

CITY COUNCIL PROCEEDINGS
May 22, 2024

The City Council of the City of David City, Nebraska, met in an open public session at 7:00 p.m. in the meeting room of the City Office at 490 "E" Street, David City, Nebraska. The Public had been advised of the meeting by posting in four public places (City Office, US Post Office, Butler County Courthouse and Hruska Public Library). The Mayor and members of the City Council acknowledged advance notice of the meeting by signing the Agenda which is a part of these minutes. The advance notice to the Public, Mayor, and Council members conveyed the availability of the agenda, which was kept continuously current in the office of the City Clerk and was available for public inspection on the City's website. No new items were added to the agenda during the twenty-four hours immediately prior to the opening of the Council meeting.

Present for the meeting were: Mayor Jessica Miller, Council President Bruce Meysenburg, Council members Kevin Woita, Pat Meysenburg, Tom Kobus, Keith Marvin, Jim Angell, City Attorney Spencer Hosch, Interim City Administrator/City Clerk Tami Comte and City Administrator Intern Raiko Martinez.

Also present for the meeting were: Deputy Clerk Lori Matchett, Police Chief Marla Schnell, Recreation Coordinator Will Reiter, Bob Veenstra with Veenstra & Kimm, Kyle Overturf with AMGL, P.C., Kelly Gentrup with SENDD, Marlene Hein, Jan Sypal, and David McPhillips.

The meeting opened with the Pledge of Allegiance.

Mayor Jessica Miller informed the public of the "Open Meetings Act" posted on the west wall of the meeting room and asked those present to please silence their cell phones. Mayor Miller read the speaking guidelines for the City Council meeting. She also reminded the public that if they speak tonight in front of the Council, they must state their name and address for the record.

Council member Jim Angell made a motion to approve the minutes of the May 8, 2024 City Council meeting as presented. Council Member Bruce Meysenburg seconded the motion. The motion carried.

Jim Angell: Yea, Tom Kobus: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Woita: Yea
Yea: 6, Nay: 0

Council member Keith Marvin made a motion to approve Certificate of Payment #2 for the "2023 AGP Substation - Long Lead Equipment, Group A - Substation Transformer" to Virginia Transformer Corp. in the amount of \$225,165.00. Council Member Tom Kobus seconded the motion. The motion carried.

Jim Angell: Yea, Tom Kobus: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Woita: Yea
Yea: 6, Nay: 0

Contractor's Application for Payment

Owner: <u>City of David City</u>	Owner's Project No.: _____
Engineer: <u>JEO Consulting Group, Inc.</u>	Engineer's Project No.: <u>220993.00</u>
Contractor: <u>Virginia Transformer Corporation</u>	Contractor's Project No.: <u>M231303A Rev.1</u>
Project: <u>2023 AGP Substation - Long Lead Equipment</u>	
Contract: <u>2023 AGP Substation - Long Lead Equipment, Group A - Substation Transformer</u>	
Application No.: <u>2</u>	Application Date: <u>2/21/2024</u>
Application Period: From _____ to _____	

1. Original Contract Price	\$ 856,846.63
2. Net change by Change Orders	\$ _____
3. Current Contract Price (Line 1 + Line 2)	\$ 856,846.63
4. Total Work completed and materials stored to date (Sum of Column G Lump Sum Total and Column J Unit Price Total)	\$ 310,849.66
5. Retainage	
a. 0% X \$ 310,849.66 Work Completed =	\$ _____
b. 0% X \$ _____ Stored Materials =	\$ _____
c. Total Retainage (Line 5.a + Line 5.b)	\$ _____
6. Amount eligible to date (Line 4 - Line 5.c)	\$ 310,849.66
7. Less previous payments (Line 6 from prior application)	\$ 85,684.66
8. Amount due this application	\$ 225,165.00
9. Balance to finish, including retainage (Line 3 - Line 4 + Line 5.c)	\$ 545,996.97

Contractor's Certification

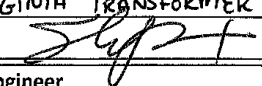
The undersigned Contractor certifies, to the best of its knowledge, the following:

(1) All previous progress payments received from Owner on account of Work done under the Contract have been applied on account to discharge Contractor's legitimate obligations incurred in connection with the Work covered by prior Applications for Payment;

(2) Title to all Work, materials and equipment incorporated in said Work, or otherwise listed in or covered by this Application for Payment, will pass to Owner at time of payment free and clear of all liens, security interests, and encumbrances (except such as are covered by a bond acceptable to Owner indemnifying Owner against any such liens, security interest, or encumbrances); and

(3) All the Work covered by this Application for Payment is in accordance with the Contract Documents and is not defective.

Contractor: VIRGINIA TRANSFORMER CORP

Signature:  **Date:** 3/12/24

Recommended by Engineer	Approved by Owner
By: _____	By: _____
Title: _____	Title: _____
Date: _____	Date: _____
Approved by Funding Agency	
By: _____	By: _____
Title: _____	Title: _____
Date: _____	Date: _____

Progress Estimate - Lump Sum Work

Owner: City of David City
 Engineer: JEO Consulting Group, Inc.
 Contractor: Virginia Transformer Corporation
 Project: 2023 AGP Substation - Long Lead Equipment
 Contract: 2023 AGP Substation - Long Lead Equipment, Group A - Substation Transformer

Contractor's Application for Payment

Owner's Project No.: 220993.00
 Engineer's Project No.: M/231302A Rev.1
 Contractor's Project No.:

Application No.: 2 Application Period: From to Application Date: 02/21/24

A	B	C	D	E	F	G	H	I
Item No.	Description	Scheduled Value (\$)	(D + E) From Previous Application (\$)	Work Completed This Period (\$)	Currently Stored (not in D or E) (\$)	Work Completed and Materials Stored to Date (D + E + F) (\$)	% of Scheduled Value (G / C) (%)	Balance to Finish (C - G) (\$)
1	Order Acknowledgement	85,684.66	85,684.66			85,684.66	100%	
2	Drawing Approval	257,053.99		225,165.00		225,165.00	88%	31,888.99
3	Factory Acceptance Testing	257,053.99				257,053.99	0%	257,053.99
4	Shipment	171,369.33				171,369.33	0%	171,369.33
5	Delivery	85,684.66				85,684.66	0%	85,684.66
Original Contract Totals		856,846.63	85,684.66	225,165.00		310,849.66	36%	545,996.97
Change Orders								
Change Order Totals		\$ -	\$ -	\$ -	\$ -	\$ -		\$ -
Project Totals		856,846.63	85,684.66	225,165.00		310,849.66	36%	545,996.97

Lump Sum

EICDC C-620 Contractor's Application for Payment
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VIRGINIA TRANSFORMER CORP.

220 Glade View Drive, N.E. ● Roanoke, Virginia 24012
 Tel. (540) 345-9892 ● Fax (540) 342-7694

INVOICE NO.

76078

Page 1

"The Commitment Company"

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12135
 CITY OF DAVID CITY
 490 E STREET
 PO BOX 191
 DAVID CITY,NE 68632
 PAY APP

SHIP TO:

CITY OF DAVID CITY
 JEO PROJECT NO 220993.00
 490 E STREET
 DAVID CITY,NE 68632

DATE: 02/21/24

SALES ORDER NO.		ORDERED BY	ORDER DATE	CUSTOMER P.O. NO.		FOB		
DA331			07-13-23	220993.00		FREE ON BOARD		
ITEM NO.	SERIAL NO.	DESCRIPTION			QTY. ORDER	QTY. SHIP	UNIT PRICE	TOTAL COST
DA331A	47011MA036	LIQUID 11200 / 12544 / 14000 / 15680 30.00% ON DWG APPROVAL					225,165.00	225,165.00
Total for Line Items								225,165.00
Invoice Total (USD)								225,165.00
PLEASE REMIT TO: BMO HARRIS BANK NA CHICAGO, IL BANK ROUTING NUMBER: 071000288 ACCOUNT NUMBER : 4363867								

INVOICE

THIS INVOICE CONTAINS THE ONLY TERMS AND CONDITIONS, WITH RESPECT TO THE SALE OF THE ABOVE DESCRIBED GOODS, TO WHICH THE SELLER AGREED PER OUR CONFIRMATION OF ORDER. THE COMPANY RESERVES THE RIGHT TO REFUSE TO FULFILL ALL OF OUR OBLIGATIONS IF THE PAYMENT IS NOT RECEIVED PER OUR TERMS OF SALE.

Council member Kevin Woita made a motion to approve Certificate of Payment #1 for the 2023 Well #10 Relining to Sargent Drilling in the amount of \$157,669.30. Council Member Jim Angell seconded the motion. The motion carried.

Jim Angell: Yea, Tom Kobus: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Woita: Yea
 Yea: 6, Nay: 0

DocuSign Envelope ID: E7513D06-1B22-4EA1-B6E0-E801341F3C4E

Contractor's Application for Payment

Owner: <u>City of David City</u>	Owner's Project No.: _____
Engineer: <u>JEO Consulting Group, Inc.</u>	Engineer's Project No.: <u>231289.00</u>
Contractor: <u>Sargent Drilling</u>	Contractor's Project No.: _____
Project: <u>2023 Well #10 Relining</u>	
Contract: <u>2023 Well #10 Relining</u>	
Application No.: <u>1</u>	Application Date: <u>4/30/2024</u>
Application Period: From <u>12/13/2023</u> to <u>4/30/2024</u>	

1. Original Contract Price		\$ 160,669.30
2. Net change by Change Orders		\$ -
3. Current Contract Price (Line 1 + Line 2)		\$ 160,669.30
4. Total Work completed and materials stored to date (Sum of Column G Lump Sum Total and Column J Unit Price Total)		\$ 157,669.30
5. Retainage		
a. <u>0%</u> X \$ <u>157,669.30</u> Work Completed =		\$ -
b. <u>0%</u> X \$ - Stored Materials =		\$ -
c. Total Retainage (Line 5.a + Line 5.b)		\$ -
6. Amount eligible to date (Line 4 - Line 5.c)		\$ 157,669.30
7. Less previous payments (Line 6 from prior application)		\$ -
8. Amount due this application		\$ 157,669.30
9. Balance to finish, including retainage (Line 3 - Line 4 + Line 5.c)		\$ 3,000.00

Contractor's Certification

The undersigned Contractor certifies, to the best of its knowledge, the following:

(1) All previous progress payments received from Owner on account of Work done under the Contract have been applied on account to discharge Contractor's legitimate obligations incurred in connection with the Work covered by prior Applications for Payment;

(2) Title to all Work, materials and equipment incorporated in said Work, or otherwise listed in or covered by this Application for Payment, will pass to Owner at time of payment free and clear of all liens, security interests, and encumbrances (except such as are covered by a bond acceptable to Owner indemnifying Owner against any such liens, security interest, or encumbrances); and

(3) All the Work covered by this Application for Payment is in accordance with the Contract Documents and is not defective.

Contractor: Charles Sargent Irrigation, Inc dba Sargent Drilling

Signature: Nathan Jacobson **Date:** 5/10/2024

Recommended by Engineer	Approved by Owner
By: <u>Filhan Jay, P.E.</u>	By: _____
Title: <u>Branch Manager</u>	Title: _____
Date: <u>5/12/2024</u>	Date: _____
Approved by Funding Agency	
By: _____	By: _____
Title: _____	Title: _____
Date: _____	Date: _____

Progress Estimate - Unit Price Work										Contractor's Application for Payment			
Owner:		City of David City								Owner's Project No.:			
Engineer:		JEO Consulting Group, Inc.								Engineer's Project No.:		251280.00	
Contractor:		Sargent Drilling								Contractor's Project No.:			
Project:		2023 Well #10 Relining											
Contract:		2023 Well #10 Relining											
Application No.:		1		Application Period:		From 12/13/23 to 04/30/24		Application Date:		04/30/24			
A Bid Item No.	B Description	C Contract Information			G Work Completed								
		D Item Quantity	E Units	F Unit Price (\$)	H Estimated Quantity Incorporated In the Work	I Value of Work Completed to Date (E X G) (\$)	J Materials Currently Stored (not In G) (\$)	K Work Completed and Materials Stored to Date (H + I) (\$)	L % of Value of Item (I / F) (%)	M Balance to Finish (F - J) (\$)			
Original Contract													
1	Mobilization	1.00	LS	6,750.00	6,750.00	1.00	6,750.00	100%	-				
2	Bonding and Insurance	1.00	LS	1,464.00	1,464.00	1.00	1,464.00	100%	-				
3	Remove Existing Well Column and Pump	1.00	LS	5,175.00	5,175.00	1.00	5,175.00	100%	-				
4	Mechanically Brush Existing Well Screen and Casing	1.00	LS	3,000.00	3,000.00	-	-	0%	3,000.00				
5	Sonar Jet Existing Well Screen and Casing	1.00	LS	1,590.00	1,590.00	1.00	1,590.00	100%	-				
6	Well Debris Removal	1.00	LS	1,500.00	1,500.00	1.00	1,500.00	100%	-				
7	Well TV Inspection	1.00	LS	1,277.00	1,277.00	1.00	1,277.00	100%	-				
8	Acid Well Development	1.00	LS	5,746.00	5,746.00	1.00	5,746.00	100%	-				
9	12" PVC Casing	377.00	LF	58.00	21,866.00	377.00	21,866.00	100%	-				
10	12" SS Screen (100 Slot)	48.00	VF	273.00	13,104.00	48.00	13,104.00	100%	-				
11	Bentonite, Grout, Gravel Pack	1.00	EA	6,640.00	6,640.00	1.00	6,640.00	100%	-				
12	Develop and Disinfect Well	1.00	LS	2,450.00	2,450.00	1.00	2,450.00	100%	-				
13	Furnish and Install Well Pump and Column Piping	1.00	LS	73,645.00	73,645.00	1.00	73,645.00	100%	-				
14	Reinstall Pump Motor and Water Level Transducer	1.00	LS	800.00	800.00	1.00	800.00	100%	-				
15	Step Drawdown and Constant Rate Pump Testing	20.00	HOURL	235.00	4,700.00	20.00	4,700.00	100%	-				
16	Water Quality Testing (WE)	1.00	LS	585.00	585.00	1.00	585.00	100%	-				
SUBTOTAL BASE BID					150,292.00	-	-	0%	150,292.00				
SALES TAX FOR MATERIALS & EQUIPMENT ON BASE BID @ 7.5% (SHOWN SEPARATELY BY OPTION 1 CONTRACTORS ONLY)					10,377.30	1.00	10,377.30	100%	-				
Original Contract Totals					\$ 160,669.30	\$ 157,669.30	\$ -	98%	\$ 153,292.00				

Kyle Overturf, CPA with AMGL, P.C. introduced himself and presented the audit findings from the fiscal year ended September 30, 2023. Overturf stated that the sewer fund had a deficit balance and he was glad to see that an increase in the sewer rates was on the agenda for this meeting.

Council member Kevin Woita made a motion to accept the 2022-2023 audit as presented by Kyle Overturf of AMGL, P.C. for fiscal year ended September 30, 2023. Council Member Jim Angell seconded the motion. The motion carried.

