

**CITY OF LA VISTA  
MAYOR AND CITY COUNCIL REPORT  
MAY 3, 2022 AGENDA**

<b>Subject:</b>	<b>Type:</b>	<b>Submitted By:</b>
AUTHORIZE BORROWING UP TO \$2,745,000 FROM NEBRASKA DEPT. OF ENVIRONMENT AND ENERGY - EAST LA VISTA SEWER REHABILITATION	RESOLUTION ◆ ORDINANCE RECEIVE/FILE	JEFF CALENTINE DEPUTY DIRECTOR OF PUBLIC WORKS

**SYNOPSIS**

An ordinance has been prepared authorizing the issuance of a Sewer Revenue Bond Series 2022 in a principal amount not to exceed \$2,745,000 and the related loan agreement.

**FISCAL IMPACT**

Payment of the loan must begin 3 years from the date the loan is signed or 1 year from the initiation of operation (IOO) date, whichever comes first. Repayment terms include semiannual payments of principal and interest of approximately \$72,200 each June 15<sup>th</sup> and December 15<sup>th</sup> until final maturity of the loan in June of 2043.

**RECOMMENDATION**

Approval

**BACKGROUND**

The East La Vista Sewer Rehabilitation is eligible for a loan from the State of Nebraska Department of Environment and Energy (NDEE) revolving fund program.

The NDEE has approved the East La Vista Sewer Rehabilitation project consisting of installation of cast-in-place pipe (CIPP) lining for all sewers point repairs for areas with significant pipe damage or offset joints, replacement of sanitary sewer laterals to residences, manhole rehabilitation and other related repairs and improvements which have been designated in the Sewer Rehabilitation Project (NDEE Project No. C318045).

For the purposes of paying the costs of the NDEE Project, it is necessary for the city to issue Sewer Revenue Bond, Series 2022 in the principal amount not to exceed \$2,745,000 issued as a single promissory note to the NDEE and payable from the revenues of the Sewer System.

**ORDINANCE NO. \_\_\_\_\_**

AN ORDINANCE AUTHORIZING THE ISSUANCE OF A SEWER REVENUE BOND, SERIES 2022, OF THE CITY OF LA VISTA, NEBRASKA, IN THE PRINCIPAL AMOUNT OF NOT TO EXCEED TWO MILLION SEVEN HUNDRED FORTY-FIVE THOUSAND DOLLARS (\$2,745,000), IN THE FORM OF A PROMISSORY NOTE ISSUED TO EVIDENCE INDEBTEDNESS TO THE NEBRASKA DEPARTMENT OF ENVIRONMENT AND ENERGY; APPROVING THE FORM OF SAID BOND (ISSUED AS A SINGLE PROMISSORY NOTE) AND RELATED LOAN AGREEMENT; PLEDGING AND HYPOTHECATING THE REVENUES AND EARNINGS OF THE SANITARY SEWER SYSTEM OWNED BY THE CITY FOR THE PAYMENT OF SAID BOND; PROVIDING FOR THE ISSUANCE AND SALE OF SAID BOND; AUTHORIZING THE DELIVERY OF SAID 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 PROCEEDS OF SAID BOND AND ORDERING THE ORDINANCE PUBLISHED IN PAMPHLET FORM.

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF LA VISTA, NEBRASKA, AS FOLLOWS:

Section 1. The Mayor and Council of the City of La Vista, Nebraska (the "City") hereby find and determine as follows:

