve Transfer" shall mean the amount of any required transfer from the respective sub-accounts in the Combined Utilities Bond Reserve Account for the Outstanding Bonds or any issue of Additional Bonds. The amount of any Applicable Debt Service Reserve Transfer shall apply under the terms of the Outstanding Bond Ordinances and this Ordinance so long as the Reserve Requirement is being maintained in the sub-account of the Combined Utilities Bond Reserve Account for the respective series of bonds for which such Applicable Debt Service Reserve Transfer has been established. In the event of any deficiency with respect to such Reserve Requirement, the amount of the Applicable Debt Service Reserve Transfer next required to be made in order of time shall be reduced by the amount of such deficiency for purposes of any calculation or determination under the terms of the Outstanding Bond Ordinances and this Ordinance.
- (b) The term "Additional Bonds" shall mean any and all bonds hereafter issued by the City pursuant to the terms of the Outstanding Bond Ordinances and this Ordinance which are

equal in lien to the Outstanding Bonds and the 2026 Series Note including such bonds issued pursuant to the provisions of the Outstanding Bond Ordinances and refunding bonds issued pursuant to the Outstanding Bond Ordinances, as and when such bonds become equal in lien to the Outstanding Bonds and the 2026 Series Note, according to their terms and the terms of this ordinance and the Outstanding Bond Ordinances.

- (c) The term "Deposit Securities" shall mean direct obligations of or obligations the principal and interest of which are unconditionally guaranteed by the United States of America, including obligations issued in book-entry form.
- (d) The term "Maximum Annual Debt Service" shall mean the maximum amount scheduled to fall due for payment of principal and interest in any fiscal year on the bonds for which such computation is required. In making such computation, the principal of any bonds for which mandatory redemptions are scheduled shall be treated as maturing in accordance with such schedule of mandatory redemptions.
- (e) The term "Net Revenues" shall mean the gross revenues derived by the City from the ownership or operation of the Combined Utilities, including investment income, but not including any income from sale or disposition of any property belonging to or forming a part of the Combined Utilities, less the ordinary expenses to the City of operating and maintaining the Combined Utilities payable from the Operation and Maintenance Account described in the Outstanding Bond Ordinances and in Section 6 of this Ordinance. Operation and maintenance expenses for purposes of determining "Net Revenues" shall not include depreciation, amortization or interest on any bonds or other indebtedness. Net Revenues for all purposes of the Outstanding Bond Ordinances and this Ordinance shall be shown by an audit for the fiscal year in question as conducted by independent certified public accountants, provided, however, that in the case of issuance of Additional Bonds, for that period from the end of each fiscal year until the financial statements reported on by the City's accountants are available, Net Revenues shall either (i) be based upon the most recent fiscal year for which there are financial statements which have been reported on by such accountants so long as the unaudited financial information for the then most recently completed fiscal year as certified by the City Treasurer would not result in a contrary determination, if such unaudited financial information were deemed the completed and reported on results or (ii) based upon a report of the City's accountants that the completed and reported on results will not be less than such amount as such accountants shall confirm.
- (f) "Reserve Requirement" shall mean the amount (if any) required to be maintained in the respective sub-accounts in the Combined Utilities Bond Reserve Account for the 2013 Note, the 2014 Series Bonds, the 2016 Series Bonds, the 2018 Series Bonds, the 2020 Series Bonds, the 2026 Series Note or any issue of Additional Bonds. The Reserve Requirement for the 2026 Series Note is hereby set at \$0.00.

Section 3. To provide for the payment of the costs of the Project, there shall be and there is hereby ordered issued the 2026 Series Note, in the form of and evidenced by a single promissory note (the "2026 Series Bond" or the "2026 Series Note") in the principal amount of not to exceed One Million Five Thousand Dollars (\$1,005,000), with such 2026 Series Note to be substantially in such form and content

as the form presented herewith as an attachment to the form NDWEE Agreement, with such changes determined necessary or appropriate by the Mayor, City Manager, City Finance Director or City Clerk (each, an "Authorized Officer"), and to have such payment terms as determined appropriate by an Authorized Officer. In connection with the issuance of the 2026 Series Note, the City shall also enter into the NDWEE Agreement with NDWEE in substantially the form presented herewith, with such changes as determined necessary or appropriate by an Authorized Officer. The terms and conditions of the 2026 Series Note and Project are hereby approved and the Authorized Officers are hereby authorized to execute and deliver the 2026 Series Note and the NDWEE Agreement for and on behalf of the City.