Jim Angell: Yea, Tom Kobus: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Woita: Yea
Yea: 6, Nay: 0

City Council Proceedings
 May 22, 2024
 Page # 7

City of David City
 September 30,

	Reference	Recommended	2023	2022	2021	2020
Population			2999	2995	2995	2922
Valuation		\$ 396,676,799	\$ 183,993,329	\$ 174,894,100	\$ 161,163,627	\$ 148,679,695
Per Capita		\$ 72,754	\$ 61,352	\$ 58,395	\$ 53,811	\$ 50,883
1) Unrestricted Net Position/Total Net Position						
Government Wide	Page 13	35%	51.80%	42.14%	61.44%	85.55%
Governmental Activities	Page 13	25%	39.86%	23.82%	58.85%	66.85%
Business-Type Activities	Page 13	40%	56.37%	49.36%	95.47%	96.18%
2) Top 4 Sources of Revenues - Governmental Activities						
Grants and Contributions	Page 9	\$232 per Capita	40	166	83	-
Property Taxes		\$247 per Capita	331	312	322	-
Sales Tax		\$426 per Capita	399	352	335	-
State Allocation		\$188 per Capita	216	137	134	-
3) State Allocations						
Highway Allocation		\$136 Per Capita	\$ 145	\$ 132	\$ 132	\$ 124
Municipal Equalization		\$92 Per Capita	60	57	62	65
4) Governmental Expenses (Excludes capital outlay and debt)						
Administrative	Page 47	\$97 Per Capita	\$ 153	\$ 106	\$ 91	n/a
Police		\$219 Per Capita	114	95	100	n/a
Library		\$60 Per Capita	50	48	45	n/a
Community Center		\$35 Per Capita	41	30	33	n/a
Park		\$62 Per Capita	49	48	41	n/a
Pool		\$36 Per Capita	36	36	41	n/a
Summer Recreation		\$52 Per Capita	44	40	28	n/a
5) Outstanding GO Debt/Valuation	Page 12	< 5%-Good < 3%-Excellent	6.97%	4.94%	4.76%	4.97%
6) Unassigned Fund Balance/General Fund Expenditures	Pages 15 & 17	30%	69.51%	113.72%	165.38%	-
7) Months Expense in Street Cash Reserve	Pages 15 & 17	12.00	0.00	0.00	0.00	0.00
8) Levy Rates						
General		0.37	0.500000	0.492152	0.500000	0.500000
Debt Service		\$287/Capita	\$ 307	\$ 287	\$ 269	\$ 254
Total Levy		0.07	0.500000	0.492152	0.500000	0.500000

City of David City
 September 30,

	Reference	Recommended	2023	2022	2021	2020
9) Net Depreciable Capital Assets/Original Cost						
Governmental Activities	Page 37	> 35%	n/a	n/a	n/a	n/a
Business-type Activities	Page 39	> 35%	38.08%	38.22%	38.43%	40.19%
10) Operating Income/Total Operating Revenue						
Water Fund	Page 20	15.00%	-29.39%	-14.70%	3.72%	15.93%
Sewer Fund		15.00%	-131.02%	-84.88%	-38.55%	8.76%
Electric Fund		15.00%	1.38%	11.27%	1.54%	15.01%
11) Debt Coverage Ratio						
Water	Pages 20 & 21	1.50	-0.14	0.60	1.89	2.51
Sewer		1.50	-1.69	-0.46	0.26	0.75
12) Cash, Investments & Treasurer Cash						
General Fund:	Pages 15 & 17					
Operating		810,000				
Replacement		-				
(Budgetary stabilization \$0)			810,000	1,201,536	1,450,356	2,086,354
Business-type Activities (Excluding Depreciation/Amortization)	Pages 19/20/39					
Operating		2,860,000				
Restricted		380,000				
Replacement		-				
		3,240,000	5,705,706	5,055,989	6,648,636	5,052,846

Mayor Jessica Miller stated that the next item on the agenda was appointment of Will Reiter as Recreation Director. Mayor Miller stated that Will was currently the Recreation Coordinator and this move would make him a department head in charge of the campground, ballfields and soccer field.

Council member Keith Marvin made a motion to appoint Will Reiter as the Recreation Director. Council Member Kevin Woita seconded the motion. The motion carried.
 Jim Angell: Yea, Tom Kobus: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Woita: Yea
 Yea: 6, Nay: 0

Council member Keith Marvin introduced Ordinance No. 1476 Accepting the Results of the Sales Tax Election. Mayor Jessica Miller read Ordinance No. 1476 by title. Council member Keith Marvin made a motion to suspend that statutory requirement that an Ordinance has to be read on three separate days. Council Member Kevin Woita seconded the motion. The motion carried.

Jim Angell: Yea, Tom Kobus: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Woita: Yea

Yea: 6, Nay: 0

Council member Bruce Meysenburg made a motion to pass and adopt Ordinance No. 1476 accepting the results of the sales tax election. Council Member Jim Angell seconded the motion. The motion carried.

Jim Angell: Yea, Tom Kobus: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Woita: Yea

Yea: 6, Nay: 0

ORDINANCE NO. 1476

AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF DAVID CITY, NEBRASKA, ACCEPT THE RESULTS OF THE 2024 NEBRASKA PRIMARY ELECTION WHEREBY THE ELECTORS OF THE CITY OF DAVID CITY, NEBRASKA APPROVING A TEN-YEAR EXTENSION OF A SALES AND USE TAX OF ONE-HALF PERCENT (0.50%) UPON THE SAME TRANSACTIONS WITHIN THE CITY OF DAVID CITY, NEBRASKA ON WHICH THE STATE OF NEBRASKA IS AUTHORIZED TO IMPOSE A TAX.

WHEREAS, the Mayor and Council of the City of David City, Nebraska, a municipal corporation and city of the second class ("**City**"), passed Resolution No. 26-2023 on June 14, 2023, which submitted to the qualified electors of the City following question:

"Shall the governing body of the City of David City, Nebraska continue to impose a sales and use tax of ONE-HALF PERCENT (0.50%) upon the same transactions within the City of David City on which the State of Nebraska is authorized to impose a tax, for a ten (10) year period commencing October 1, 2024, and ending October 1, 2034, with the proceeds collected to be used for water treatment works and systems, water distribution facilities, and water resources projects, including, but not limited to, pumping stations, transmission lines, and mains and their appurtenances within the City of David City, Nebraska?"

WHEREAS, the above-referenced resolution was submitted to the qualified electors at the statewide primary election on May 14, 2024, at which time a majority of the qualified electors voting on the question approved such tax.

WHEREAS, pursuant to Nebraska Revised Statutes section 77-27,142, the City may proceed with imposing the above-described local option sales and use tax.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF DAVID CITY, NEBRASKA, that the local option sales tax of one-half percent (0.50%), imposed upon the same transactions within the City of David City on which the State of Nebraska is authorized to impose a tax, shall be imposed and collected beginning on October 1, 2024.

Bob Veenstra, Engineer with Veenstra & Kimm, introduced himself and stated that the sewer rates need to be increased because that was part of the agreement with USDA to get a one-percent loan for the wastewater treatment plant expansion and also because the rates had not been increased for a ten-year period.

Council member Keith Marvin introduced Ordinance No. 1465 increasing the sewer rates. Mayor Jessica Miller read Ordinance No. 1465 by title. Council member Keith Marvin made a motion to suspend the statutory rule requiring that an Ordinance be read on three separate days. Council Member Bruce Meysenburg seconded the motion. The motion carried.
Jim Angell: Yea, Tom Kobus: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Woita: Yea
Yea: 6, Nay: 0

Council member Keith Marvin made a motion to pass and adopt Ordinance No. 1465 increasing the sewer rates. Council Member Tom Kobus seconded the motion. The motion carried.
Jim Angell: Yea, Tom Kobus: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Woita: Yea
Yea: 6, Nay: 0

ORDINANCE NO. 1465

AN ORDINANCE SETTING THE MONTHS THAT WILL BE USED TO CALCULATE SEWER RATES; EFFECTIVE DATES; REPEALING ALL PARTS OF THE MUNICIPAL CODE AND ORDINANCES IN CONFLICT HERewith; AND PROVIDING FOR PUBLICATION OF THE ORDINANCE IN PAMPHLET FORM.

WHEREAS, SECTION 7-313 OF THE MUNICIPAL CODE PROVIDES THAT THE GOVERNING BODY SHALL SET RATES TO BE CHARGED BY ORDINANCE.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF DAVID CITY, NEBRASKA.

- Section 1. For residential customers, the monthly sewer rate fee shall be based on the average quantity of water **used during the time period of December 20th thru March 19th, preceding April of the current year.** Customers who move within the City shall pay the same Sewer Use Fee at their new location as they paid for at their former location until which time the sewer rate fees are recalculated. For new residential customers in the City, an appropriate Sewer Use Fee will be determined by the Water/Sewer Supervisor.
- Section 2. For commercial customers, who use water in a commercial business, industrial, or other non-residential way, a monthly Sewer Use Fee will be calculated monthly based on the current month's water usage. Commercial customers who do not want to pay a sewer use fee for water used for watering lawns or shrubs will be responsible, at their own cost, to hire a licensed plumber to install a separate water meter to separately meter such water usage.

- Section 3. Notwithstanding Section 3, commercial customers who use more than 2,000,000 gallons of water per month, on average (referred to herein as “High Volume Commercial Customers”), shall have the option to install, at their own cost and subject to inspection/oversight by the Water/Sewer Supervisor, a separate meter to measure the outflow of wastewater, in which case the monthly Sewer Use Fee will be calculated monthly based on the current month’s discharge of waste water.
- Section 4. With respect to all residential customers and commercial customers who do not qualify as High Volume Commercial Customers, the following monthly Sewer Rates and customer charges became effective May 22, 2024, billed in June, and due July 1-10th.

Customer charge of \$16.46 per month
Plus @ \$5.22 per 1,000 gallons of water used
- Section 5. With respect to High Volume Commercial Customers, the following monthly Sewer Rates and customer charges became effective March 19, 2024, billed in April, and due May 1 - 10th.

Customer charge of \$11.35 per month
Plus @ \$3.25 per 1,000 gallons of water used
- Section 6. The monthly rates to be charged for sewer usage and customer charges will be reviewed by the City Council on an as needed basis;
- Section 7. That any other ordinance or section of any ordinance passed and approved prior to passage, approval, and publication or posting of this ordinance and in conflict with its provisions, is hereby repealed.
- Section 8. This ordinance shall be published in pamphlet form and shall be in full force and effect from and after its passage as provided by law.

PASSED AND APPROVED this 22nd day of May, 2024.

Mayor Jessica Miller

(ATTEST)

City Clerk Tami Comte

Council member Bruce Meysenburg introduced Ordinance No. 1472 Approving the NDEE Sewer Revenue Bond 2024. Mayor Jessica Miller read Ordinance No. 1472 by title. Council member Keith Marvin made a motion to suspend the statutory rule requiring that an Ordinance be read on three separate days. Council Member Kevin Woita seconded the motion. The motion carried. Jim Angell: Yea, Tom Kobus: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Woita: Yea

Council member Bruce Meysenburg made a motion to pass and adopt Ordinance No. 1472 on third and final reading approving the NDEE Sewer Revenue Bond 2024. Council Member Keith Marvin seconded the motion. The motion carried.

Jim Angell: Yea, Tom Kobus: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Woita: Yea
Yea: 6, Nay: 0

ORDINANCE NO. 1472

AN ORDINANCE AUTHORIZING THE ISSUANCE OF A SEWER REVENUE BOND OF THE CITY OF DAVID CITY, NEBRASKA, IN THE PRINCIPAL AMOUNT OF UP TO NINETEEN MILLION SIX HUNDRED SIXTY FIVE THOUSAND DOLLARS (\$19,665,000) FOR THE PURPOSE OF PAYING THE COSTS OF REHABILITATION, EXPANSION AND UPGRADES TO THE EXISTING SANITARY SEWER PLANT AND SEWER SYSTEM OF THE CITY; AUTHORIZING THE ISSUANCE OF SAID BOND IN THE FORM OF A PROMISSORY NOTE TO EVIDENCE A LOAN FROM THE NEBRASKA DEPARTMENT OF ENVIRONMENT AND ENERGY; APPROVING THE EXECUTION AND DELIVERY OF A LOAN CONTRACT WITH THE NEBRASKA DEPARTMENT OF ENVIRONMENT AND ENERGY; APPROVING RELATED DOCUMENTS WITH RESPECT TO SAID LOAN; PRESCRIBING THE FORM, TERMS AND DETAILS OF SAID BOND; PLEDGING AND HYPOTHECATING THE REVENUES AND EARNINGS OF THE SANITARY SEWER PLANT AND SEWER SYSTEM OWNED BY THE CITY FOR THE PAYMENT OF SAID BOND; ENTERING INTO A CONTRACT ON BEHALF OF THE CITY WITH THE HOLDER OF SAID BOND; AUTHORIZING THE DELIVERY OF THE BOND TO THE NEBRASKA DEPARTMENT OF ENVIRONMENT AND ENERGY; 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 BOND PROCEEDS AND ORDERING THE ORDINANCE PUBLISHED IN PAMPHLET FORM.

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

Section 1. The Mayor and Council hereby find and determine as follows:

a) that the City presently owns and operates a sanitary sewer plant and sewer system, which is hereby determined to be a revenue-producing facility under the provisions of Section 18-1803 to 18-1805, R.R.S. Nebraska, 2012, as amended;

b) that the City has issued and there remain currently outstanding the following revenue bonds which constitute a charge against the revenues of the sewer utility (collectively, the "Outstanding Bonds"):

i. Sanitary Sewer System Revenue Bond, Series 2020, dated July 13, 2020, issued in the original drawable principal amount of \$3,000,000 (the "2020 Bonds"), issued to evidence a loan from The United States Department of Agriculture ("USDA"), of which the remaining principal balance outstanding as of September 30, 2022 was \$2,879,687

c) that the Outstanding Bonds constitute the only presently-outstanding obligations for which the revenues of the sewer utility have been pledged;

d) that the City has the authority to pledge, to the extent required to secure the bonds herein contemplated, the revenues of the City's Sewer utility;

e) the Nebraska Department of Environment and Energy ("NDEE") has approved a project designated as NDEE Project No. C318068 relating to the acquisition, construction, improvement, repair, rehabilitation or extension of the City's sewer utility (the "Sewer Project") for which the estimated total cost is not less than \$19,665,000 and NDEE has agreed to lend the City funds in such amount (the "NDEE Loan") and in such connection has agreed to accept the Bond (in such amount and as defined below) payable from the revenues of the Sewer utility;

f) in connection with the Loan it will be necessary for the City to approve, execute and deliver an agreement entitled "Loan Agreement (Governmental Borrower) between NDEE and the City of David City NDEE Project No. C318068" (the "NDEE Loan Contract") and it is necessary and advisable for the City to approve the execution and delivery of said NDEE Loan Contract and the "Note" as described therein (for the borrowed amount of up to \$19,665,000, which Note shall evidence, be and constitute the NDEE Note as herein authorized);

g) to satisfy the borrowing requirements described in this Section 1, it is necessary for the City to issue its Sewer Revenue Bond in the total principal amount of up to \$19,665,000 (the "Bond" and sometimes referred to herein separately as the "NDEE Note") pursuant to Sections 18-1803 to 18-1805 R.R.S. Neb. 2012;

h) that under the terms of the ordinance(s) authorizing the Outstanding Bonds (the "Outstanding Bond Ordinances"), the City is permitted to issue "Additional Bonds" payable from the revenues of the Sewer utility of the City on a parity with the lien of the Outstanding Bonds and equally and ratably secured therewith and entitled to the security and benefits of the Outstanding Bond Ordinances provided, however, that before any such Additional Bonds are actually issued, the revenues of the Sewer utility, for the fiscal year next preceding the date of the authorization of such Additional Bonds, after deducting therefrom all costs of operation and maintenance of the Sewer utility for such fiscal year and before deduction of depreciation or interest (the "Net Revenues") as based on a certified public accountants report shall have been equal to 1.20 times the average annual bond requirements of the Outstanding Bonds, any Additional Bonds then outstanding and the Additional Bonds proposed to be issued;

i) the Net Revenues, for the fiscal year ending September 30, 2022, as based on a certified public accountants report, does not exceed the average annual bond requirements of the Outstanding Bonds and the Bond (determined by adding all of the principal and interest which will become due when computed to the absolute maturity of the Outstanding Bonds and all of the principal and interest of the Bond to be issued, and dividing such total by the number of years remaining that the longest bond of any such issue of bonds (including the Bonds) has to run to maturity);

j) that USDA, as holder of the Outstanding Bonds, has consented to the issuance of the Bond payable from the revenues of the Sewer utility of the City on a parity with the lien of the Outstanding Bonds and equally and ratably secured therewith and entitled to the security and benefits of the Outstanding Bond Ordinances, upon satisfaction of the conditions outlined in the letter from USDA dated April 26, 2024 (the "USDA Conditions"), and attached as Exhibit A;

k) all conditions, acts and things required by law to exist or to be done precedent to the issuance of said Bond as provided for in this Ordinance and as an Additional Bond equal in lien to the Outstanding Bonds do exist and have been done in regular and due form and time as required by law.