- A. the City owns and operates a sanitary sewer system, said system as now existing together with all additions and improvements thereto hereafter acquired or constructed are herein referred to as the "Sewer System";
- B. the Sewer System represents a revenue-producing undertaking and facility of the City under the provisions of Sections 18-1803 to 18-1805, R.R.S. Neb, as amended, for which the City is authorized to issue revenue bonds;
- C. the City currently has outstanding no bonds, notes or other indebtedness for which the revenues of the Sewer System have been pledged or made security;
- D. The NDEE has approved a project of the City for its Sewer System consisting of the installation of cast-in-place pipe (CIPP) lining for all sewers, point repairs for areas with significant pipe damage or offset joints, replacement of sanitary sewer laterals to residences, manhole rehabilitation, and other related repairs and improvements, which has been designated as Project No. C318045 (the "NDEE Project"), which project is more fully described in the "Loan Agreement between Nebraska Department of Environment and Energy and City of La Vista, Nebraska, NDEE Project No. C318045" (the "NDEE Agreement"), and has agreed to lend from monies in NDEE's Construction Loan Fund or from other sources in the total principal amount of not to exceed \$2,745,000, and in connection with such loan has agreed to accept one or more bonds payable from the revenues of the Sewer System, and the Mayor and Council do hereby confirm, ratify and approve all prior actions of the City relative to approval and execution of the said NDEE Agreement;
- E. For the purposes of paying the costs of the NDEE Project as set forth in this Section 1, it is necessary and advisable for the City to issue its Sewer Revenue Bond, Series 2022, (the "2022 Bond") in the principal amount of not to exceed \$2,745,000, issued as a single promissory note to the NDEE and payable from the revenues of the Sewer System.

Section 2. Unless the context shall clearly indicate otherwise, the following terms (in addition to any terms herein defined by parentheses) shall have the following meanings when used in this Ordinance:

- (a) the term “Additional Bonds” shall mean any and all bonds including refunding bonds and notes, hereafter authorized and issued by the City pursuant to the terms of this Ordinance which are equal to lien to the Sewer Revenue Bond, Series 2022 and equally and ratably secured therewith including any such bonds issued pursuant to Section 11 of this Ordinance.
- (b) the term “Sewer System” shall mean the Sewer System of the City of La Vista.
- (c) the term “revenues” shall mean all the rates, rentals, fees, charges, earnings and other monies from any source whatever derived by the City of La Vista through its ownership and operation of the Sewer System (including, without limitation, fees and charges for hook ups, taps and capital facilities charges).

Section 3. To provide for the payment of the costs of the Project, there shall be and there is hereby ordered issued the 2022 Bond, in the form of and evidenced by a single promissory note (sometimes referred to in this Ordinance, according to the context, as the “2022 NDEE Note” and sometimes as the “2022 Bond”) in the principal amount of not to exceed Two Million Seven Hundred Forty-five Thousand Dollars (\$2,745,000), with such 2022 NDEE Note to be substantially in such form and to have such payment terms as are set forth as included in the NDEE Agreement attached as Exhibit A to this Ordinance, which exhibit is by such reference incorporated herein as if fully set forth. In connection with the issuance of the 2022 NDEE Note, the City shall also enter into an agreement with NDEE previously described herein and entitled Loan Agreement Between Nebraska Department of Environment and Energy and the City of La Vista, Nebraska, NDEE Project No. C318045 in substantially the form set forth in Exhibit A to this Ordinance, which exhibit is by such reference incorporated herein as if fully set forth. The terms and conditions of the 2022 NDEE Note and NDEE Project are hereby approved and the Mayor and the City Clerk are hereby authorized to execute and deliver the 2022 NDEE Note and the 2022 Bond for and on behalf of the City in substantially the form approved but with such changes from the forms presented and attached hereto as such officers shall deem appropriate for and on behalf of the City.

Section 4. The City hereby pledges and hypothecates all revenues and earnings, now or hereafter received, or otherwise due and owing to the City, derived from the ownership and operation of the City’s Sewer System and all extensions and enlargements thereof, including any additions and improvements hereafter made, for the payment of