Section 4. The City hereby pledges and hypothecates all revenues and earnings, now or hereafter received, or otherwise due and owing to the City, derived from the ownership and operation of the City's Combined Utilities and all extensions and enlargements thereof, including any additions and improvements hereafter made, for the payment of principal of and interest on the Outstanding Bonds, the 2026 Series Note and any Additional Bonds as the same fall due. So long as said revenues and earnings are sufficient to make all required payments of principal and interest with respect to the Outstanding Bonds, the 2026 Series Note and any Additional Bonds, all such required payments with respect to each such issue shall be made in full from the respective sub-accounts in the Combined Utilities Revenue Bond Payment Account for each such series. In the event that such revenues and earnings are insufficient to meet the required payments from the Combined Utilities Revenue Bond Payment Account, such revenues and earnings shall be allocated to the Outstanding Bonds, the 2026 Series Note and any such Additional Bonds, pro rata in accordance with the respective unpaid principal amounts then outstanding for the Outstanding Bonds, the 2026 Series Note and such Additional Bonds. The pledge and hypothecation provided for the Outstanding Bonds and the 2026 Series Note, as provided for in the Outstanding Bond Ordinances and this Ordinance, is intended to be and shall provide for a first and prior pledge of, lien upon and security interest in the revenues of the Combined Utilities (subject to the right of the City to issue Additional Bonds as provided in the Outstanding Bond Ordinances and this Ordinance) for the payment of principal of and interest on the Outstanding Bonds and the 2026 Series Note, superior to any pledge or promise made with respect to any other indebtedness of the City as to its Combined Utilities, and is intended to be a full exercise of the powers

of the City provided for in Sections 18-1803 to 18-1805, R.R.S. Neb., as amended, with respect to its Combined Utilities.

Section 5. So long as any of the Outstanding Bonds, the 2026 Series Note and any Additional Bonds issued pursuant to this Ordinance shall remain outstanding and unpaid, the City covenants and agrees to establish, revise, from time to time as necessary, and collect such rates, charges and rentals for the sewer, water and electric service furnished from the Combined Utilities adequate to produce revenues and earnings sufficient at all times:

(a) To provide for the payment of the interest and principal of the Outstanding Bonds, the 2026 Series Note and any Additional Bonds as the same fall due.

(b) To pay all proper and necessary costs of operation and maintenance of the Combined Utilities and to pay for the necessary and proper repairs, replacements, enlargements, extensions and improvements to the Combined Utilities.

(c) To provide funds sufficient to make the deposits into the accounts required by the Outstanding Bond Ordinances and Section 6 of this Ordinance and any parallel or similar section of any ordinance authorizing the issuance of Additional Bonds.

(d) To maintain Net Revenues in each fiscal year adopted by the City for the Combined Utilities in an amount not less than 1.20 times the total amount of principal paid or payable (exclusive of any principal redeemed prior to maturity other than principal redeemed pursuant to a schedule of mandatory redemptions and taking into consideration any Applicable Debt Service Reserve Transfer made in such fiscal year) and interest falling due during such fiscal year for the Outstanding Bonds, the 2026 Series Note and any Additional Bonds, excluding from principal paid the amount of any Applicable Debt Service Reserve Transfer for such fiscal year, if any.

Section 6. All revenues and earnings derived from the operation of the Combined Utilities of said City shall be set aside as collected and deposited into a separate fund previously established and designated (and referred to in this Ordinance) as the "Combined Utilities Fund". Any uninvested moneys in the Combined Utilities Fund shall be deposited in a separate bank account properly earmarked and deposit shall be made in a bank or banks designated by the Council and be secured as provided by law for public deposits. The City shall set up and maintain as long as any of the Outstanding Bonds, the 2026 Series Note or Additional Bonds are outstanding the accounts described in this Section 6 for the administration of said fund. Within the Combined Utilities Fund there were previously established and maintained and are hereby confirmed the following accounts for allocation of the monies in said fund under the terms of the Outstanding Bond Ordinances and this Ordinance: (a) Combined Utilities Revenue Bond Payment

Account; (b) Operation and Maintenance Account; (c) Combined Utilities Bond Reserve Account; and (d) Surplus Account. Within each such account further sub-accounts have been, shall now, or may hereafter, be established as provided in the Outstanding Bond Ordinances and this Ordinance. Deposits shall be made to said accounts on a monthly basis, to the accounts in the order of priority as follows:

- I. COMBINED UTILITIES REVENUE BOND PAYMENT ACCOUNT; Within the Combined Utilities Revenue Bond Payment Account there is hereby ordered established the 2026 Series Bond Payment Sub-account. Out of the Combined Utilities Fund the City shall transfer into the Combined Utilities Revenue Bond Payment Account on or before the tenth day of each calendar month the amounts required to be deposited to the 2026 Series Bond Payment Sub-account in accordance with the following requirements for such sub-account:

2026 Series Bond Payment Sub-account. From the monies deposited to the Combined Utilities Revenue Bond Payment Account from the Combined Utilities Fund, there shall be deposited monthly to the 2026 Series Bond Payment Sub-account the following amounts for the periods indicated:

Beginning with the fifteenth day of the month (or such other day of the month as may be provided in the NDWEE Agreement) which immediately follows the "Initiation of Operation" (as defined in the NDWEE Agreement; and as established in this 2021 Ordinance (hereafter referred to as the "Initiation of Operation") of the Project, and continuing until and including that June 15 or December 15 (or such other day of the month as determined by the Mayor in the NDWEE Agreement), as the case may be with respect to the earliest occurring of such dates, an amount such that if the same amount were credited on the fifteenth day of each calendar month (or such other date as described above) from such date of credit until the next payment date upon which any amount falls due on the 2026 Series Note, provided, however, that such credits shall be required only as and to the extent that such payments are not provided from other sources including amounts advanced by NDWEE pursuant to the NDWEE Agreement and the 2026 Series Note and during the period from and including that June 15 or December 15 (or such other dates as described above), as the case may be with respect to the earliest occurring of such dates, which immediately follows the Initiation of Operation until the 2026 Series Note has been paid in full an amount equal to one-sixth of the installment amount (principal and interest) due on the next installment payment date for the 2026 Series Note.

Bond Payment Sub-account for Outstanding Bonds. From the monies deposited to the Combined Utilities Revenue Bond Payment Account from the Combined Utilities Fund, there shall be deposited to the Bond Payment Sub-accounts established for the Outstanding Bonds, such amounts deposited at such times as shall be required to comply with the requirements of the Outstanding Bond Ordinances.

All such deposits to the Bond Payment Sub-accounts for the Outstanding Bonds shall be made in such amounts and at such times that there will be sufficient sums in each such sub-account to meet the payments required to be made by the City with respect to the Outstanding Bonds and the 2026 Series Note as the same fall due, including any and all transfers required to be made to the NDWEE for the 2026 Series Bond or the paying agent and registrar for the Outstanding Bonds All such deposits are required to be made without preference or priority as between each such sub-account and any similar sub-account established for the Outstanding Bonds, the 2026 Series Note or any

issue of Additional Bonds and if amounts available are insufficient to make all deposits as required, the available funds shall be allocated on a pro rata basis in accordance with the terms of Section 4 of this Ordinance. In the event of the issuance of any Additional Bonds, the City shall in the ordinance authorizing their issuance provide for a related sub-account in the Combined Utilities Revenue Bond Payment Account and for deposits into such sub-account sufficient to make payments upon such Additional Bonds as the same fall due. Such sub-account and the deposits required to be made thereto shall have equal rank and standing with the Bond Payment Sub-accounts established for the Outstanding Bonds, the 2026 Series Bond Payment Sub-account and the payments required to be made to each thereof. Each sub-account in the Combined Utilities Revenue Bond Payment Account shall constitute a separate fund held in trust by the City for the separate special benefit of the issue or series of bonds for which it is established.

II. OPERATION AND MAINTENANCE ACCOUNT: After making all deposits required to the Combined Utilities Revenue Bond Payment Account in each month, the City shall set aside in the Operation and Maintenance Account each month an amount sufficient for the operation and maintenance of its Combined Utilities during the next period of one month (from deposit date to the next expected monthly deposit date for such account) and the expenses of maintenance and operation of said utilities shall be paid out of the Operation and Maintenance Account. Expenses for operation and maintenance shall include all ordinary and necessary costs for operating and maintaining the Combined Utilities and shall include, without limitation, wages, salaries, supplies, professional services, materials, insurance premiums, costs for purchased power and franchise fees charged by the City, if any, and shall also include any items necessary to maintain the properties of the Combined Utilities to achieve the capacity and performance for which such properties were designed and constructed, including the costs of installing equipment, accessories or appurtenances which are necessary during the life of such properties to maintain the capacity and performance for which such properties were designed and constructed. The City hereby covenants and agrees that in the event of any default in payment on the Outstanding Bonds, the 2026 Series Note or any Additional Bonds, no franchise fees shall be payable from the Operation and Maintenance Account until all such payment defaults have been cured in full.