Section 2. Unless the context shall clearly indicate otherwise, the following terms shall have the following meanings when used in this Ordinance:

- a) "Additional Bonds" shall mean any bond including refunding bonds authorized and issued pursuant to the provisions of Section 13 of this Ordinance at any time outstanding, which are payable on a parity with the Bond and equally and ratably secured therewith;
- b) "Bond" shall mean the Bond authorized to be issued pursuant to Section 3 of this Ordinance at any time outstanding;
- c) "revenues" shall mean all the rates, rentals, fees, charges, earnings and other monies from any source whatever derived by the City through its ownership and operation of its Sewer utility;
- d) the "Sewer utility" shall mean the Sanitary Sewer plant and Sewer system of the City, as now existing and all additions (including any additional systems which might hereafter be lawfully included in the Sewer utility of the City), extensions and improvements hereafter made;
- e) "Net Revenues" shall mean the Revenues (excluding receipts from insurance or attributable to condemnation of the Sewer System or any part thereof) less ordinary expenses of operating and maintaining the Sewer utility payable from the Operation and Maintenance Account. Operation and maintenance expenses for such purpose shall not include depreciation, amortization or interest on any bonds or other indebtedness. Also for such purposes "average annual debt service" shall be determined by adding all the principal and interest which will become due when computed to the absolute maturity on the Outstanding Bonds, the Bond and any Additional Bonds then outstanding and together with the total principal and interest which will become due when computed to absolute maturity on the proposed Additional Bonds and dividing such total by the number of years remaining that the longest bond of any such issue of bonds has to run to maturity, including the proposed Additional Bonds.

Section 3. To provide for paying the costs of the Sewer Project as described in Section 1 hereof, there shall be and there are hereby ordered issued the City's Sewer Revenue Bond in the form of a single promissory note (referred to in this Ordinance sometimes as the "Bond" or the "NDEE Note") in the principal amount not to exceed \$19,665,000 with such note to be in such form and to have such payment terms as are set forth in Exhibit B to this Ordinance which exhibit is by such reference incorporated herein as if fully set forth. In connection with the NDEE Note, the City shall also enter into the Loan Agreement (Governmental Borrower) between the Nebraska Department of Environment and Energy and the City of David City Nebraska NDEE Project No. C318068" (the "NDEE Loan Contract") in substantially the form set forth in Exhibit C to this Ordinance, which exhibit is by such reference incorporated herein as if fully set forth. The terms of the NDEE Note and the NDEE Loan Contract are hereby approved and the Mayor and City Clerk are hereby authorized to execute and deliver the NDEE Note and the NDEE Loan Contract with such changes from the forms presented and attached hereto as such officers shall deem appropriate for and on behalf of the City. The Mayor and City Clerk and any other officer or officers of the City are hereby further authorized to take such further actions and to execute such certificates and other documents as shall be deemed necessary or appropriate by any of them in connection with the issuance and delivery of the NDEE Note and the NDEE Loan Contract. For all purposes of this Ordinance, the NDEE Note shall constitute a revenue bond of the City as authorized by Sections 18-1803 to 18-1805, R.R.S. Neb. 2012, as amended, and shall be included within the terms "bond" where such inclusion is appropriate. Additional notes may be issued to NDEE as Additional Bonds upon compliance with the terms of Section 13 of this Ordinance.

Section 4. The City Clerk shall make and certify in duplicate transcripts of the proceedings of the Mayor and Council with respect to the NDEE Note, which shall be retained on file with the City and the other of which shall be delivered to the City's special bond counsel.

Section 5. The City hereby pledges and hypothecates all of the revenues of the Sewer utility for the payment of, the Bond, the Outstanding Bonds and any Additional Bonds, both principal and interest as the same fall due. The pledge of the revenues of the Sewer utility provided for in this Ordinance for the Bond, the Outstanding Bonds and any Additional Bonds, subject to the right of the City to issue Additional Bonds as provided in this Ordinance, is intended as a first and prior pledge of, lien on and security interest in the revenues of the Sewer utility for the payment of principal and interest of the Bond, the Outstanding Bonds and any Additional Bonds, superior to any pledge or promise made with respect to any other indebtedness of the City as to its Sewer utility 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. 2012, with respect to its Sewer utility.

Section 6. The City will maintain and collect rates and charges for all Sewer service furnished from its Sewer utility adequate to produce revenues sufficient at all times:

(a) to provide for the payment of interest on and principal of the Bond, the Outstanding Bonds and any Additional Bonds as such interest and principal become due;

(b) to pay all reasonable costs of operation and maintenance of the Sewer utility, including adequate insurance as provided by this Ordinance and to pay for the necessary and reasonable repairs, replacements and extensions of said Sewer utility;

(c) to provide funds sufficient to make the credits into the Accounts and at the times and in the amounts required by Section 7 of this Ordinance.

(d) to maintain Net Revenues in each fiscal year adopted by the City for the Sewer utility 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 interest falling due during such fiscal year on the Outstanding Bonds, the Bond and any Additional Bonds.

Section 7. The entire revenues derived from the operation of the Sewer utility shall be set aside as collected and be deposited in a separate fund previously established in connection with the issuance of the Outstanding Bonds (and which is hereby ratified and affirmed) and which is and shall be known as the "Sewer System Fund". The moneys in the Sewer System Fund shall be 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 maintain as long as the Bond, the Outstanding Bonds or Additional Bonds are outstanding hereunder the following accounts for the administration of said Fund:

I. OPERATION AND MAINTENANCE ACCOUNT: There is hereby ordered created and established an account designated as the "Operation and Maintenance Account" into which the City shall deposit, out of the Sewer System Fund, such amounts as the City shall from time to time determine to be necessary to pay the reasonable and necessary expenses of operating and maintaining the Sewer System and the City may withdraw funds credited to the Operation and Maintenance Account as necessary from time to time to pay such expenses.

II. SEWER SYSTEM REVENUE BOND PAYMENT ACCOUNT: Out of said Fund the City shall pay into the Sewer System Revenue Bond Payment Account, beginning on the fifteenth day of the first calendar

month after the issuance and delivery of the Bond an amount such that if the same amount were credited on the fifteenth day of each calendar month from such date of credit until the next payment date upon which any amount falls due on the Bond, the Outstanding Bonds and any Additional Bonds outstanding, whether for principal or interest, the amount accumulated by such monthly credits would equal the amount falling due on such payment date on such bonds, provided however, that such credits shall be required only as and to the extent that such payments are not provided from other sources. All such transfers to the Sewer System Revenue Bond Payment Account shall be made in such amounts and at such times that there will be sufficient sums in such Account to meet the required payments due on such bonds. Transfers from such Account shall be made to the respective paying agents (or direct payee) for each such issue.

III. EMERGENCY FUND RESERVE ACCOUNT: There is hereby ordered created and established an account designated as the "Emergency Fund Reserve Account" into which there shall be deposited each year (on or before the anniversary of the issuance of the Bond in such year) the sum of \$0.00, with such sum to be so deposited annually until the Bond is no longer outstanding. Amounts may be withdrawn from such account (a) for maintenance and extensions to the Sewer System (including in case of any emergency), (b) for replacement of short-lived assets necessary or appropriate for the operation of the Sewer System and (c) to make payments on the Bond, if needed, as described in Section 7(II) above.

IV. ASSET MANAGEMENT RESERVE ACCOUNT: There is hereby ordered created and established an account designated as the "Asset Management Reserve Account" into which the City shall deposit the annual sum of \$0.00, and the City shall annually review the funding requirements of such Asset Management Reserve Account, and may adjust the annual contribution to account for inflation, until the Bond is no longer outstanding. Amounts may be withdrawn from such account for replacement of short-lived assets. Amounts in the Asset Management Reserve Account are not directly or indirectly pledged to pay principal or interest on the Bond, and are not reasonably expected to be available to pay principal or interest on the issue even if the City encounters financial difficulties. Provided, however, that so long as NDEE is the owner of the Bond, any withdrawals from such Asset Management Reserve Account must be approved in writing by NDEE prior to any such withdrawal. So long as the Bond remains outstanding and unpaid, the City covenants and agrees that it will maintain said account as a separate bookkeeping account and will administer the same in accordance with the provisions contained in this ordinance.

V. SURPLUS ACCOUNT: After providing for the required payments into the Operation and Maintenance Account, the Sewer System Revenue Bond Payment Account, the Emergency Fund Reserve Account and the Asset Management Reserve Account, all of the remaining revenues shall be credited to the Surplus Account. All monies credited to the Surplus Account, from whatever source, shall be used only for the following purposes, with priority to be given in the order set out:

A. Filling any deficiency in required monthly payments in the Operation and Maintenance Account, the Sewer System Revenue Bond Payment Account the Emergency Fund Reserve Account and the Asset Management Reserve Account.

B. So long as no deficiency exists in required monthly payments in the Accounts set out in this Section 7, payment may be made to the City annually, semiannually or quarterly as and in lieu of tax payment which can be used by the City for any purpose authorized by law a sum which shall be determined by the Mayor and Council and which may be in any amount available in the Surplus Account after deducting from the credits to this Account any amount used to fill deficiencies into any of the Accounts set out in this Section 7.

C. Accelerating the payments of the required fund balance of the Sewer System Revenue Bond Payment Account, the Emergency Fund Reserve Account and the Asset Management Reserve Account.

D. Retiring the Bond, the Outstanding Bonds or Additional Bonds prior to their maturity under their option provisions or by purchase on the open market. Monies credited to the Surplus Account may periodically be transferred to such other funds or accounts of the City as the Mayor and City Council may direct from time to time so long as there are no deficiencies in the credits required to be made to any of the Accounts described in this section and so long as all applicable reserves are met which may be required by the Outstanding Bonds or under any applicable regulations or contract terms.

The provisions of this Section shall require the City to maintain a set of books and records in accordance with such accounting methods and procedures as are generally applicable to municipal utility enterprises, which books and records shall show credits to and expenditures from the several sub-accounts required by this Section. The City shall not be required to establish separate bank or investment accounts for said Accounts in this Section. Moneys in any of the above-described Accounts may be invested in securities eligible for investment of other City funds. Income from or profit realized from any such investment shall be credited to the respective Account from which such investment is made until such Account contains the maximum amount required to be therein and thereafter such income or profit shall be transferred to the Sewer System Fund and treated as other revenues from the operation of the Sewer System.

Section 8. The City will not hereafter grant any franchise or right to any person, firm or corporation to own or operate a Sewer system in competition with that owned by the City.

Section 9. The City will cause proper books and accounts adapted to the Sewer utility to be kept and will cause the books and accounts to be audited annually by an independent firm of certified public accountants and will make generally available to the holders of the Outstanding Bonds or any Additional Bonds the balance sheet and profit and loss statement of the City as certified by such accountants. The holders of any of said bonds shall have at all reasonable times the right to inspect the Sewer utility and the records, accounts and data of the City relating thereto.

Section 10. The City Treasurer and the City Clerk shall be bonded, in addition to their official bonds, by an insurance company or bonding company licensed to do business in Nebraska in amounts sufficient to cover at all times all the revenues and earnings of the Sewer utility placed in their hands. Any other person employed by the City in the collection or handling of monies derived from the operation of said property shall also be bonded in an amount sufficient to cover all monies 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 Sewer utility and they shall secure the faithful accounting of all monies.

Section 11. The City will maintain insurance on the property constituting the Sewer System (other than such portions of the Sewer System as are not normally insured against loss by casualty) in the amounts and against the risks customarily carried by similar utilities, but including fire and extended coverage insurance in an amount which would enable the City to repair, restore or replace the property damaged to the extent necessary to make the Sewer System operable in an efficient and proper manner to carry out the City's obligations under this Ordinance. The Mayor and City Council shall annually, within one month after the end of each fiscal year adopted by the City for the Sewer System examine the amount of insurance carried with respect to the Sewer System and shall evidence approval of such insurance by resolution. The proceeds of any such insurance received by the City shall be used to repair, replace or restore the property damaged or destroyed to the extent necessary to make the Sewer System

operable in an efficient and proper manner, and any amount of insurance proceeds not so used shall be used to either (i) prepay the Outstanding Bond and the Bond or (ii) pay for additions, improvements and/or extensions to the Sewer System. In the event of any such insured casualty loss, the City may advance funds to make temporary repairs or provide for an advance on costs of the permanent repair, restoration or replacement from the Operation and Maintenance Account and any such advances shall be repaid from insurance proceeds received.

Section 12. The City will maintain the Sewer utility in good condition and operate the same in an efficient manner and at a reasonable cost. The City agrees with the holder of the Bond that the City will continue to own, free from all liens and encumbrances, and will adequately maintain and efficiently operate said Sewer utility; provided, however, the City may sell for cash property which is recommended to be sold by the manager or superintendent of utilities, or an independent Consulting Engineer, and which is determined as a matter of record by the Council to have become obsolete, non-productive or otherwise unusable to the advantage of the City.

Section 13. Nothing in this Ordinance shall be construed in such a manner as to prevent the issuance by the City of Additional Bonds payable from the revenues of the Sewer utility of the City on a parity with the lien of the Bond and equally and ratably secured therewith and entitled to the security and benefits of this Ordinance; provided, however, that before any such Additional Bonds are actually issued, the Net Revenues, for the fiscal year next preceding the date of the authorization of such Additional Bonds, as based on a certified public accountants report shall have been equal to 1.20 times the average annual bond requirements of the Bond, the Outstanding Bonds, any Additional Bonds then outstanding and the Additional Bonds proposed to be issued or such revenues would have met such test by applying the provisions of the second paragraph of this Section 13. For this purpose the average annual bond requirements shall be determined by adding all of the principal and interest which will become due when computed to the absolute maturity of the Bond, the Outstanding Bonds and Additional Bonds, if any, then outstanding and all of the principal and interest of the Additional Bonds to be issued, and dividing such total by the number of years remaining that the longest bond of any such issue of bonds (including the Additional Bonds to be issued) has to run to maturity. In the event of the issuance of Additional Bonds payable from the Sewer System Revenue Bond Payment Account, as authorized above, sufficient additional net revenues may be deposited to the Emergency Fund Reserve Account in a separate sub-account for such Additional Bonds as shall be determined appropriately by the Mayor and Council.

In the event any change in the rates, rentals and charges for the use and service of the Sewer utility has been made during the preceding fiscal year or during the interval between the end of such fiscal year and the issuance of such Additional Bonds, or in the event the City shall covenant in the ordinance or ordinance authorizing the issuance of such Additional Bonds to impose, effective upon the issuance of such Additional Bonds, higher rates, rentals and charges for such use and service, compliance with the provisions of this Section 13 may be evidenced by a certificate of an independent Consulting Engineer or firm of Consulting Engineers or independent Certified Public Accountant or firm of Certified Public Accountants to be filed with the City Clerk prior to the issuance of any such Additional Bonds. Such certificate shall state fully the facts upon which such certificate is based and, if it is a certificate of the Consulting Engineer or firm of Consulting Engineers, shall have attached thereto the certified financial statement for the fiscal year next preceding (or the fiscal year yet next preceding) the date of authorization of such Additional Bonds used by the Consulting Engineer or firm of Consulting Engineers in arriving at the conclusion stated in said certificate. The Consulting Engineer or independent Certified Public Accountant of the City shall, in determining the earnings for such fiscal year adjust the collections to reflect the result as if such changed rates, rentals and charges, or such higher rates, rentals and charges had been in existence for such entire preceding fiscal year period, and the amount

of such net collections and adjusted earnings as aforesaid shall be conclusive evidence and the only evidence required to show compliance with the provisions and the requirements of this Section 13.