principal of and interest on the 2022 Bond and any Additional Bonds as the same fall due. So long as said revenues and earnings are sufficient to make all required payments of principal and interest with respect to the 2022 Bond and any Additional Bonds, all such required payments with respect to each such issue shall be made in full from the respective sub-accounts in the Sewer Revenue Bond Account for each such series. In the event that such revenues and earnings are insufficient to meet the required payments from the Sewer Revenue Bond Account, such revenues and earnings shall be allocated to the 2022 Bond and any such Additional Bonds, pro rata in accordance with the respective unpaid principal amounts then outstanding for the 2022 Bond and such Additional Bonds. The pledge and hypothecation provided for the 2022 Bond, as provided for in this Ordinance, is intended to be and shall provide for a first and prior pledge of, lien upon and security interest in the revenues of the Sewer System (subject to the right of the City to issue Additional Bonds as provided in this Ordinance) for the payment of principal of and interest on the 2022 Bond, superior to any pledge or promise made with respect to any other indebtedness of the City as to its Sewer System, 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, as amended, with respect to its Sewer System.

Section 5. The City will maintain and collect rates and charges for all Sewer System service furnished from the Sewer System adequate to produce revenue and earnings sufficient at all times:

- (a) to provide for the payment of interest on and principal of the 2022 Bond and any Additional Bonds as such interest and principal become due; and
- (b) to pay all reasonable costs of operation and maintenance of the Sewer System, including adequate insurance as provided by this Ordinance and to pay for the necessary and reasonable repairs, replacements and extensions of said Sewer System.

Section 6. The application and handling of all revenues collected, derived and to be derived by the City from the operation of the Sewer System shall be governed by the terms of this Ordinance. There has been, and shall be, established a separate fund held by the City Treasurer, designated as the "La Vista Sewer Fund" (herein referred to as the "Sewer Fund"), into which all of the revenues of the Sewer System are required to be deposited as and when received. Said Sewer System revenues are required to be deposited as and when reviewed. Said Sewer Fund shall be maintained so long as any of the 2022 Bond and any Additional Bonds remain outstanding. Within the Sewer Fund, in

accordance with the requirements of this Ordinance, the accounts and sub-accounts shall be as follows:

I. OPERATION AND MAINTENANCE ACCOUNT: The City shall set aside in this account each month an amount sufficient for the operation and maintenance of its Sewer System and the expenses of maintenance and operation of said utilities shall be paid out of this account.

II. SEWER REVENUE BOND ACCOUNT: Within the Sewer Revenue Bond Account there is hereby ordered established the 2022 Bond Payment Sub-account. Out of the Sewer Fund the City shall transfer into the Sewer Revenue Bond Account on or before the first day of each calendar month (or such other dates as may be determined in the NDEE Agreement) the amounts required to be deposited to the 2022 Bond Payment Sub-account in accordance with the following requirements for such sub-account:

Out of the Sewer Fund, the City shall pay into the Sewer Revenue Bond Account on or before the first day of each calendar month (or such other day of the month as may be determined in the NDEE Agreement) an amount sufficient to meet the payment requirements for each sub-account established therein. Upon the issuance of the 2022 Bond there is hereby ordered established the 2022 Bond Sub-account for purposes of providing the payments on the 2022 Bond as the same falls due. Beginning with the first day of the month which immediately follows the "Initiation of Operation" (as defined in the NDEE Agreement, hereafter referred to as the "Initiation of Operation") of the Project, and continuing on the corresponding day of each month thereafter an amount which, when combined with additional equal monthly amounts to be deposited pursuant to this subparagraph prior to the next falling payment date for the 2022 Bond, will be sufficient to provide the required funds due on such payment date with respect to the 2022 Bond.

In any ordinance authorizing Additional Bonds a separate sub-account in the Sewer Revenue Bond Account shall be established for such Additional Bonds. Credits to the sub-accounts in the Sewer Revenue Bond Account shall be made at such times and in such amounts to provide sufficient funds in each sub-accounts within the Sewer Revenue Bond Account shall be made without preference or priority as between sub-accounts and if amounts available are insufficient to make all credits as required the available funds shall be allocated among the sub-accounts for the 2022 Bond, and the various issues of Additional Bonds pro rata in accordance with the respective unpaid principal amounts then outstanding for each issue. Each sub-account in the Sewer Revenue Bond Account shall constitute a separate account held in trust by the City Treasurer for the separate benefit of the issue of bonds for which it is established.