III. COMBINED UTILITIES BOND RESERVE ACCOUNT: The sub-account within the Combined Utilities Bond Reserve Account for the Outstanding Bonds shall continue to be held and funded pursuant to the Outstanding Ordinances. Within the Combined Utilities Bond Reserve Account as established there is hereby ordered established a separate sub-account designated as the 2026 Series Bond Reserve Sub-account, which shall not be funded. In any ordinance authorizing Additional Bonds, the City may (but is not required to) make provision for the creation of an additional separate sub-account in the Combined Utilities Bond Reserve Account for each such issue of Additional Bonds provided that the required balance to be set for any such issue shall not be required to exceed at any time the maximum amount permitted to be invested without yield restriction under Section 103(b) and 148 of the Internal Revenue Code of 1986, as amended, and applicable regulations of the United States Treasury Department. The balance for any such sub-account may be established from monies of the Combined Utilities otherwise available, from periodic deposits made to such sub-account or from bond proceeds. Any such additional sub-account in the Combined Utilities Bond Reserve Account shall be of equal priority with those reserve accounts created for the Outstanding Bonds and the 2026 Series Bond and available monies from the Combined Utilities Fund required to be deposited to each such sub-account at any time shall be allocated on a pro rata basis in accordance to the terms of Section 4 of this Ordinance. Each sub-account in the Combined Utilities Bond Reserve Account shall constitute a separate fund held in trust by the City for the separate special benefit of the issue or series of bonds for which it is established. The City shall make each Applicable Debt Service Reserve Transfer when and as required under the terms of the definition for such term.

IV. SURPLUS ACCOUNT:

After making the payments hereinabove required to be made into the Combined Utilities Revenue Bond Account, the Operation and Maintenance Account and the Combined Utilities Bond Reserve Account, all remaining funds shall be transferred into a Surplus Account. Moneys in the Surplus Account may be used as follows:

- (a) To fill any deficiency in the foregoing accounts.
- (b) In lieu of tax payments or additional City franchise tax payments. So long as no deficiency exists in required monthly payments in the accounts established by Section 13 of the Outstanding Bond Ordinances and Section 6 of this Ordinance, payment may be made to the City annually, semiannually or quarterly as an in lieu of tax payment or additional franchise fee which can be used by the City for any purpose authorized by law.
- (c) Any lawful purpose connected with the Combined Utilities, including improvements, extensions and enlargements of the Combined Utilities and paying principal and interest on general obligation bonds of the City or junior lien indebtedness authorized to pay the cost of constructing improvements to any one of the utilities systems included in the Combined Utilities.
- (d) Retiring the Outstanding Bonds, the 2026 Series Note or Additional Bonds prior to their maturity under their option provisions or by purchase on the open market.

Moneys on deposit in the Combined Utilities Fund or any account therein may to the extent practicable and reasonable be invested in Deposit Securities or in any other lawful investments for cities of the class to which the City belongs. Investments for the Combined Utilities Revenue Bond Payment Account shall mature at such times and in such amounts as shall be required to provide moneys to make the payments to be made from said Account. Moneys credited to the Combined Utilities Bond Reserve Account shall be invested in Deposit Securities, in obligations of any agency of the United States of America (whether or not guaranteed by the United States) so long as the obligations of such agency are rated in one or the other of the two highest rating categories (not taking into consideration subcategories, if any) of any recognized rating agency or in certificates of deposit which are fully insured by insurance of the Federal Deposit Insurance Corporation or (as to any uninsured amounts) secured by collateral securities as required by law, any of which securities or certificates of deposit shall mature or be redeemable at stated fixed prices at the option of the holder by not more than eight years from the date of such investment. All moneys and income from investments made from moneys credited to the Combined Utilities Revenue Bond Payment Account and the Combined Utilities Bond Reserve Account shall, when realized and collected, be credited to the

respective Account from which such investments were made, unless there shall then be credited thereto the respective full amounts then required by paragraphs I and III of this Section 6, in which event such interest and income may be credited to the Surplus Account. All investments held for the credit of any Fund or Account may be sold when required to make the payments to be made from such Fund or Account. Any moneys credited to the Combined Utilities Fund or any Account or Sub-account therein which are not invested shall be secured in the manner provided by law for the security of funds of cities of the class of which the City is one.

It is understood that the revenues of the Combined Utilities are to be credited to the various accounts hereinabove established in the order in which said accounts have been listed, and if within any period the revenues are insufficient to credit the required amounts in any of the said accounts, the deficiencies shall be made up the following period or periods after payment into all accounts enjoying a prior claim on the revenues have been made in full.

Section 7. The City will make deposits on or prior to the date each payment of interest or principal becomes due on the 2026-Series Note as provided herein. All such payments shall be made out of the Combined Utilities Revenue Bond Payment Account or from other funds of the Combined Utilities available for such purpose, in accordance with the terms of this Ordinance.