Additional Bonds may also be issued without compliance with the foregoing requirement that the Net Revenues for the preceding fiscal year shall have been equal to 1.20 times average annual bond requirements, provided that prior to issuing such Additional Bonds, the City shall have received a projection made by a Consulting Engineer or a firm of Consulting Engineers, recognized as having experience and expertise in municipal utility systems, projecting that the Net Revenues, after deducting therefrom all costs of operation and maintenance and before deduction of depreciation or interest, in each of the three full fiscal years after the issuance of such Additional Bonds, will be at least equal to 1.20 times the average annual bond requirements, calculated as hereinabove described, on all bonds then outstanding and payable from the revenues of the Sewer utility, and such Additional Bonds proposed to be issued. In making such projection the Consulting Engineer shall use as a basis the revenues of the Sewer utility during the last year for which an independent audit has been prepared and shall adjust such revenues as follows:

- 1) to reflect changes in the rates which have gone into effect since the beginning of the year for which the audit was made;
- 2) to reflect such engineer's estimate of the net increase over or net decrease from the revenues of the Sewer utility for the year for which the audit was made by reason of:
 - a) changes in the amounts payable under existing utility service contracts,
 - b) additional general operating income from sales to customers under existing rate schedules for the various classes of customers, or as such schedules may be revised under a program of change which has been adopted by the Mayor and Council of the City,
 - c) projected revisions in labor, wages, salary, fuel, machinery, equipment and supply costs,
 - d) revisions in production, transmission and distribution and in administration costs associated with increases in sales of Sewer utility services due to the acquisition of the additional facilities or due to other causes,
 - e) changes in costs of other Sewer utility services, and
 - f) such other projections of revenues and expenses as the consulting engineer deems reasonable and proper.

Average annual bond requirements shall be determined as described above provided that requirements relating to the proposed Additional Bonds to be issued may be estimated by the Consulting Engineer, but no such Additional Bonds shall be issued based upon such projections if the actual requirements for the proposed Additional Bonds are in excess of the amount so estimated (on a final estimated basis) by the Consulting Engineer.

If the City shall find it desirable, the City shall also have the right when issuing Additional Bonds to combine with its Sewer utility any other utility or utilities of the City authorized to be combined under Sections 18-1803 through 18-1805 R.R.S. Nebraska 2012, and to cause all of the revenues of all such combined utility systems to be paid into the Sewer System Fund (which may be redesignated as appropriate), and to provide that all of the Bond, the Outstanding Bonds and any Additional Bonds previously issued, all as then outstanding, and the proposed issue of Additional Bonds shall be payable

from the revenues of such Sewer utility and such additional utility or utilities as combined and shall stand on a parity and in equality as to security and payment, provided, however, no utility shall be combined with the Sewer utility as contemplated in this paragraph unless the City is current with all the payments required to be made into the accounts created in Section 7 and the Net Revenues of the Sewer utility shall and such additional utility or utilities, as combined, shall satisfy at least one of the requirements for Additional Bonds provided in this Section 13. For purposes of meeting such requirements, the definition of revenues shall include the revenues and earnings of the additional utility or utilities and take into consideration the ordinary expenses of operating and maintaining such additional utility or utilities and for such purposes any engineer furnishing projections may take into consideration the factors described in the second or third paragraphs of this Section 13 with respect to such additional utility or utilities.

If, prior to the payment of the bonds herein authorized, it shall be found desirable to refund Bond, the Outstanding Bonds or any Additional Bonds then outstanding, under the provisions of any law then available, said bonds or any part thereof may be refunded without the consent of the holders thereof and the refunding obligations so issued shall enjoy complete equality of lien with the portion of the bonds which is not refunded, if any there be, and the refunding obligations shall continue to enjoy whatever priority of lien over subsequent issues may have been enjoyed by the bonds refunded, provided, however, that unless all of the outstanding bonds are being refunded, the total of the interest and principal payment obligation in any succeeding year shall not be greater, after such refunding, than it would have been in each such succeeding year without such refunding without the consent of the holders of the unrefunded portion of said bonds. Refunding bonds shall also be permitted to be issued in accordance with the first three paragraphs of this Section 13 and for purposes of calculating average annual bond requirements, the City shall not be required to include principal or interest due on any bonds to be refunded, from and after the time that such refunded bonds shall no longer be outstanding under the terms of their authorizing ordinance.

Section 14. Nothing herein contained shall prevent the City from issuing bonds, revenue notes or other forms of indebtedness, the payment of the principal and interest of which is a charge upon all or a portion of the revenues of the Sewer utility, junior or inferior to the Bond, the Outstanding Bonds and to the payments to be made into the Operation and Maintenance Account, the Sewer System Revenue Bond Payment Account and the Emergency Fund Reserve Account, and the City shall have the right to pay interest thereon and the principal thereof, as long as no deficiency exists in the payments into such Accounts, from funds available for improvements and enlargements to the Sewer utility of the City or from other funds which are available for such debt service.

Section 15. While any of the Bond is outstanding, the City will render bills to all customers for Sewer and, subject to applicable statutes and rules, if bills are not paid within sixty days after due, such utility service will be discontinued. The City agrees that it will make appropriate charge for use of Sewer service by all properties of the City connected to the Sewer utility.

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 of sixty percent (60%) in principal amount of the Bond, the Outstanding Bonds and of Additional Bonds outstanding authorized hereunder (not including any of said bonds credited to any of the accounts set out in Section 10 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 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 holders of the Bond, the Outstanding Bonds and of Additional Bonds 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 of sixty percent (60%) in principal amount of said bonds shall be binding upon all holders of said Bond, the Outstanding Bonds 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 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 this Ordinance for the Bond, the Outstanding Bonds 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 City Council of said City.

Section 17. So long as any of the Bond, the Outstanding Bonds 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 of said bonds, and this Ordinance and every provision and covenant thereof shall constitute a contract of the City with every holder from time to time of said bonds. Any holder of a Bond or 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, 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 Sewer utility, the segregation of the revenues of said systems and the application thereof to the respective Fund and Accounts referred to and described in Section 7 of this Ordinance. Any holder of a Bond or Additional Bond, in the event of any default in payment of principal or interest on any such bond, shall be entitled to the appointment of a receiver for the Sewer utility to take possession of the Sewer utility, to manage the Sewer utility and receive and apply the revenues of the Sewer utility in accordance with the terms of 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 Bond, the Outstanding Bonds or Additional Bonds issued hereunder, and said bonds shall no longer be deemed outstanding hereunder, if such bonds shall have been purchased and canceled by the City or, as to any of said bonds not theretofore purchased and canceled by the City, when payment of the principal of and any applicable redemption premium, if any, on such bonds plus interest thereon, to the respective dates of maturities 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 in escrow with any state or national bank having trust powers, or trust company, in trust solely for such payment (i) sufficient monies to make such payment or (ii) direct general obligations of or obligations the principal and interest of which are unconditionally guaranteed by the United States of America (herein referred to as "Government Obligations") in such amount and bearing interest payable and maturing or redeemable at stated fixed prices at the option of the holder as to principal at such time or times as will insure the availability of sufficient monies to make such payment, and such bonds shall cease to draw interest from the date of their redemption or maturity and, except for the purposes of such payment, shall no longer be entitled to the benefits of this Ordinance except for payment from such deposit and shall no longer be considered as outstanding; provided that, with respect to any such bonds called or to be called for redemption, the City shall have duly given notice of redemption, or made irrevocable provision for giving such notice. Any such monies so deposited with the aforesaid bank or trust company as provided in this section may be invested and reinvested in Government Obligations at the

direction of the City, and all interest and income from all such Government Obligations in the hands of the aforesaid bank or trust company which is not required to pay principal or interest on such bonds for which deposit has been made shall be paid to the City as and when realized and collected. For purposes of this Section 18, such Government Obligations shall be non-callable or callable only at the option of the holder. With respect to any deposit made for purposes of satisfying the Bond, under this Section 18, there shall be furnished to NDEE and the Nebraska Investment Finance Authority ("NIFA") an opinion of nationally recognized bond counsel that such deposit for payment of the Bond, will not adversely affect the exclusion for interest from gross income for federal tax purposes on any bonds issued by NIFA to provide funds for deposit into the Nebraska Drinking Water Facilities Loan Fund and/or the Wastewater Treatment Facilities Construction Loan Fund (as applicable) and the furnishing of such opinion shall be a condition required to be satisfied prior to the making of any such deposit in trust for payment and satisfaction with respect to the Bond, unless the Bond then being defeased are to be prepaid and redeemed within 60 days from the time of such deposit.

Section 19. 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 20. All ordinances, ordinances or orders or parts thereof in conflict with the provisions of this Ordinance are to the extent of such conflict hereby repealed.

Section 21. The Mayor and Clerk 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 the Bond as contemplated by this Ordinance.

Section 22. The Bond shall be sold to NDEE in accordance with the terms of the NDEE Loan Contract, and the City Treasurer is authorized to deliver the Bond to NDEE as provided in and subject to the conditions in the NDEE Loan Contract. The proceeds of the Bond shall be applied to pay costs as described in the NDEE Loan Contract. The Mayor and City Clerk 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 Bond and the execution and delivery of the NDEE Loan Contract as contemplated by this Ordinance.

Section 23. The Mayor and Council hereby expressly declare the intent and understanding that interest on the Bond shall not be excludable from gross income under the terms of Section 103 of the Internal Revenue Code of 1986, as amended, and the City as issuer shall not file any information report with respect to the issuance of the Bond pursuant to Section 149(e) of said Code.

Section 24. This Ordinance shall be published in pamphlet form and take effect as provided by law.

PASSED AND APPROVED this 22nd day of May, 2024.

Mayor

ATTEST:

City Clerk
(S E A L)

Exhibit "A"

USDA Letter of Conditions

[see attached]



United States Department of Agriculture

April 26, 2024

Ms. Jessica Miller
City of David City
P.O. Box 191
David City, NE 68632-0191

RE: Proposed \$19,665,000 Sewer Loan from Nebraska Department of Environment and Energy (NDEE)

Dear Ms. Miller:

This office has reviewed the April 19, 2024, Sewer Revenue Analysis/Rate Adjustment Recommendation provided by Veenstra & Kimm Inc. and has found it acceptable. The information contained in this document satisfies the information required to demonstrate the City's capacity to meet the 1.2 debt service coverage requirements contained in Section 10 of the Ordinance authorizing the issuance of the Sanitary Sewer System Revenue Bond, Series 2020 (Ordinance). USDA concurs with the proposed financing upon the following conditions:

1. The City agrees to collect rates and charges for all services furnished by the sewer system in accordance with Section 8 of the Ordinance. In reviewing the financial performance of the sewer system for the fiscal years 2020 through 2023 the following was observed:
 - a. Cash from operations was only positive in fiscal year 2021. This situation would not allow for any repayment of the principal payments on long term debt, funding of reserves, the purchase of plant and equipment, or any other financing/ investing activities.
 - b. The net change in cash was negative all four fiscal years and has resulted in the Sewer Fund going from a positive \$1,264,228 to negative \$1,040,049 for the period.
 - c. The City has been out of compliance with Section 8 of the Ordinance from the onset of the USDA financing. The City will need to evaluate the user rate and charges ordinance each year and make sure it is generating sufficient revenues to cover all the costs of the system including reserves and reoccurring capital purchases. Rate setting should consider customer count/utilization, historical financial performance, and the forecasted operating budget and cash flow for the upcoming fiscal year.
2. The proposed sewer rates of \$16.46 Customer Charge and \$5.22/1,000 gallons Commodity charge for residential and commercial customers will be made effective May 2024. Subsequent rate adjustments will be made effective April of each year thereafter. Multiple year rate adjustments can be incorporated into the sewer rate ordinance but it will need to allow for annual adjustments if the costs of operating the system exceed expectations. The rate guidance provided in the April 19, 2024, Veenstra & Kimm Inc. sewer rate analysis shall be used as a resource in establishing future rate structures.

Rural Development • Lincoln State Office
100 Centennial Mall North, Suite 308 • Lincoln, NE 68508
Voice (402) 437-5551 • Fax (855) 207-0384

USDA is an equal opportunity provider, employer, and lender.

If you wish to file a Civil Rights program complaint of discrimination, complete the USDA Program Discrimination Complaint Form (PDF), found online at http://www.ascr.usda.gov/complaint_filing_cust.html, or at any USDA office, or call (866) 632-9952 to request the form. You may also write a letter containing all of the information requested in the form. Send your completed complaint form or letter to us by mail at U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410, by fax (202) 690-7442 or email at program.intake@usda.gov.

3. High volume customers such as Ag Processing Inc (AGP) will pay consumptive rates in accordance with the then current sewer rate ordinance for commercial users as specified in the Redevelopment Contract adopted by the City on April 26, 2023. Also, within this agreement AGP has agreed to pay \$345,000 a year for 20 years in consideration of the capital improvement costs associated with expanding the City's sewer treatment facilities. The term of these payments is less than the term of the NDEE loan. The City may want to consider a long-term plan in funding the retirement of the NDEE loan in 20 years to lessen the impact on customer charges once the \$345,000 payments from AGP cease.
4. NDEE issuing the loan in accordance with the draft Loan Agreement (version 12:12.18.2023). This agreement authorizes the issuance of a NDEE loan in the amount \$19,665,000. A portion of this loan may be repaid through subsidies namely Loan Forgiveness. The maximum Loan Forgiveness cannot exceed 37.67% of the eligible project cost up to a ceiling of \$7,408,125. The City will need to be prepared to adjust their rates accordingly if this amount of subsidy is later reduced by NDEE.
5. The City will manage the use of cash resources in the Sewer Fund so that it is maintained at a positive level. The City will need to consider a plan to cure the negative cash position of the Sewer Fund either through transfers of funds from other City Funds or through the generation of excess net revenues from the sewer system. USDA is not an advocate of interfund transfers but the current cash position of the sewer fund may necessitate such action.
6. The debt service coverage ratio requirement of 1.2 needs to be adhered to so long as USDA is a holder of the Sanitary Sewer System Revenue Bond, Series 2020. Compliance to this requirement and Section 8 of the ordinance will be done through the review of the annual audits.

If you should have any questions or concerns, please feel free to contact Ken Shaw at 402-416-2222.

Sincerely,

**KELLEY
MESSENGER**

Digitally signed by KELLEY
MESSENGER
Date: 2024.04.26 11:40:05
-05'00'

Kelley Messenger
Community Programs Director
USDA Rural Development

Exhibit "B"

2024 NDEE Note

Exhibit "C"

NDEE Loan Contract

LOAN AGREEMENT

(Governmental Borrower)

Between the

NEBRASKA DEPARTMENT OF ENVIRONMENT AND ENERGY

And

CITY OF DAVID CITY, NEBRASKA

NDEE PROJECT NO. C318068

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 ENVIRONMENT AND ENERGY
AND
THE CITY OF DAVID CITY, NEBRASKA
PROJECT NO. C318068

This LOAN AGREEMENT with SRF Number C318068 (hereinafter "Loan Agreement") is entered into by and between the State of Nebraska, acting by and through the Nebraska Department of Environment and Energy (hereinafter "NDEE") and the City of David City, Nebraska (hereinafter "Borrower").

WITNESSETH THAT

WHEREAS, the Federal Water Pollution Control Act, and all amendments thereto (hereinafter "Federal Act"), including the Water Quality Act of 1987, 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) #66.458 for Clean 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.) §81-15,153 empowers the NDEE to loan available funds in the Wastewater Treatment Facilities Construction Loan Fund (hereinafter "Fund") to borrowers pursuant to the Wastewater Treatment Facilities Construction Assistance Act (hereinafter "Act") and rules and regulations adopted under such Act; and

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

WHEREAS, pursuant to such authorization, the Nebraska Investment Finance Authority (hereinafter "NIFA") may, from time to time, issue its Wastewater Treatment Facilities Construction Loan Fund revenue bonds for the purpose of financing wastewater treatment projects (as defined in the Act), including to provide funds for the NDEE to loan to borrowers and to satisfy the state match requirements of the Federal Act; and

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

WHEREAS, the City of David City, Nebraska, is a "Municipality" as defined in Neb. Rev. Stat. §81-15,149(10); and

WHEREAS, the project to be financed under this Loan Agreement, as described in Exhibit 1 (hereinafter "Project") of this Loan Agreement, 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 NDEE pursuant to Section 2.01 of this Loan Agreement; and

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

WHEREAS, the NDEE 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 NDEE pursuant to the Federal Act and the Act to finance Project Costs; and

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

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 Wastewater Treatment Facilities Construction Assistance Act, Neb. Rev. Stat. §81-15,147 et seq., 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 David City, Nebraska that is a party to and is described in the first paragraph of this Loan Agreement, and its successors and assignees.
- (e) "Clean Water State Revolving Fund" or "CWSRF" means the Nebraska Clean Water State Revolving Fund Program established pursuant to the Act and Regulations.
- (f) "Cut-off Date" means the date established by the NDEE, 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 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.
- (i) "Due Date" means the dates specified for payment of principal and interest on the Loan as specified in Section 2.06.
- (j) "Event of Default" means any occurrence or event specified in Article V of this Loan Agreement.

- (k) "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.
- (l) "Federal Act" means the Federal Water Pollution Control Act, et seq. as amended.
- (m) "Fund" means the Wastewater Treatment Facilities Construction Loan Fund established pursuant to the Act.
- (n) "GAAP" means generally accepted accounting principles as applicable to the Public Water System.
- (o) "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.
- (p) "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.
- (q) "Intended Use Plan" means a document prepared annually by the NDEE which identifies the intended use of all State Revolving Fund program funds.
- (r) "Late Payment" means any payment that is not received within fifteen days of the due date as established by this Loan Agreement.
- (s) "Loan" means the loan made by the NDEE to the Borrower to finance or refinance all or a portion of the Project Costs pursuant to this Loan Agreement.
- (t) "Loan Agreement" means this Loan Agreement, including the Attachments hereto, as it may be properly supplemented, modified, or amended.
- (u) "Loan Amount" means the principal amount specified in Section 2.01 of this Loan Agreement and as amended which the NDEE 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.
- (v) "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.
- (w) "Loan Repayments" means the payments of the Loan required to be made by the Borrower pursuant to Section 2.06 of this Loan Agreement.
- (x) "Loan Terms" means the terms as established by this Loan Agreement.
- (y) "NDEE" means the Nebraska Department of Environment and Energy established pursuant to Neb. Rev. Stat. §81-1501 et. seq, as amended.
- (z) "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.

- (aa) "Note" means a promissory note of the Borrower with respect to the Loan in the form of Attachment F to this Loan Agreement.
- (bb) "Ordinance" means Ordinance No. _____ passed and approved by the governing body of the Borrower on _____, 20____, as the same may be amended from time to time.
- (cc) "Project" means an eligible item for funding under the Act and is as described in Exhibit 1 of this Loan Agreement.
- (dd) "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 NDEE are eligible under the Federal Act, and the Act, and Regulations. Estimated Project Costs are described in Attachment B.
- (ee) "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 NDEE pursuant to the Act.
- (ff) "Retainage" means construction costs held back by the Borrower from the payments due to the contractor to assure satisfactory completion of the construction agreement.
- (gg) "Revenue Obligation" means, without duplication, (i) the Loan; (ii) any Existing Revenue Obligation; and (iii) any Additional Revenue Obligation.
- (hh) "Sanitary Sewer Collection System" means the structures, equipment, and processes required to collect and transport sanitary sewer wastewater to the wastewater treatment facility.
- (ii) "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.
- (jj) "State" means the State of Nebraska acting, unless otherwise specifically indicated, by and through the NDEE and its successors and assignees.
- (kk) "Subsidies" means Loan Forgiveness Grant funds as established by Section 2.01(a) of this Agreement that are provided as grant concurrently with the loan amount to the Borrower.
- (ll) "System Revenues" means all revenues derived by the Borrower from the User Charge System.
- (mm) "Trustee" means the trustee under any trust indenture with respect to revenue bonds the proceeds of which are deposited in the Fund.
- (nn) "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 Wastewater Treatment Facility and Sanitary Sewer Collection 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 Wastewater Treatment Facility and Sanitary Sewer Collection 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.

- (oo) "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 NDEE will loan amount not to exceed nineteen million six hundred sixty-five thousand dollars (\$19,665,000) 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 Subsidies cannot exceed seventy-five percent of the total amount of eligible Project Costs.
- (2) Loan Forgiveness. This Loan Agreement includes CWSRF Loan Forgiveness of up to 37.67% of the eligible Project Costs, up to a ceiling of seven million four hundred eight thousand one hundred twenty-five dollars (\$7,408,125).
- (3) All Subsidies shall be effective only upon the completion of the Project in accordance with this Loan Agreement, including compliance with the requirements of the CWSRF, as determined by the NDEE and Initiation of Operation. The amount of such Subsidies shall be stated on the final Attachment A repayment schedule prepared by the NDEE 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 NDEE 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 NDEE 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 NDEE with such revised or additional terms, conditions, and covenants as the NDEE 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 twenty-eight (28) years from Initiation of Operation and to pay all principal, interest, administrative fees, and penalty fees when due. The Borrower shall provide the NDEE 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 NDEE pursuant to Regulations and the Intended Use Plan and is applied to outstanding principal. The interest rate on this Loan is 0.5% 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 NDEE pursuant to Regulations and the Intended Use Plan and is applied to outstanding principal. The Borrower shall pay to the NDEE, or at the direction of the NDEE, to the NIFA or the Trustee, an annual administrative fee of 0.5% 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 NDEE, the NDEE 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 NDEE. 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 NDEE 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 NDEE.
- (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 NDEE until such Retainage is either reduced or released to the contractor by the Borrower.
- (e) Additional requirements for disbursement include:
 - (1) Operation and Maintenance Manual. The Borrower shall submit a draft of the operation and maintenance manual for the Project to the NDEE before disbursements exceed 75% of the Project Costs. The Borrower shall submit a final operation and maintenance manual to the NDEE and receive approval before disbursements exceed 95% of the Project Costs or final disbursement, whichever occurs first.
 - (2) Fiscal Sustainability Plan. In accordance with the Regulations, a recipient of a CWSRF loan for a project that involves the repair, replacement, or expansion of a Wastewater Treatment Works must develop and implement a Fiscal Sustainability Plan (FSP) that includes, at minimum:
 - i. An inventory of critical assets that are part of the Wastewater Treatment Works;

- ii. An evaluation of the condition and performance of inventoried assets or asset groupings;
- iii. A certification that the Borrower has evaluated and will be implementing water and energy conservation efforts as part of the plan; and
- iv. A plan for maintaining, repairing, and, as necessary, replacing the Wastewater Treatment Works assets and a plan for funding such activities.

The Borrower agrees to develop, implement, and provide certification to the NDEE that their FSP meets these requirements before disbursements exceed 95% of the Project Costs or before final disbursement, whichever occurs first.

- (3) Cost and Effectiveness Analysis. The Borrower agrees that a cost and effectiveness analysis has been conducted in accordance with the Regulations and Section 2.10(r) of this Loan Agreement, and agrees to provide certification of a cost and effectiveness analysis being completed to the NDEE before disbursement of construction costs for the Project.

- (f) If a request for disbursement is not received by the NDEE within eighteen (18) months from either the effective date of this Loan Agreement or the last disbursement request, the NDEE may finalize, close, or terminate this agreement pursuant to Section 6.12 of this Loan Agreement.

Section 2.06. Loan Payments.

- (a) Principal and Interest Payments. The Borrower shall pay to the NDEE, or at the direction of the NDEE, 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 NDEE 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 NDEE 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 NDEE 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 NDEE 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 NDEE 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 NDEE 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 NDEE 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 NDEE 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 NDEE 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 provision of Article V of this Loan 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 – February 2024
- (b) Substantial Completion of Construction – October 2025
- (c) Estimated Initiation of Operation – September 2025

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 Sewer Use Ordinances and User Charge Systems.

- (a) The Borrower agrees to submit for review to the NDEE its Sewer User Ordinance and its User Charge System, and to adopt and implement any necessary changes as determined by the NDEE.
- (b) The Borrower agrees that it shall not modify, amend, make additions to, or deletions from its Sewer Use Ordinance and its User Charge System without the consent of the NDEE 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 Sewer Use 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 the payment of Additional Revenue Obligations.
- (c) The Borrower agrees that at least 80% of the impact from the loan forgiveness will be targeted to reduce rates for the residential user class.

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 NDEE concurrence and authorization of the construction agreement.
- (c) Initiation of Operation. The Borrower shall provide written notification to the NDEE of the date of Initiation of Operation of the Project.
- (d) Construction Completion. The Borrower shall provide written notification to the NDEE of the construction completion date of the Project.
- (e) Long Term Planning. The Borrower agrees to develop and implement a long-term Wastewater Treatment Works management plan for the term of the Loan, including yearly renewals. This plan shall recognize the cost relationship between the Project and future projects.
- (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 NDEE in the amount of the bid.

- (g) Certified Operator. The Borrower agrees to provide a certified operator for its Wastewater Treatment Works pursuant to Nebraska Administrative Code, Title 197 - Rules and Regulations for the Certification of Wastewater Treatment Facility Operators in Nebraska.
- (h) Site Title and Easements. The Borrower must certify that site title for all easements and rights-of-way necessary to allow construction of the Project have been obtained prior to award of the construction agreement (i.e., all real property has been acquired, bonafide options have been taken or formal condemnation proceedings have been initiated for necessary real property).
- (i) Contractors 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 NDEE of its intent to solicit bids for the project and to request the latest State Revolving Fund Federal Assurance Packet from the NDEE. 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 NDEE, the Borrower agrees to display a project sign created by the NDEE. 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 NDEE 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 NDEE 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. Davis-Bacon prevailing wage requirements will apply to the construction, alteration, and repair of “Wastewater Treatment Works”, as defined by the Federal Act 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 NDEE, 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) NDEE Federal Assurance Package. Before soliciting, The Borrower agrees to contact the NDEE for the most recent applicable NDEE Federal Assurance Package and to incorporate the package into the solicitation documents. If the Borrower has failed to incorporate the most recent applicable NDEE Federal Assurance Package, the Borrower shall either: i) terminate the contract or ordering instrument and issue a revised solicitation, or ii) incorporate the NDEE 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 "Wastewater Treatment Works", as defined by the Federal Act, the required clauses as listed in most recent applicable NDEE 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 NDEE 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 NDEE 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 NDEE, 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 NDEE Federal Assurance Package. In addition:
 - (i) Withholding Payments. The Borrower, upon written request by authorized representatives of the NDEE, 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 NDEE.

- (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 NDEE, 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 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.

- (v) Potential Violations. The Borrower must immediately report potential violations of the Davis-Bacon prevailing wage requirements to the NDEE, 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 Borrower, 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 “Wastewater Treatment Works”, as defined by the Federal Act, must be constructed pursuant to Public Law 113-76, Consolidated Appropriations Act of 2014, which includes an “American Iron and Steel” requirement. The Borrower agrees to be responsible for and to comply with all American Iron and Steel conditions and requirements pursuant to the Consolidated Appropriations Act of 2014 and agrees to provide written certification of such compliance to the NDEE after construction completion.

- (r) Cost Effectiveness Analysis. The Borrower agrees to certify that they have:
 - (1) Studied and evaluated the cost and effectiveness of the processes, materials, technique, and technologies for carrying out the proposed project or activity for which assistance is sought under the Water Resources Reform and Development Act of 2014; and
 - (2) Selected, to the maximum extent practicable, a project or activity that maximizes the potential for efficient water use, reuse, recapture, and conservation, and energy conservation, taking into account:
 - (i) The cost of constructing the project or activity;
 - (ii) The cost of operating and maintaining the project or activity over the life of the project or activity; and
 - (iii) The cost of replacing the project or activity.

- (s) 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 NDEE 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.

- (t) Loan Finalization Date. This Loan Agreement will be considered finalized either upon the date the NDEE 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.

- (u) Build America Buy America. Use of Loan funds for partial or full payment of the construction, alteration, maintenance, and repair of "Wastewater Treatment Works", 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 NDEE, or any party designated by the NDEE, after construction completion unless i) the Borrower has requested and obtained a waiver from the NDEE, or any party designated by the NDEE, 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.
- (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 NDEE, the EPA, or any party designated by the NDEE 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.

- (v) Federal Flood Risk Management Standard (FFRMS). For the project noted in Exhibit 1, it must be at or above (i) the elevation and flood hazard area that result from using a climate-informed science approach that uses the best-available, actionable hydrologic and hydraulic data and methods that integrate current and future changes in flooding based on climate science. This approach will also include an emphasis on whether the action is a critical action as one of the factors to be considered when conducting the analysis; (ii) the elevation and flood hazard area that result from using the freeboard value, reached by adding an additional 2 feet to the base flood elevation for non-critical actions and by adding an additional three (3) feet to the base flood elevation for critical actions; (iii) the area subject to flooding by the 0.2% annual chance flood; or (iv) the elevation and flood hazard area that result from using any other method identified

in an update to the FFRMS.

This does not apply if the project is not a substantial improvement (i.e. projects worth more than 50% of the market value or replacement costs of the facility), based on an NDEE approved opinion submitted by a licensed professional engineer per Section 2.10(a) of this Loan Agreement.

- (w) 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>).

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 Wastewater Treatment Works, 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 NDEE 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 Wastewater Treatment Works, 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 NDEE and is eligible for such

reimbursement pursuant to the Regulations. All of such costs constitute Project Costs for which the NDEE 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 NDEE, 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 NDEE, and grants a lien to the NDEE on, the System Revenues 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 the Ordinance and is secured on 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 Wastewater Treatment Facility, and Sanitary Sewer Collection System, 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 Wastewater Treatment Facility, and Sanitary Sewer Collection System, (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 NDEE on the revenues of the Borrower's Wastewater Treatment Facility and Sanitary Sewer Collection System, shall be on a parity with the lien on such revenues of the Borrower's Existing Revenue Obligations and any Additional Revenue Obligations hereafter issued on parity with such Existing Revenue Obligations. The Borrower hereby expressly reserves the right to issue Revenue Obligations on parity with the lien described in this Loan Agreement and the other Existing 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 the Wastewater Treatment Works, 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 user's 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 NDEE 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 NDEE 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) 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 as set forth on Attachment D of this Loan Agreement, and other NDEE Regulations); and
 - (2) To cooperate with the NDEE in the observance and performance of the respective duties, covenants, obligations, and agreements of the Borrower and the NDEE 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 wastewater treatment 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.
- (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 NDEE 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 NDEE may require.
- (e) Operation and Maintenance of Wastewater Treatment System. The Borrower agrees that it shall, in accordance with prudent wastewater treatment utility practice:
- (1) At all times operate the properties of its Wastewater Treatment Works in an efficient manner; and
 - (2) Maintain its Wastewater Treatment Works, 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 Wastewater Treatment Works. The Borrower agrees 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 (i) supervening circumstances not anticipated by the Borrower at the time of the Loan, (ii) adverse circumstances beyond the control of the Borrower or (iii) 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 Wastewater Treatment Works except on ninety (90) days' prior written notice to the NDEE and, in any event, shall not so 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 Wastewater Treatment Works 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 Wastewater Treatment Works to any person or entity other than a municipal corporation or other political subdivision of the State of Nebraska or any combination thereof, which has legal responsibility to treat wastewater.

Before any proposed disposition of the Wastewater Treatment Works can be made, the Borrower shall provide the NDEE with (i) an opinion of counsel, satisfactory to the NDEE, that such proposed disposition is permitted by the provisions of this Loan Agreement, and (ii) if any such proposed disposition includes a portion of the Project financed by the Loan, an opinion of a nationally recognized bond counsel, satisfactory to the NDEE, that such disposition will not adversely affect the exclusion from gross income for federal income tax purposes of the interest on any bonds issued to fund deposits into the Fund. No disposition of all or any portion of the Wastewater Treatment Works shall 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 Wastewater Treatment System (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 NDEE at any reasonable time. The Borrower shall, upon written request by the NDEE 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 NDEE a copy of the audit report, provided such audit shall not be due to the NDEE 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 (\$750,000) during the Borrower's fiscal year, then the Borrower shall, irrespective of any request from the NDEE, provide the NDEE 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 NDEE, any requirement herein to perform and/or provide an audit at the request of the NDEE may be waived by the NDEE 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 NDEE under this Loan or for any other reason acceptable to the NDEE.
- (h) Inspections; Information. The Borrower shall permit the EPA, the NDEE, and any party designated by the NDEE 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 NDEE may reasonably require in connection therewith.
- (i) Financial Information. The Borrower specifically agrees to provide to the NDEE a reasonable number of copies of such financial information and operating data of the Borrower and the Wastewater Treatment Facility and/or Works and the prompt notification of the occurrence of certain material events, to the extent necessary for the NDEE 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 NDEE 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 Wastewater Treatment Works as would be carried by similar sized Wastewater Treatment Works, 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 NDEE of any material adverse change in the activities, prospects, or condition (financial or otherwise) of the Borrower's Wastewater Treatment Works, 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 NDEE. The Borrower hereby approves and consents to any assignment or transfer of this Loan Agreement that the NDEE 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 the 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 NDEE 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 responsibility to treat wastewater;
- (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 NDEE's ability to meet its duties, covenants, and obligations under any Pledge Agreement as determined in writing by the NDEE;
- (e) The assignment will not adversely affect the exclusion from gross income for federal tax purposes of the interest on any bonds issued by the NIFA to fund deposits into the Fund; and
- (f) The Borrower shall provide the NDEE, and the NIFA if the NIFA is an assignee of the Note, with:
 - (1) An opinion of a qualified attorney satisfactory to the NDEE that each of the conditions set forth in Section 4.02(b) and Section 4.02(c) of this Loan Agreement has been met, and;
 - (2) An opinion of nationally recognized bond counsel satisfactory to the NDEE that the condition set forth in Section 4.02(e) of this Loan Agreement 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 NDEE; 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 NDEE 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 NDEE, the NDEE 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 NDEE 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 NDEE 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 NDEE 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 NDEE the reasonable fees and expenses incurred by the NDEE 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 NDEE shall provide copies of statements evidencing the fees and expenses for which the NDEE is requesting payment.