Section 8. The City shall keep proper books of records and account, separate and apart from all other records and accounts, showing complete and correct entries of all transactions relating to the Combined Utilities and the registered owners of any of the Outstanding Bonds, 2026 Series Note or of any Additional Bonds or any duly authorized agent or agents of such registered owners shall have the right at all reasonable times to inspect all records, accounts and data relating thereto and to inspect said systems and all properties comprising the same. Within one hundred twenty (120) days following the close of each fiscal year, the City shall cause an audit of such books and accounts to be made by an independent firm of certified public accountants, showing the receipts and disbursements for account of the Combined Utilities, and such audit will be available for inspection by the registered owners of any of the 2026 Series Note. Each such audit, in addition to whatever matters may be thought proper by the accountant to be included therein, shall include the following:

- (a) A statement in detail of the income and expenditures of each component of the Combined Utilities for such fiscal year;

- (b) A balance sheet as of the end of such fiscal year; and
- (c) The accountant's comments (if any) regarding the manner in which the City has carried out the requirements of this Ordinance, and the accountant's recommendation for any changes or improvements in the operation of the Combined Utilities or the components thereof.

All expenses incurred in the making of the audits required by this section shall be regarded and paid as a maintenance and operation expense. The City shall furnish a copy of each such audit to the original purchaser of the 2026 Series Note and of any series of Additional Bonds, and to the holder or registered owner of at least twenty-five percent (25%) of any issues of combined utilities revenue bonds outstanding, upon request, after the close of each fiscal year, and said purchaser or purchasers or any such holder or registered owner shall have the right to discuss with the accountant making the audit the contents of the audit and to ask for such additional information as each may require.

Section 9. The City Treasurer shall be bonded, in addition to such Treasurer's official bond, by an insurance company licensed to do business in Nebraska, in amounts sufficient to cover at all times all the revenues and earnings of the Combined Utilities placed in such official's hands as determined appropriate from time to time by the Mayor and Council, based upon the advice of such experts or consultants as they shall deem appropriate. Any other person employed by the City in the collection or handling of moneys derived from the operation of said properties shall also be bonded in an amount sufficient to cover all moneys which may at any time be placed in such person's hands. The amount of such bonds shall be fixed by the Council, and the cost thereof shall be paid from the earnings of said Combined Utilities and they shall secure the faithful accounting of all moneys.

Section 10. The City will carry adequate insurance on the Combined Utilities in such amounts as are normally carried by private or public utilities engaged in similar operations, including, without limiting the generality of the foregoing, fire and windstorm insurance and public liability insurance. The cost of all such insurance shall be regarded and paid as an operation and maintenance expense.

All insurance moneys, except public liability, shall be deposited in a separate special fund held by the City Treasurer as part of the Combined Utilities Fund and subject to the pledge of this Ordinance and shall be used in making good the loss or damage in respect of which they were paid either by repairing the property damaged or replacing the property destroyed, and expenditures from said moneys shall be made

only upon a certificate issued by a consulting engineer and filed with the City Clerk stating that the proceeds, together with any other moneys available for such purposes, are sufficient for the repair or replacement of any such properties; and when the City shall have been furnished with a certificate of a consulting engineer stating that the property damaged or destroyed has been fully repaired or replaced and such repairs or replacements have been fully paid for, the residue, if any, of such insurance moneys shall be held in a separate special fund and be applied upon order of the Mayor and Council to paying the costs of further improvements to the Combined Utilities.

If the proceeds of any insurance shall be insufficient to repair or replace the property damaged or destroyed, the City may use and shall pay out for such purpose, to the extent of such deficiency, any money then held in the Surplus Account. If in the opinion of a consulting engineer the proceeds of any insurance, together with any amount then available for such purpose in the Surplus Account shall be insufficient to fully complete and pay for such repairs or replacements and if the City shall fail to supply such deficiency from other sources within a period of six months after receipt by the City of such insurance moneys, or if in the opinion of a consulting engineer it is to the best interest of the City not to repair or replace all or any part of the damaged properties and that failure to repair or replace the damaged properties shall not affect the sufficiency of the income and revenue from the remaining properties to properly maintain and operate the same, provide funds for the Combined Utilities Revenue Bond Payment Account and Combined Utilities Bond Reserve Account, as herein provided for, then such insurance moneys to the extent not applied to repair or replace the damaged properties shall remain in such separate special fund and be applied upon order of the Mayor and Council to paying the costs of further improvements to the Combined Utilities.

The proceeds of any and all policies for public liability shall be applied in paying the claims on account of which they were received.

Section 11. The City will maintain the Combined Utilities in good condition and operate the same in an efficient manner and at a reasonable cost. The City agrees with the registered owners from time to time of the 2026 Series Note and any Additional Bonds that the City will continue to own, free from all liens and encumbrances, and will adequately maintain and efficiently operate said Combined Utilities; provided, however, the City may dispose of property which is recommended for disposal by the manager or superintendent of the utilities, or an independent consulting engineer and which is determined as a matter

of record by the Mayor and Council to have become obsolete, non-productive or otherwise unusable to the advantage of the City.