Section 5.05. Application of Moneys. Any moneys collected by the NDEE 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 of this Loan Agreement; and
- (e) Fifth, to pay any other amounts due and payable hereunder as such amounts become due and payable. To the extent that the NDEE'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 NDEE 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 NDEE, 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 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 NDEE, at the following addresses:

(a) BORROWER

City of David City
557 N. 4th Street
P.O. Box 191
David City, NE 68632
Phone: (402) 367-3135

(b) THE NDEE

Nebraska Department of Environment & Energy
P.O. Box 98922
Lincoln, NE 68509-8922
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 NDEE 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 NDEE and the Borrower and their respective successors and assignees.

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 NDEE.

Section 6.10. Further Assurances. The Borrower shall, at the request of the NDEE, 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 the NIFA which may occur from time to time and thereafter, the NDEE shall deliver a notice of this Loan in the form prescribed by the NIFA, and other pertinent information relating thereto, to the Trustee for any bonds of the NIFA issued to fund deposits into the Fund.

Section 6.12. Finalizing, Closing, and Termination of the Loan Agreement. The NDEE 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 NDEE shall give no less than 30 days written notice of the NDEE's intent to the Borrower. Following the final disbursement of Loan proceeds to the Borrower, the NDEE 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 NDEE 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 DAVID CITY 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 NDEE.

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 DAVID CITY, NEBRASKA

NEBRASKA DEPARTMENT OF ENVIRONMENT AND ENERGY

By

By

_____ (printed name)

_____ (printed name)

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

Title _____ Date _____

Title _____ 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 -	Resolution
Attachment I -	Additional Documents

EXHIBIT 1

PROJECT DESCRIPTION

The project consists of the rehabilitation and upgrading of the Borrower's wastewater treatment facility. This includes the updating and expansion, as well as slip-lining several wastewater lines. 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 June 15, 2026 (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 NDEE'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 NDEE 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 NDEE based on the following parameters:

- (1) Final principal amount of Loan;
- (2) Amount of Subsidies, if any;
- (3) Interest rate as set forth in Section 2.03;
- (4) Administrative fee rate as set forth in Section 2.04; and
- (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 twenty-eight (28) 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 A

PROJECTED AMORTIZATION SCHEDULE

TOTAL PRINCIPAL: \$ 12,256,875 **INTEREST RATE (%):** 0.50
LOAN FORGIVENESS: \$ 7,408,125 **ADMIN FEE (%):** 0.50
SMALL TOWN GRANT: \$ - **TERM (YEARS):** 28
TOTAL SRF ASSISTANCE: \$ 19,665,000

Principal Payment	Principal	Principal Payment	Interest	Admin Fee	Total Payment	Remaining Principal
6/15/2026	\$ 12,256,875.00	\$ 204,182.08	\$ 30,642.19	\$ 30,642.19	\$ 265,466.46	\$ 12,052,692.92
12/15/2026	\$ 12,052,692.92	\$ 204,692.54	\$ 30,131.73	\$ 30,131.73	\$ 264,956.00	\$ 11,848,000.38
6/15/2027	\$ 11,848,000.38	\$ 205,204.27	\$ 29,620.00	\$ 29,620.00	\$ 264,444.27	\$ 11,642,796.12
12/15/2027	\$ 11,642,796.12	\$ 205,717.28	\$ 29,106.99	\$ 29,106.99	\$ 263,931.26	\$ 11,437,078.84
6/15/2028	\$ 11,437,078.84	\$ 206,231.57	\$ 28,592.70	\$ 28,592.70	\$ 263,416.97	\$ 11,230,847.27
12/15/2028	\$ 11,230,847.27	\$ 206,747.15	\$ 28,077.12	\$ 28,077.12	\$ 262,901.39	\$ 11,024,100.12
6/15/2029	\$ 11,024,100.12	\$ 207,264.02	\$ 27,560.25	\$ 27,560.25	\$ 262,384.52	\$ 10,816,836.10
12/15/2029	\$ 10,816,836.10	\$ 207,782.18	\$ 27,042.09	\$ 27,042.09	\$ 261,866.36	\$ 10,609,053.92
6/15/2030	\$ 10,609,053.92	\$ 208,301.63	\$ 26,522.63	\$ 26,522.63	\$ 261,346.90	\$ 10,400,752.29
12/15/2030	\$ 10,400,752.29	\$ 208,822.39	\$ 26,001.88	\$ 26,001.88	\$ 260,826.15	\$ 10,191,929.90
6/15/2031	\$ 10,191,929.90	\$ 209,344.44	\$ 25,479.82	\$ 25,479.82	\$ 260,304.09	\$ 9,982,585.45
12/15/2031	\$ 9,982,585.45	\$ 209,867.80	\$ 24,956.46	\$ 24,956.46	\$ 259,780.73	\$ 9,772,717.65
6/15/2032	\$ 9,772,717.65	\$ 210,392.47	\$ 24,431.79	\$ 24,431.79	\$ 259,256.06	\$ 9,562,325.17
12/15/2032	\$ 9,562,325.17	\$ 210,918.46	\$ 23,905.81	\$ 23,905.81	\$ 258,730.08	\$ 9,351,406.72
6/15/2033	\$ 9,351,406.72	\$ 211,445.75	\$ 23,378.52	\$ 23,378.52	\$ 258,202.79	\$ 9,139,960.97
12/15/2033	\$ 9,139,960.97	\$ 211,974.37	\$ 22,849.90	\$ 22,849.90	\$ 257,674.17	\$ 8,927,986.60
6/15/2034	\$ 8,927,986.60	\$ 212,504.30	\$ 22,319.97	\$ 22,319.97	\$ 257,144.23	\$ 8,715,482.30
12/15/2034	\$ 8,715,482.30	\$ 213,035.56	\$ 21,788.71	\$ 21,788.71	\$ 256,612.97	\$ 8,502,446.74
6/15/2035	\$ 8,502,446.74	\$ 213,568.15	\$ 21,256.12	\$ 21,256.12	\$ 256,080.39	\$ 8,288,878.58
12/15/2035	\$ 8,288,878.58	\$ 214,102.07	\$ 20,722.20	\$ 20,722.20	\$ 255,546.46	\$ 8,074,776.51
6/15/2036	\$ 8,074,776.51	\$ 214,637.33	\$ 20,186.94	\$ 20,186.94	\$ 255,011.21	\$ 7,860,139.19
12/15/2036	\$ 7,860,139.19	\$ 215,173.92	\$ 19,650.35	\$ 19,650.35	\$ 254,474.62	\$ 7,644,965.27
6/15/2037	\$ 7,644,965.27	\$ 215,711.86	\$ 19,112.41	\$ 19,112.41	\$ 253,936.68	\$ 7,429,253.41
12/15/2037	\$ 7,429,253.41	\$ 216,251.13	\$ 18,573.13	\$ 18,573.13	\$ 253,397.40	\$ 7,213,002.27
6/15/2038	\$ 7,213,002.27	\$ 216,791.76	\$ 18,032.51	\$ 18,032.51	\$ 252,856.77	\$ 6,996,210.51
12/15/2038	\$ 6,996,210.51	\$ 217,333.74	\$ 17,490.53	\$ 17,490.53	\$ 252,314.79	\$ 6,778,876.77
6/15/2039	\$ 6,778,876.77	\$ 217,877.08	\$ 16,947.19	\$ 16,947.19	\$ 251,771.46	\$ 6,560,999.69
12/15/2039	\$ 6,560,999.69	\$ 218,421.77	\$ 16,402.50	\$ 16,402.50	\$ 251,226.77	\$ 6,342,577.92
6/15/2040	\$ 6,342,577.92	\$ 218,967.82	\$ 15,856.44	\$ 15,856.44	\$ 250,680.71	\$ 6,123,610.10
12/15/2040	\$ 6,123,610.10	\$ 219,515.24	\$ 15,309.03	\$ 15,309.03	\$ 250,133.29	\$ 5,904,094.86
6/15/2041	\$ 5,904,094.86	\$ 220,064.03	\$ 14,760.24	\$ 14,760.24	\$ 249,584.51	\$ 5,684,030.83
12/15/2041	\$ 5,684,030.83	\$ 220,614.19	\$ 14,210.08	\$ 14,210.08	\$ 249,034.35	\$ 5,463,416.63
6/15/2042	\$ 5,463,416.63	\$ 221,165.73	\$ 13,658.54	\$ 13,658.54	\$ 248,482.81	\$ 5,242,250.91
12/15/2042	\$ 5,242,250.91	\$ 221,718.64	\$ 13,105.63	\$ 13,105.63	\$ 247,929.90	\$ 5,020,532.27
6/15/2043	\$ 5,020,532.27	\$ 222,272.94	\$ 12,551.33	\$ 12,551.33	\$ 247,375.60	\$ 4,798,259.33
12/15/2043	\$ 4,798,259.33	\$ 222,828.62	\$ 11,995.65	\$ 11,995.65	\$ 246,819.92	\$ 4,575,430.71
6/15/2044	\$ 4,575,430.71	\$ 223,385.69	\$ 11,438.58	\$ 11,438.58	\$ 246,262.85	\$ 4,352,045.02
12/15/2044	\$ 4,352,045.02	\$ 223,944.16	\$ 10,880.11	\$ 10,880.11	\$ 245,704.38	\$ 4,128,100.86
6/15/2045	\$ 4,128,100.86	\$ 224,504.02	\$ 10,320.25	\$ 10,320.25	\$ 245,144.52	\$ 3,903,596.84
12/15/2045	\$ 3,903,596.84	\$ 225,065.28	\$ 9,758.99	\$ 9,758.99	\$ 244,583.26	\$ 3,678,531.57
6/15/2046	\$ 3,678,531.57	\$ 225,627.94	\$ 9,196.33	\$ 9,196.33	\$ 244,020.60	\$ 3,452,903.63
12/15/2046	\$ 3,452,903.63	\$ 226,192.01	\$ 8,632.26	\$ 8,632.26	\$ 243,456.53	\$ 3,226,711.62
6/15/2047	\$ 3,226,711.62	\$ 226,757.49	\$ 8,066.78	\$ 8,066.78	\$ 242,891.05	\$ 2,999,954.13
12/15/2047	\$ 2,999,954.13	\$ 227,324.38	\$ 7,499.89	\$ 7,499.89	\$ 242,324.15	\$ 2,772,629.75
6/15/2048	\$ 2,772,629.75	\$ 227,892.69	\$ 6,931.57	\$ 6,931.57	\$ 241,755.84	\$ 2,544,737.05
12/15/2048	\$ 2,544,737.05	\$ 228,462.43	\$ 6,361.84	\$ 6,361.84	\$ 241,186.11	\$ 2,316,274.63
6/15/2049	\$ 2,316,274.63	\$ 229,033.58	\$ 5,790.69	\$ 5,790.69	\$ 240,614.96	\$ 2,087,241.04
12/15/2049	\$ 2,087,241.04	\$ 229,606.17	\$ 5,218.10	\$ 5,218.10	\$ 240,042.37	\$ 1,857,634.88
6/15/2050	\$ 1,857,634.88	\$ 230,180.18	\$ 4,644.09	\$ 4,644.09	\$ 239,468.36	\$ 1,627,454.70
12/15/2050	\$ 1,627,454.70	\$ 230,755.63	\$ 4,068.64	\$ 4,068.64	\$ 238,892.91	\$ 1,396,699.07
6/15/2051	\$ 1,396,699.07	\$ 231,332.52	\$ 3,491.75	\$ 3,491.75	\$ 238,316.02	\$ 1,165,366.54
12/15/2051	\$ 1,165,366.54	\$ 231,910.85	\$ 2,913.42	\$ 2,913.42	\$ 237,737.68	\$ 933,455.69
6/15/2052	\$ 933,455.69	\$ 232,490.63	\$ 2,333.64	\$ 2,333.64	\$ 237,157.91	\$ 700,965.06
12/15/2052	\$ 700,965.06	\$ 233,071.86	\$ 1,752.41	\$ 1,752.41	\$ 236,576.68	\$ 467,893.21
6/15/2053	\$ 467,893.21	\$ 233,654.54	\$ 1,169.73	\$ 1,169.73	\$ 235,994.00	\$ 234,238.67
12/15/2053	\$ 234,238.67	\$ 234,238.67	\$ 585.60	\$ 585.60	\$ 235,409.87	\$ (0.00)
TOTAL:	\$ 12,256,875	\$ 893,284.04	\$ 893,284.04	\$ 893,284.04	\$ 14,043,443.07	

ATTACHMENT B

PROJECT COSTS

<u>COST CLASSIFICATION</u>	<u>ESTIMATED TOTAL COST</u>
1) Administrative and legal expenses	\$ 175,000
2) Land, structures, right-of-ways, appraisals, etc.	
3) Relocation expenses and payments	
4) Architectural and engineering fees	\$ 779,500
5) Project inspection fees	\$ 655,000
6) Site work, demolition and removal	\$ 17,553,383
7) Construction	
8) Equipment	
9) Miscellaneous	
10) SUBTOTAL (sum of lines 1-9)	\$ 19,162,883
11) Contingencies	\$ 502,117
12) SUBTOTAL (sum of lines 10-11)	\$ 19,665,000
Less project (program) income	
TOTAL PROJECT COSTS (line 12 minus 13)	\$ 19,665,000
<u>SOURCE OF FUNDS</u>	
NDEE CWSRF Loan (Principal)	\$ 12,256,875
NDEE CWSRF Loan Forgiveness	\$ 7,408,125
TOTAL PROJECT ASSISTANCE	\$ 19,665,000

Categories of loan eligibility are established by the Federal Act, the state Act, and state Regulation. Eligible items shall not include the costs of water rights, legal costs, fiscal agent's fees, operation and maintenance costs, and municipal or county administrative costs.

OUTLAY SCHEDULE

	2024	2025	2026
January	\$ -	\$ 590,000	\$ -
February	\$ -	\$ 925,000	\$ -
March	\$ 3,244,500	\$ 755,000	\$ -
April	\$ 1,425,000	\$ 760,000	\$ -
May	\$ 1,420,000	\$ 651,000	\$ -
June	\$ 1,060,000	\$ 540,000	\$ -
July	\$ 662,000	\$ 475,000	\$ -
August	\$ 380,000	\$ 726,000	\$ -
September	\$ 1,280,000	\$ 245,000	\$ -
October	\$ 3,260,000	\$ 66,500	\$ -
November	\$ 600,000	\$ -	\$ -
December	\$ 600,000	\$ -	\$ -
YEARLY TOTAL	\$ 13,931,500	\$ 5,733,500	\$ -
TOTAL OUTLAY	\$ 19,665,000		

ATTACHMENT C

FINANCIAL CAPABILITIES ANALYSIS

The City of David City, NE has requested CWSRF funding assistance of \$19,665,000 to rehabilitate a Wastewater Treatment Facility that needs updating and expansion, and sliplining the southside of David City’s sanitary sewer system. The City of David City is eligible for up to 37.67% CWSRF Loan Forgiveness out of the SRF SFY2024 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 David City for the years 2020 through 2022;
2. Clean Water Preapplication for State Assistance; and
3. Miscellaneous correspondence from the City of David City in project file.

Analysis of the Sewer Utility:

The City of David City manages and operates a wastewater treatment system and utilizes sewer user rates for their user charge system. Table 1 displays the City of David City’s general gross profit of their revenue and expenses from the operation of their sewer user charge system.

**Table 1
 Sewer User Charge System Summary**

Year	Revenue (includes interest income & interest expenses)	Expenses (excludes depreciation)	Gross Profit (Revenue minus Expenses)
2020	\$595,570	\$478,896	\$116,674
2021	\$636,738	\$492,049	\$144,689
2022	\$571,155	\$647,619	-\$47,088)

The City of David City manages their sewer system utility which generates revenue by assessing use fees on the residents and businesses in David City. The revenue stream goes toward paying for the operation and maintenance expenses incurred to operate the sewer utility. The sewer use revenues will be used to pay the debt service due to the proposed CWSRF sewer loan. The sewer system ran an operating surplus in 2020 and 2021 with a deficit in 2022, as shown in Table 1.

The following long-term debt and liabilities are taken directly from David City’s audit report: City of David City, Nebraska, Financial Statements and Supplementary Information, September 30, 2022, Note D – Other Notes.

2. Long-term Debt

The reporting entity’s long-term debt is segregated between the amounts to be repaid from governmental activities and amounts to be repaid from business-type activities.

Governmental Activities

As of September 30, 2022, the governmental long-term liabilities consisted of the following:

Bonds payable:

On July 15, 2020, the City issued General Obligation Various Purpose Bonds, Series 2020 for \$7,135,000. Interest is at 0.9 percent to 1.6 percent and maturity is December 15, 2031. The bond payments are made from the Sales Tax Fund.	\$ 6,455,000
On June 30, 2021, the City issued General Obligation Sewer Bonds, Series 2021 for \$540,000. Interest is 0.95 to 1.70 percent and maturity is December 15, 2036. The bond payments are made from the CDA Fund using TIF proceeds.	540,000
On July 29, 2022, the City issued General Obligation Bond Anticipation Notes, Series 2022 for \$870,000. Interest is 2.35 and maturity is July 15, 2024. The bond payments are made from the Debt Service Fund.	870,000
On July 29, 2022, the City issued General Obligation Bond Anticipation Notes, Series 2022B for \$775,000. Interest is 2.50 and maturity is July 15, 2025. The bond payments are made from the CDA Fund using future TIF proceeds.	775,000

Governmental Activities, continued

Note payable:

Note with Bank of the Valley dated May 3, 2022, with a maximum issue of \$600,000 to provide financing on the purchase of land for housing development. Interest is at 3.00 percent due semi-annually with a balloon payment due May 15, 2024. The payments are made by the CDA Fund.

389,522

Total governmental activities long-term debt

\$ 9,029,522

Current portion

\$ 720,000

Noncurrent portion

8,309,522

Total governmental long-term debt

\$ 9,029,522

Changes in Long-term Debt

The following is a summary of changes in long-term debt for the year ended September 30, 2022:

<u>Type of Debt</u>	<u>Balance at</u>	<u>Additions</u>	<u>Deductions</u>	<u>Balance at</u>	<u>Amount Due</u>
	<u>October 1,</u>			<u>September 30,</u>	
	<u>2021</u>			<u>2022</u>	<u>One Year</u>
Governmental Activities					
Notes payable	\$ 399,964	\$ 544,522	\$ (554,964)	\$ 389,522	\$ -
Bonds payable	<u>7,675,000</u>	<u>1,645,000</u>	<u>(680,000)</u>	<u>8,640,000</u>	<u>720,000</u>
Totals	<u>\$ 8,074,964</u>	<u>\$ 2,189,522</u>	<u>\$ (1,234,964)</u>	<u>\$ 9,029,522</u>	<u>\$ 720,000</u>

Annual debt service requirements to maturity, including principal and interest, for long-term debt as of September 30, 2022, are as follows:

<u>Year Ending</u>	<u>Governmental Activities</u>			
	<u>Direct Placement</u>		<u>Other Debt Issues</u>	
	<u>Principal</u>	<u>Interest</u>	<u>Principal</u>	<u>Interest</u>
<u>September 30,</u>				
2023	\$ -	\$ 12,070	\$ 720,000	\$ 122,256
2024	389,522	11,718	1,595,000	116,769
2025	-	-	1,510,000	88,866
2026	-	-	740,000	61,606
2027	-	-	750,000	53,106
2028-2032	-	-	3,135,000	98,428
2033-2037	-	-	190,000	8,330
	<u>\$ 389,522</u>	<u>\$ 23,788</u>	<u>\$ 8,640,000</u>	<u>\$ 549,361</u>

The City is eligible for a 28-year CWSRF loan at a per annum interest rate of 0.5 percent plus an annual 0.5 percent administrative fee on the outstanding principal amount. The CWSRF offers loan funding assistance of \$19,665,000 minus \$7,408,125 in loan forgiveness for a principal amount of \$12,256,875. An annual debt service of \$530,422.46 plus the CWSRF contract required 10% coverage for delinquency or loss of users, as shown in Table 2, totals \$583,464.71 for the first-year debt service. Principal and interest repayments of SRF loans are protected by intercept statute Neb. Rev. Stat. §75-1503, which allows the Department to recover delinquent loan payments by intercepting state funds that are paid to the City of David City.

Table 2
CWSRF Loan No. C318068, \$19,665,000 Total Loan, less Loan Forgiveness of \$7,408,125
for a total Principal Loan of \$12,256,875

CWSRF Loan Term (years)	Interest Rate	Admin Fee	Estimated First Year Payment	First Year Payment + 10% Coverage
28	0.5%	0.5%	\$530,422.46	\$583,464.71

The revenues from the City of David City sewer system utility will be dedicated to repaying the CWSRF loan. The number of users is estimated at 1,212 total connections, with 1,120 being residential. The current sewer user charge is a base charge of \$8.15 plus \$3.00 per 1,000 gallons used per winter months. The estimated current monthly bill for 5,000 gallons usage would be \$23.15. For the new CWSRF debt service, at least 80% of the impact from the loan forgiveness assistance will need to be targeted to reduce rates for the residential user rate class, which would limit the residential rate increase to \$20.38 per user per month. Therefore, the upper limit of the residential sewer user rate is estimated at \$43.53 per month.

Any commercial/industrial user charge increases to address the balance of the annual CWSRF debt service will be at the discretion of the City, but will need to average at least \$232.31 per user. That discretion being, including but not limited to (a) larger facilities with significantly higher wastewater discharge totals accounting for the majority of that needed rate increase; and/or (b) the City can further increase commercial/industrial user rates to limit the increases to residential rates, but (c) cannot decrease the average projected commercial/industrial rates needed for the presented CWSRF debt service.

The projected monthly residential sewer rate is \$43.53 per month, or \$522.36 annually. This projected sewer rate total is 1.01% of the City of David City's median household income of \$51,090 and is below EPA's 2.0% upper level of sewer 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 Clean Water State Revolving Loan Fund #CS – 310001

**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.*

ATTACHMENT E

Form of Opinion of Borrower's Counsel

[USE BORROWER'S OR COUNSEL'S LETTERHEAD]

[Date]

[NOTE: Any of the opinions given below may be given in reliance upon the opinion of another Bond Counsel, and one Bond Counsel may give some of the opinions and another Bond Counsel may give others.]

Nebraska Department of Environment and Energy
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 David City (the "Borrower"), of an Agreement for Loan No. C318068 (the "Loan Agreement") between the Borrower and the Nebraska Department of Environment and Energy ("NDEE") and the issuance of a promissory note (the "Note") by the Borrower to the NDEE. 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 the **[DESCRIBE RESOLUTION AND/OR ORDINANCE PURSUANT TO WHICH LOAN AGREEMENT AND NOTE ARE TO BE ENTERED INTO]**;
- (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, 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,

For Borrower's Legal/Bond Counsel:

A Form of Opinion of Borrower's Counsel is required for this loan agreement. Attachment E is NDEE's recommended language and attestations with areas of blue to be changed. The letter should be on counsel's letterhead, if applicable, and must be signed by a counselor.

Signing of the letter can be done in one of two ways:

- 1) A signed letter is provided to the SRF Project Manager to insert and incorporate into the loan before document is electronically signed; or**
- 2) Counsel can sign a prepared letter inserted into the loan agreement at the time of electronic signing. Please provide an unsigned letter to the SRF Project Manager to incorporate into the loan document, and the name and email of the signee. When the loan goes out for electronic signing, the NDEE Director will sign the document; the loan will then automatically be sent to the Borrower for signature. Once signed, the loan will then automatically be sent to the attorney/bond counsel for final review and approval via signature.**

Any questions, please contact the SRF Project Manager.

ATTACHMENT F

PROMISSORY NOTE OF THE CITY OF DAVID CITY, NEBRASKA

FOR VALUE RECEIVED, the undersigned (the "Borrower") promises to pay, but solely from the sources described herein, to the order of the Nebraska Department of Environment and Energy ("NDEE"), or its successors and assigns, the principal sum of not to exceed \$19,665,000 [less any Loan Forgiveness as established by Section 2.01 of the Loan Agreement], to the extent disbursed pursuant to Section 2.01 and Section 2.05 of the Loan Agreement No. C318068 ("the Loan Agreement"), with interest on each such amount until paid, pursuant to Section 2.03 of the Loan Agreement between the NDEE and the Borrower. In addition, the Borrower shall pay an Administrative Fee on the outstanding principal amount of this Note per annum pursuant to Section 2.04 of the Loan Agreement. The said principal, interest, and Administrative Fee shall be payable in semiannual installments each payable on June 15 and December 15 of each year in accordance with Section 2.06 of the Loan Agreement. Each installment shall be in the amount set forth in Attachment A to the Loan Agreement. The Borrower will pay any penalty or additional interest due pursuant to Section 2.06(d) of this Loan Agreement.

All payments under this Note shall be payable at the offices of the NDEE in Lincoln, Nebraska, and upon the assignment of this Note to the NIFA, at the principal corporate trust office of a Trustee designated by the NIFA, or such other place as the NDEE may designate in writing.

This Note is issued pursuant to and is secured by the Loan Agreement and Ordinance No. 1472 (the "Ordinance") of the City of David City, Nebraska, the terms and provisions of which are incorporated herein by reference.

All payments of principal of and interest on this Note and other payment obligations of the Borrower hereunder shall be limited obligations of the Borrower payable solely out of the System Revenues (as defined in the Loan Agreement) on parity with the Existing Revenue Obligations (as defined in the Loan Agreement) and any Additional Revenue Obligations (as defined in the Loan Agreement) hereafter issued, as established in the Loan Agreement, and shall not be payable out of any other revenues of the Borrower. The obligations of the Borrower under this Note shall never constitute or give rise to a charge against its general credit or taxing power. This note shall not be a debt of the Borrower within the meaning of any constitutional statutory or charter limitation upon the creation of general obligation indebtedness of the Borrower.

If default be made in the payment of any installment due under this Note, or by the occurrence of any one or more of the Events of Default specified in Article V of the Loan Agreement, and if such Event of Default is not remedied as therein provided, or at any time thereafter, may give notice to the Borrower that all unpaid amounts of this Note then outstanding, together with all other unpaid amounts outstanding under the Loan Agreement, are due and payable immediately, and thereupon, without further notice or demand, all such amounts shall become and be immediately due and payable. Failure to exercise this option shall not constitute a waiver of the right to exercise the same at any time in the event of any continuing or subsequent default.

The Borrower hereby waives presentment for payment, demand, protest, notice of protest and notice of dishonor.

This Note and all instruments securing the same are to be construed according to the laws of the State of Nebraska. Signed and sealed, if applicable, by the following:

[SEAL] (if applicable)

CITY OF DAVID CITY, NEBRASKA

NEBRASKA DEPARTMENT OF ENVIRONMENT AND ENERGY

Attest:	_____	_____	_____
	(signature)	(signature)	(signature)
Title	Clerk	Title	Mayor
	_____		_____
Date	_____	Date	_____
	_____		_____
		Title	Director

		Date	_____

ATTACHMENT F

PROMISSORY NOTE OF THE CITY OF DAVID CITY, 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 NDEE 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 NDEE hereby assigns, grants and conveys any and all of the NDEE'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

By

(printed name)

(printed name)

Note For Borrower:

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

Nebraska Department of Environment & Energy

ATTN: SRF PROGRAM – Steve McNulty

PO Box 98922

Lincoln, NE 68509-8922

Please leave the 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 DAVID CITY

The following certifications are made in connection with the Agreement for Loan No. C318068 (the "Loan Agreement") between the Nebraska Department of Environment and Energy ("NDEE") and the City of David City, 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 NDEE, 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 and will be owned and operated by the Borrower. 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 David City, Nebraska

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

Date _____

ATTACHMENT H

RESOLUTION 15-2024

WHEREAS, the City of David City, Nebraska recognizes that a properly functioning sanitary sewer system is necessary to the health and welfare of the citizens of the City; and

WHEREAS, the Mayor and City Board of Trustees have determined that portions of the City sanitary sewer system are in need of significant repair and improvement; and

WHEREAS, funding for the cost of the repair and improvement of portions of the City sanitary sewer system may be obtained by loan from the Nebraska Department of Environment and Energy, subject to certain requirements and obligations; and

NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Board of Trustees of the City of David City, Nebraska that they should execute the contract for loan between the Nebraska Department of Environment and Energy and the City of David City, Nebraska designated as Project No. C318068, incorporated by reference into this Resolution as if fully set forth; and

BE IT FURTHER RESOLVED, Jessica Miller, Mayor, is hereby directed to execute the Agreement and all other documents necessary to facilitate the Loan between the Nebraska Department of Environment and Energy and the City of David City, Nebraska for the purpose of repairing and improving the City's sanitary sewer system; and

BE IT FURTHER RESOLVED THAT Tami Comte, Clerk, be authorized and directed to sign all necessary documents, to furnish such assurances to the State of Nebraska as may be required by law or regulations, and to receive payment on behalf of the applicant.

HEREBY the RESOLUTION has passed and approved as of April 10, 2024.

City of David City, Nebraska

(signature)

Title

Mayor

Date

IN WITNESS WHEREOF, I have hereunto set my hand and seal this day of _____.

(signature)

Title

Clerk

ATTACHMENT I

ADDITIONAL DOCUMENTS

Attachment I.01 – Loan Forgiveness Agreement Form

ATTACHMENT I.01

LOAN FORGIVENESS AGREEMENT FORM

PART I

SRF LOAN FORGIVENESS AWARD

Pursuant to Neb. Rev. Stat. §81-15,153 et. Seq., as amended, the NDEE hereby offers the following Loan Forgiveness to the Borrower for the project as established by this Loan Agreement:

- (1) Loan Forgiveness of up to 37.67% of eligible SRF project costs of this Loan Agreement, not to exceed seven million four hundred eight thousand one hundred twenty-five dollars (\$7,408,125).

These funds are 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 population at the time of the Loan Forgiveness award for the Borrower is equal to or less than ten thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census;
- (2) The Borrower has demonstrated serious financial hardship through the assessment and processes established in the related NDEE's State Fiscal Year's (SFY) Intended Use Plan;
- (3) The Borrower is considered at least a "moderate" or "high" sustainability risk by the NDEE's Assessing Wastewater Infrastructure Needs (AWIN) scoring. If the Borrower is not considered a "moderate" or "high" sustainability risk through AWIN scoring, they have submitted a request to be considered a financial hardship community along with sufficient documentation demonstrating financial hardship to the NDEE and have received approval from the NDEE to the request;
- (4) The Borrower's Median Household Income (MHI) as listed in the NDEE'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; and
- (5) The total amount of Loan Forgiveness cannot exceed 37.67% of eligible SRF project cost of this Loan Agreement.

PART III

SUBSIDY CONDITIONS

- (1) The total award of all Subsidies 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 NDEE 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 Subsidies and a demand that any disbursed Subsidy 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 NDEE and promptly repay loan and Subsidy funds issued by the NDEE to the extent these costs are covered by the other funding.
- (6) Notice of annulment of any Subsidy 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 V

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 David City, Nebraska;
- (2) The award is subject to the applicable provisions of §81-15,153 et. seq., as amended, the Federal Act, and Regulations, and that acceptance of any payments constitutes an agreement by the grantee 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 Subsidies have been disbursed and is outstanding under this Loan Agreement, the recipient will notify the NDEE immediately and such portion of the Loan Amount and Subsidy amount shall become immediately due and payable.