Section 12. To provide funds for any purpose or purposes related to the Combined Utilities, the City may issue Additional Bonds (other than Additional Bonds issued for refunding purposes which are governed by Section 13 of this Ordinance) payable from the revenues of the Combined Utilities having equal priority and on a parity with the Outstanding Bonds, the 2026 Series Note and any Additional Bonds then outstanding only upon compliance with the following conditions:

- (a) Such Additional Bonds shall be issued only pursuant to an ordinance which shall provide for an increase in the monthly credits into the Combined Utilities Revenue Bond Payment Account in amounts sufficient to pay, when due, the principal of and interest on the Outstanding Bonds, the 2026 Series Note, any Additional Bonds then outstanding and the proposed Additional Bonds.
- (b) The City shall have complied with one or the other of the two following requirements:
 - (1) The Net Revenues derived by the City from its Combined Utilities for the fiscal year next preceding the issuance of the Additional Bonds (determined in accordance with the definition of such term set forth in Section 2 of this Ordinance, including, if applicable, a determination made for any period when financial statements have not yet been completed and reported on) shall have been at least equal to 1.20 times the Maximum Annual Debt Service (taking into consideration and excluding from debt service any Applicable Debt Service Reserve Transfer for any series of bonds) of the Outstanding Bonds, the 2026 Series Note and any Additional Bonds, all as then outstanding, and of the proposed Additional Bonds; or
 - (2) The City shall have received a projection made by a consulting engineer or firm of consulting engineers, recognized as having experience and expertise in municipal utility systems, projecting that the Net Revenues of the Combined Utilities in each of the three full fiscal years after the issuance of such Additional Bonds will be at least equal to 1.35 times the Maximum Annual Debt Service (taking into consideration and excluding from debt service any Applicable Debt Service Reserve Transfer for any series of bonds) of the Outstanding Bonds, the 2026 Series Note and any Additional Bonds, all as then outstanding, and of the proposed Additional Bonds. In making such projection, the consulting engineer shall use as a basis the Net Revenues of the Combined Utilities during the last fiscal year for which an independent audit has been prepared and shall adjust such Net Revenues as follows: (A) to reflect changes in rates which have gone into effect since the beginning of the fiscal year for which the audit was made, (B) to reflect such engineer's estimate of the net increase over or net decrease under the Net Revenues of the Combined Utilities for the fiscal year for which the audit was made by reason of: (i) changes of amounts payable under existing contracts for services; (ii) additional general income from sales to customers under existing rate schedules for various classes of customers or as such schedules may be revised under a

program of changes which has been adopted by the Mayor and Council of the City; (iii) projected revisions in costs for labor, wages, salaries, machinery, equipment, supplies and other operational items; (iv) revisions in the amount of service to be supplied and any related administrative or other costs associated with such increases due to increased supply from the acquisition of any new facility or increased demand related to new customers; (v) such other factors affecting the projections of revenues and expenses as the consulting engineer deems reasonable and proper. Annual debt service on any proposed Additional Bonds to be issued may be estimated by the consulting engineer in projecting Maximum Annual Debt Service, but no Additional Bonds shall be issued requiring any annual debt service payments in excess of the amounts so estimated by the consulting engineer.

The City hereby covenants and agrees that so long as any of the Outstanding Bonds, the 2026 Series Note and any Additional Bonds are outstanding, it will not issue any bonds or notes payable from the revenues of the Combined Utilities except in accordance with the provisions of this Ordinance, provided, however, the City reserves the right to issue bonds or notes which are junior in lien to the Outstanding Bonds, the 2026 Series Note and any such Additional Bonds with the principal and interest of such bonds or notes to be payable from monies credited to the Surplus Account as provided in Subsection 6(IV) of this Ordinance.

Section 13. The City may issue refunding bonds which shall qualify as Additional Bonds of equal lien to refund any of the Outstanding Bonds, 2026 Series Note or Additional Bonds then outstanding, provided, that if any such Outstanding Bonds, 2026 Series Note or Additional Bonds are to remain outstanding after the issuance of such refunding bonds, the principal payments due in any calendar year in which those bonds which are to remain outstanding mature shall not be increased over the amount of such principal payments which would have been due in such calendar years immediately prior to such refunding. Refunding Bonds issued in accordance with this paragraph of this Section 13 may be issued as Additional Bonds of equal lien without compliance with the conditions set forth in Subsection 12(b) of this Ordinance.

The City may also issue refunding bonds which shall qualify as Additional Bonds of equal lien to refund any of the Outstanding Bonds, 2026 Series Note or Additional Bonds then outstanding provided, that, if any such Outstanding Bonds, 2026 Series Note or Additional Bonds are to remain outstanding after the application of the proceeds of the refunding bonds to the payment of the bonds which are to be refunded, such issuance must comply with the Net Revenues test set forth in Subsection 12(b)(1) of this Ordinance and, if the proceeds of such refunding bonds are not to be applied immediately to the satisfaction of the bonds which are to be refunded, then such refunding bonds must provide by their terms that they shall be junior in lien to all Outstanding Bonds, 2026 Series Note and any Additional Bonds outstanding at the time

of issuance of such refunding bonds until the time of application of their proceeds to the satisfaction of the bonds which are to be refunded. In computing Maximum Annual Debt Service to show compliance with said Net Revenues test for such refunding bonds, all payments of principal and interest due on such refunding bonds from the time of their issuance to the time of application of the proceeds of such refunding bonds to the satisfaction of the bonds which are to be refunded shall be excluded from such computation to the extent that such principal and interest are payable from sources other than the revenues of the Combined Utilities, such as bond proceeds or investment earnings on such proceeds while held in escrow, and/or from monies of the Combined Utilities but only those in the Surplus Account and all payments of principal and interest due on the bonds which are to be refunded from and after the time of such application shall also be excluded. For purposes of this paragraph of this Section 13, the time of application of the proceeds of the refunding bonds to the satisfaction of the bonds which are to be refunded shall be the time of deposit with the paying agent for such bonds which are to be refunded pursuant to Section 10-126 R.R.S. Neb., as amended, (or any successor statutory provision thereto) or the time when such bonds which are to be refunded under the terms of their authorizing ordinance or ordinances are no longer deemed to be outstanding, whichever occurs sooner.

Section 14. The City will not hereafter grant any franchise or right to any person, firm or corporation to own or operate a sewer, water or electrical plant or system in competition with that owned by the City.

Section 15. While any of the Outstanding Bonds, 2026 Series Note or Additional Bonds are outstanding, the City will render bills to all customers for sewer, water and electrical services. If bills are not paid within sixty days after due, such utility service will be discontinued. The City agrees that it will order water service shut off on all properties served by water or sewer where there are delinquent water or sewer use charges and will order electric service shut off on all property served by electricity where there are delinquent electric charges, and will make appropriate charge for use of all properties of the City connected to the sewer, water and electrical systems. The City's obligations under this Section shall be subject, however, to any state or federal law governing the City's right to discontinue utility service.

Section 16. Except for amendments which are required for the correction of language to cure any ambiguity or defective or inconsistent provisions, omission or mistake or manifest error contained herein,

no changes, additions or alterations of any kind shall be made by the City in the provisions of this Ordinance in any manner; provided, however, that from time to time the holders or owners of two-thirds (2/3rds) in principal amount of the Outstanding Bonds, the 2026 Series Note and of Additional Bonds outstanding authorized hereunder, as to each such series or issue (not including any of said bonds credited to any of the Accounts described in Section 6 of this Ordinance or any other of said bonds owned or controlled directly or indirectly by the City), by an instrument or instruments in writing signed by such holders or owners and filed with the City Clerk shall have power to assent to and authorize any modification of the rights and obligations of the City and of the registered owners of the Outstanding Bonds, the 2026 Series Note and of Additional Bonds and interest pertaining thereto and the provisions of this Ordinance that shall be proposed by the City, and any action authorized to be taken with the assent and authority given as aforesaid of the holders or owners of two-thirds (2/3rds) in principal amount of said bonds (as to each such issue at the time of consent or approval) shall be binding upon all holders or owners of said Outstanding Bonds, 2026 Series Note and Additional Bonds at the time outstanding hereunder and upon the City as fully as though such action were specifically and expressly authorized by the terms of this Ordinance; provided, always, that no such modification shall be made which will (a) extend the time of payment of the principal of or interest on any of said bonds or reduce the principal amount thereof or the rate of interest thereon; or (b) give to any of said bonds secured by this Ordinance any preference over any other of said bond or bonds; or (c) authorize the creation of any lien prior to the pledge of the revenues afforded by the Outstanding Bond Ordinances and this Ordinance for the Outstanding Bonds, 2026 Series Note and any Additional Bonds or (d) reduce the percentage in principal amount of said outstanding bonds required to assent to or authorize any such modification. Any modification of the provisions of this Ordinance made as aforesaid shall be set forth in a supplemental ordinance to be adopted by the Mayor and Council of said City. Anything in this Section 16 notwithstanding, the City may in any ordinance authorizing Additional Bonds add additional agreements or covenants providing for the further securing of the Outstanding Bonds, the 2026 Series Note and any Additional Bonds and may also provide for appropriate sub-accounts in the Combined Utilities Revenue Bond Payment Account and Combined Utilities Bond Reserve Account, the funds in which shall be held on a priority basis for each such issue of Additional Bonds under the terms and limitations provided for in this Ordinance.