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

CITY OF DAVID CITY, NEBRASKA

NEBRASKA DEPARTMENT OF
ENVIRONMENT AND ENERGY

By

By

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

June 27, 2024
City of David City

June 27, 2024

City Council Proceedings

May 22, 2024

Page # 71

(signature)

Title

Mayor

Date

(signature)

Title

Director

Date

City Council Proceedings

May 22, 2024

Page # 72

Council member Kevin Woita made a motion to appoint Joanna Uden as the City's prosecuting attorney for ordinance violations and approve the retainer agreement. Council Member Bruce Meysenburg seconded the motion. The motion carried.

Jim Angell: Yea, Tom Kobus: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Woita: Yea

Yea: 6, Nay: 0

Council member Keith Marvin made a motion to approve amendment #4 to JEO's owner-engineer agreement for sewer extension to the soccer fields and ball fields. Council Member Tom Kobus seconded the motion. The motion carried.

Jim Angell: Yea, Tom Kobus: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Woita: Yea

Yea: 6, Nay: 0

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AMENDMENT TO OWNER-ENGINEER AGREEMENT
Amendment No. 4

The Effective Date of this Amendment is: May 14, 2024.

ARTICLE 1 – BACKGROUND DATA

Effective Date of Owner-Engineer Agreement: May 4th, 2022.
Owner: City of David City, Nebraska
Engineer: JEO Consulting Group, Inc.
Project: David City Campground JEO # 220784

ARTICLE 2 – NATURE OF AMENDMENT

- Additional Services to be performed by Engineer
- Modifications to services of Engineer
- Modifications of payment to Engineer

ARTICLE 3 – DESCRIPTION OF MODIFICATIONS

Provide design, permitting, construction, RPR, and post construction phase services to extend the proposed sewer along H St north to ballfield and soccer complex concessions and restrooms. Add changes to construction contract via change order.

ARTICLE 4 – AGREEMENT SUMMARY

See Exhibit A, attached.

The foregoing Agreement Summary is for reference only and does not alter the terms of the Agreement, including those set forth in the original Exhibit B.

Owner and Engineer hereby agree to modify the above-referenced Agreement as set forth in this Amendment. All provisions of the Agreement not modified by this, or previous Amendments remain in effect.

OWNER:
By: _____
Print
name: _____
Title: _____
Date Signed: _____

ENGINEER: JEO Consulting Group, Inc.
By: A.D.B.
Print
name: Aaron Beauclair
Title: Project Engineer
Date Signed: May 14, 2024

David City Campground 220784 -AMENDMENT # 4 - Exhibit A
5/14/2024
Page 1

AMENDMENT # 4-EXHIBIT A
Scope of Services – David City Campground
JEO Project No. 220784.00

PROJECT UNDERSTANDING

The City of David City is under contract with Vrba Construction to complete a sewer extension north of the existing RV campground towards 'H' Street and then east along 'H' Street ending at the Thege residence. The city would like to extend this sewer north to provide sewer service to the concessions and restrooms at the ballfields and soccer complex immediately north of 'H' Street.

Engineering services include site topography survey, design, NDEE approval, construction phase services, RPR, and post construction phase services. Bidding is not included, as it is intended that this extension will be added to the Vrba Construction contract via change order.

SCOPE OF SERVICES:

SITE SURVEY PHASE

Task Description: JEO proposes to complete a topographic survey of the proposed sanitary sewer route. Only survey that is required to design the sewer extension to the ballfield concession stands will be obtained.

1. Establish vertical and horizontal control using the local coordinate system.
2. Conduct a topographic survey of the area for the proposed sanitary sewer main and service routes and other expected construction area.

DESIGN PHASE

Task Description: JEO proposes to design the sewer main alignment to cross 'H' Street and end with an end of line manhole where concession stand service lines will be extend to their respective buildings. Plan and profile sheets for the main line and services will be provided. Because this is intended to be added to the existing Vrba Construction contract, technical specifications will not be prepared.

Design:

1. Create drawings that include the sewer extension plan and profile on the proposed alignment.
2. The plans to include the following:
 - A. Utility (Sanitary Sewer) Improvements Plan and Profile Sheet(s).
 - B. Details Sheet – if needed
3. Conduct an internal QA/QC of the project documents and incorporate necessary revisions.
4. Run title search and create easement drawings and descriptions for new easements along proposed sewer line. Provide to city attorney or other third party for securing.
5. Create final drawings and sign and seal by engineer and a coordinating professional (if required) all registered in the State of Nebraska.

David City Campground 220784 -AMENDMENT # 4 - Exhibit A
5/14/2024
Page 2

6. Submit signed and sealed plans and specifications to NDEE for construction permit review and approval.
7. Upon approval, furnish the final plans to the Owner and Contractor via Change Order

ESTIMATED TIME FRAME:

1. Site Survey and Design Phase – 30 days from effective date of the additional work authorization.

FEE SCHEDULE (LUMP SUM) AMENDMENT #4:

1. Site Survey	\$ 2,700
2. Design Phase	\$ 6,300
3. Bidding and Negotiation Phase	\$ 0
4. Construction Phase	\$ 1,800
5. <u>Post Construction Phase</u>	<u>\$ 290</u>
Total Lump Sum Phase	\$ 11,090

FEE SCHEDULE (HOURLY) AMENDMENT #4:

1. <u>Construction RPR</u>	<u>\$ 2,500</u>
Total Hourly Phase	\$ 2,500

CONTRACT EXCLUSIONS

- a. Services not explicitly detailed in scope of service.
- b. Special meetings and meetings not outlined in the Scope of Services.
- c. Geotechnical investigation of subsurface soil conditions.
- d. Wetland Delineation or other Environmental Field Investigation.
- e. Securing land rights or negotiating easements.
- f. Individual Corps 404 permitting, Environmental assessments.
- g. SWPPP administration and inspections during construction.
- h. Payment of permit application/review fees.
- i. Construction testing services fees.

OWNER RESPONSIBILITY

1. The Owner must provide the following information to the Engineer/Consultant:
 - A. Access to all potential project sites.
 - B. Utility site maps of potential project sites.

Council member Tom Kobus made a motion to approve the purchase of a John Deere Z930 M Ztrak mower for the street department in the amount of \$13,250. Council Member Jim Angell seconded the motion. The motion carried.

Jim Angell: Yea, Tom Kobus: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat

Meysenburg: Yea, Kevin Woita: Yea

Yea: 6, Nay: 0



Quote Summary

Prepared For:
CITY OF DAVID CITY
PO BOX 191
DAVID CITY, NE 68632
Home: 402-367-3135
Business: 402-367-3135
BBUNTGEN@DAVIDCITYNE.COM

Prepared By:
Trojan Travis
AKRS Equipment Solutions
2445 N 4th Street
David City, NE 68632
Phone: 402-367-3636
Mobile: 402-641-1033
ttrojan@akrs.com

AKRS highly recommends adding PowerGard Extended Warranty and UltraGard Physical Damage Insurance to protect your purchase.

Quote Id: 30773391
Created On: 18 April 2024
Last Modified On: 18 April 2024
Expiration Date: 01 May 2024

Equipment Summary	Suggested List	Selling Price	Qty	Extended
JOHN DEERE Z930M ZTrak	\$ 15,744.00	\$ 13,250.00 X	1 =	\$ 13,250.00
Equipment Total				\$ 13,250.00

Quote Summary	
Equipment Total	\$ 13,250.00
SubTotal	\$ 13,250.00
Est. Service Agreement Tax	\$ 0.00
Total	\$ 13,250.00
Down Payment	(0.00)
Rental Applied	(0.00)
Balance Due	\$ 13,250.00

Salesperson : X _____

Accepted By : X _____



Selling Equipment



Quote Id: 30773391 Customer: CITY OF DAVID CITY

JOHN DEERE Z930M ZTrak				
Hours:				Suggested List
Stock Number:				\$ 15,744.00
				Selling Price
				\$ 13,250.00
Code	Description	Qty	Unit	Extended
216CTC	Z930M ZTrak	1	\$ 14,409.00	\$ 14,409.00
Standard Options - Per Unit				
001A	United States/Canada	1	\$ 0.00	\$ 0.00
1036	24x12x12 Pneumatic Turf Tire for 54 In. and 60 In. Decks	1	\$ 0.00	\$ 0.00
1504	60 In. Side Discharge Mower Deck	1	\$ 0.00	\$ 0.00
2093	Fully Adjustable Suspension Seat with Armrests (24" High Back)	1	\$ 595.00	\$ 595.00
Standard Options Total				\$ 595.00
Value Added Services Total				\$ 0.00
Other Charges				
	Freight	1	\$ 400.00	\$ 400.00
	EnviroCrate	1	\$ 65.00	\$ 65.00
	Setup	1	\$ 275.00	\$ 275.00
Other Charges Total				\$ 740.00
Suggested Price				\$ 15,744.00
Customer Discounts				
Customer Discounts Total			\$ -2,494.00	\$ -2,494.00
Total Selling Price				\$ 13,250.00

Mayor Jessica Miller stated that the next item on the agenda was consider CDBG Downtown Revitalization Grant Application for Steve Hicks, 585 E Street – State Farm [2024-1] for exterior cleaning and painting, awning and signage in the amount of \$8,498.25.

Kelly Gentrup with SENDD introduced herself and explained the process for applying for CDBG funds. She said that Steve Hicks has completed the necessary paperwork and the project was ready for Council approval.

Council member Bruce Meysenburg made a motion to approve the CDBG Downtown Revitalization Grant Application for Steve Hicks, 585 E Street - State Farm [2024-1] for exterior cleaning and painting, awning and signage in the amount of \$8,498.25. Council Member Jim Angell seconded the motion. The motion carried.

Jim Angell: Yea, Tom Kobus: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Woita: Yea
Yea: 6, Nay: 0

Council member Kevin Woita made a motion to approve the Interlocal Agreement for dispatch services with Butler County. Council Member Bruce Meysenburg seconded the motion. The motion carried.

Jim Angell: Yea, Tom Kobus: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Woita: Yea
Yea: 6, Nay: 0

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INTERLOCAL AGREEMENT

THIS INTERLOCAL AGREEMENT (the “**Agreement**”) is entered into by and between the County of Butler, Nebraska, a political subdivision of the State of Nebraska (the “**County**”) and the City of David City, in Butler County, Nebraska, a municipal corporation (the “**City**”) this ____ day of May, 2024. County and City may be referred to herein as the “**Party**” or collectively as the “**Parties**”, WITNESSETH:

WHEREAS, the City has reinstated the David City Police Department to operate within the city limits of David City, Nebraska; and

WHEREAS, in order to function efficiently, the David City Police Department is in need of dispatch services; and

WHEREAS, it is recognized by both Parties that the dispatch services needed by the David City Police Department would be best accomplished jointly because of certain cost savings and efficiencies or certain hardships which might be experienced if undertaken singularly; and

WHEREAS, Sections 13-804 through 13-814 of the Nebraska Revised Statutes authorize the joint exercise of powers, privileges and authority by agreement of two or more public agencies of any power common the them; and

WHEREAS, these governmental entities do agree that the solution to this problem lies in cooperative action; and

WHEREAS, it is the desire of the parties hereto signed to participate in the joint use of trained dispatch personnel, operational equipment and resources.

NOW, THEREFORE, BE IT RESOLVED that the County of Butler and the City of David City hereto signed do agree to the following:

1. Information and Access and Equipment: Each signature agency will provide all necessary information and access to its respective departments that is needed. The dispatch office and equipment will remain the property of Butler County.
2. Administration of the Agreement: A separate entity is not created by this Agreement, and the dispatch services provided for by this Agreement will be administered by the Butler County Board of Supervisors, the Butler County 911 Coordinator and/or the NCIC Control Board.
3. City of David City Police Department: The purpose of this Agreement is to provide non-emergency dispatch services to the David City Police Department. The County will provide continuous answering and dispatch services to the

David City Police Department using qualified dispatch personnel that are trained to a competent level.

4. Fees for Services: The charge for services provided in the first year will be Seven Thousand Four Hundred Ninety-Eight and 56/100 dollars (\$7,498.56) per year (April 1 – March 31) payable at a rate of Six Hundred twenty-four and 88/100 dollars (\$624.88) per month for the purpose of covering the cost for dispatch service provided from the period of April 1, 2024 to March 31, 2025. This amount is based upon the City paying twenty percent (20%) of the cost of the Motorola console maintenance agreement, SUA/SUG services from the state and TTY services from the State. Twenty percent (20%) is based on an estimate of the total calls that will be received by the 911 center for dispatch services to the David City Police Department. This number will be reviewed every year by the Parties on or before March 15 of each year and the City's percentage of the costs will be based on the total number of calls received by the 911 center for the City applied to the costs of the Motorola console maintenance agreement, SUA/SUG services from the state and TTY services from the State. The payments made by the City to the County under this Agreement shall be paid to Butler County and remitted to the Butler County Treasurer.
5. Agreement Duration: The term of this Agreement will be from April 1, 2024 through March 31, 2025 and shall automatically renew and continue to be in effect until such time either party terminates the Agreement as provided herein.
6. Agreement Amendments: This Agreement may be amended at any time by the written agreement of the Parties.
7. Termination. This Agreement may be terminated by either Party by giving written notice to the other party no later than April 1 of the year in which the party wishes to terminate.
8. Notices. Any notices required to be sent hereunder shall be given by mailing or delivering written notice as follows:

Notices to the County:

Butler County Clerk
451 N 5th Street
David City NE 68632

Notices to the City:

City of David City Clerk
490 E Street
PO Box 191
David City NE 68632

9. Hold Harmless: Butler County and the City of David City agree to indemnify and hold each other harmless from any and all liability arising from the actions of each party's employees or agents.

IN WITNESS WHEREOF, the Parties hereto have respectively signed this Agreement as of the dates written herein.

ATTEST:

CITY OF DAVID CITY
BUTLER COUNTY, NEBRASKA

CITY CLERK

BY: _____

MAYOR

ATTEST:

COUNTY OF BUTLER, NEBRASKA
A political subdivision of the
State of Nebraska



COUNTY CLERK

BY:  _____

BOARD CHAIRMAN

Council member Keith Marvin made a motion to reappoint Keith Byrkit to the Library Board for a four-year term (May, 2024 - May, 2028). Council Member Bruce Meysenburg seconded the motion. The motion carried.

Jim Angell: Yea, Tom Kobus: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat

Meysenburg: Yea, Kevin Woita: Yea

Yea: 6, Nay: 0

Jan Sypal introduced herself and asked if a member of the Housing Authority Board has to be a resident of David City.

Mayor Miller and the Council members determined they would need to find the answer to the question before Donna Behrns reappointment.

Council member Jim Angell made a motion to table the reappointment of Donna Behrns to the Housing Authority Board for five-year term (May, 2024 - May, 2029). Council Member Keith Marvin seconded the motion. The motion carried.

Jim Angell: Yea, Tom Kobus: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat

Meysenburg: Yea, Kevin Woita: Yea

Yea: 6, Nay: 0

Council member Kevin Woita made a motion to adjourn. Council Member Tom Kobus seconded the motion. The motion carried and Mayor Jessica Miller declared the meeting adjourned at 7:58 p.m.

Jim Angell: Yea, Tom Kobus: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat

Meysenburg: Yea, Kevin Woita: Yea

Yea: 6, Nay: 0



CERTIFICATION OF MINUTES

May 29, 2024

I, Tami Comte, duly qualified and acting City Clerk for the City of David City, Nebraska, do hereby certify with regard to all proceedings of May 29, 2024; that all of the subjects included in the foregoing proceedings were contained in the agenda for the meeting, kept continually current and available for public inspection at the office of the City Clerk; that such subjects were contained in said agenda for at least twenty-four hours prior to said meeting; that the minutes of the meeting of the City Council of the City of David City, Nebraska, were in written form and available for public inspection within ten working days and prior to the next convened meeting of said body; that all news media requesting notification concerning meetings of said body were provided with advance notification of the time and place of said meeting and the subjects to be discussed at said meeting.

Tami Comte, City Clerk