Section 17. So long as any of the Outstanding Bonds, 2026 Series Note or any Additional Bonds of equal lien are outstanding, each of the obligations, duties, limitations and restraints imposed upon the City by this Ordinance shall be deemed to be a covenant between the City and every holder or owner of said bonds, and this Ordinance and every provision and covenant hereof shall constitute a contract of the City with every registered owner from time to time of said bonds. Any registered owner of an Outstanding Bond, 2026 Series Note or of an Additional Bond or Bonds may by mandamus or other appropriate action or proceeding at law or in equity in any court of competent jurisdiction enforce and compel performance of this Ordinance and every provision and covenant thereof, including without limiting the generality of the foregoing, requesting the appointment of a receiver for the Combined Utilities and the enforcement of the performance of all duties required by the City by this Ordinance and the applicable laws of the State of Nebraska, including in such duties the making and collecting of sufficient rates, rentals, fees or charges for the use and service of the Combined Utilities, the segregation of the revenues of said systems and the application thereof to the respective Fund and Accounts and sub-accounts referred to and described in the Outstanding Bond Ordinances and this Ordinance.

Section 18. The City's obligations under this Ordinance and the liens, pledges, dedications, covenants and agreements of the City herein made or provided for, shall be fully discharged and satisfied as to any 2026 Series Note and any such bonds shall no longer be deemed outstanding hereunder if such bonds shall have been purchased and canceled by the City, or when payment of the principal of and interest thereon to the respective date of maturity or redemption (a) shall have been made or caused to be made in accordance with the terms thereof; or (b) shall have been provided for by depositing with a national or state bank having trust powers, or trust company, in trust solely for such payment (1) sufficient money to make such payment and/or (2) Deposit Securities in such amount and bearing interest at such rates and payable at such time or times and maturing or redeemable at stated fixed prices at the option of the holder as to principal at such time or times as will ensure the availability of sufficient money to make such payment; provided, however, that with respect to any such bond to be paid prior to maturity, the City shall have duly given notice of redemption of such bond as required by this Ordinance or given irrevocable instructions for the giving of such notice. Any such money so deposited with a bank or trust company may be invested and reinvested in Deposit Securities at the direction of the City, and all interest and income from such Deposit

Securities in the hands of such bank or trust company in excess of the amount required to pay principal of and interest on the bonds for which such monies were deposited, shall be paid over to the City as and when collected. For purposes of this Section 18, any Deposit Securities shall be non-callable or callable only at the option of the holder.

Section 19. The Authorized Officers and all other officers of the City are hereby authorized to do all things and execute all such documents as may by them be deemed necessary and proper to complete the issuance and sale of the 2026 Series Note as contemplated by this Ordinance. The Mayor and Council do hereby confirm, ratify and approve all prior actions of the City relative to approval and execution of the NDWEE Agreement and the agreements related to the 2021 Note described herein.

Section 20. The Mayor and Council hereby expressly declare the intent and understanding that interest on the 2026 Series Note shall not be excludable from gross income under the terms of Section 103 of the Internal Revenue Code of 1986, as amended, (the "Code") and the City as issuer shall not file any information report with respect to the issuance of the 2026 Series Note pursuant to Section 149(e) of said Code.

Section 21. If any section, paragraph, clause or provision of this Ordinance shall be held invalid, the invalidity of such section, paragraph, clause or provision shall not affect any of the other provisions of this Ordinance.

Section 22. All ordinances, resolutions or orders or parts thereof in conflict with the provisions of this Ordinance are to the extent of such conflict hereby repealed.

Section 23. All documents, agreements, certificates, and instruments related to the 2021 Bonds shall be valid, binding, and enforceable against the City when executed and delivered by means of (i) an original manual signature; (ii) a faxed, scanned, or photocopied manual signature, or (iii) any other electronic signature permitted by electronic signatures laws, including any relevant provisions of the Uniform Commercial Code, in each case to the extent applicable. Each faxed, scanned, or photocopied manual signature, or other electronic signature, shall for all purposes have the same validity, legal effect, and admissibility in evidence as an original manual signature. Each document, agreement, certificate, and instrument related to the 2021 Bond may be executed in any number of counterparts, each of which shall

be deemed to be an original, but such counterparts shall, together, constitute one and the same document, agreement, certificate, or instrument, as applicable.

Section 24. This Ordinance shall be in force and take effect from and after its passage and approval according to law. This Ordinance shall be published in electronic form.

PASSED AND APPROVED this 27th day of January, 2026.

John H. Foyt

Mayor

ATTEST:
[Signature]

City Clerk

(SEAL)