All such deposits to the Bond Payment Sub-accounts for shall be made in such amounts and at such times that there will be sufficient sums in each such sub-account to meet the payments required to be made by the City with respect to and the 2022 Bond as the same fall due. All such deposits are required to be made without preference or priority as between each such sub-account and any similar sub-account established for the 2022 Bond or any issue of Additional Bonds and if amounts available are insufficient to make all deposits as required, the available funds shall be allocated on a pro rata basis in accordance with the terms of Section 4 of this Ordinance. In the event of the issuance of any Additional Bonds, the City shall in the ordinance authorizing their issuance provide for a related sub-account in the Sewer Revenue Bond Account and for deposits into such sub-account sufficient to make payments upon such Additional Bonds as the same fall due. Such sub-account and the deposits required to be made thereto shall have equal rank and standing with the Bond Payment Sub-accounts established for the 2022 Bond Payment Sub-account and the payments required to be made to each thereof. Each sub-account in

the Sewer Revenue Bond Account shall constitute a separate fund held in trust by the City for the separate special benefit of the issue or series of bonds for which it is established.

III. SURPLUS ACCOUNT: After providing for the Operation and Maintenance Account and after making the payments as hereinabove required to be made into the Sewer Revenue Bond Account, all remaining funds in the Sewer Fund shall be deposited into the Surplus Account to be used as follows:

- 1) To fill any deficiency in the foregoing accounts.
- 2) For the purpose of calling under their option provisions the 2022 Bond or for purchasing on the open market Additional Bonds.
- 3) For improvements, replacements, extensions and enlargements to the Sewer System.
- 4) For any other legal municipal purpose provided that money expended for other municipal purposes does not exceed 50% of the amount on hand in the Surplus account as of the time of such expenditure.

Any ordinance authorizing Additional Bonds may provide for the creation of additional accounts and sub-accounts in the Surplus Account or other accounts as may be established for such other purposes as the Mayor and Council shall deem appropriate. In the event that there is a deficiency in any of the accounts described in the foregoing subsections I and II, all moneys in the Surplus Account shall be applied for the purpose described in (1) above prior to any application to the purposes described in (2), (3) or (4) above.

Moneys on deposit in the Sewer Fund shall be invested in such obligations as are permitted by law for cities of the class to which the City belongs, maturing at such times not later than ten years from the date of such investment and in such amounts as shall be determined by the City. Earnings from the investment of such moneys shall not be credited to the particular fund, account or sub-account from which the investment was made but shall be treated as earnings of the Sewer System and shall be treated as any other revenues of such Sewer. All investments held for the credit of any Fund or Account or sub-account may be sold when required to make the payment to be made from such Fund or Account or sub-account. Any moneys credited to the Sewer Fund or any Account or sub-account therein which are not invested shall be secured in the manner provided by law for the security of funds of cities of the class to which the City of La Vista belongs.

It is understood that the revenues of the Sewer System are to be credited to the various accounts and sub-accounts hereinabove described and as set out in this Ordinance, and if within any period the revenues are insufficient to credit the required amounts in any of the said accounts or sub-accounts, the deficiencies shall be made up the following period or periods after payment into all accounts enjoying a prior claim on the revenues have been made in full.

Section 7. The City of La Vista shall keep proper books of record and account, separate and apart from all other records and accounts, showing complete and correct entries of all transactions relating to the Sewer System and the holder or holders of the 2022 Bond and any Additional Bonds or any duly authorized agent or agents of such holders shall have the right at all reasonable times to inspect all records, accounts and data relating thereto and to inspect said Sewer and all properties comprising the same.

Section 8. The City Treasurer and the City Clerk shall be bonded, in addition to their official bond, by an insurance company licensed to do business in Nebraska, in amounts sufficient to cover at all times all the revenues and earnings of the Sewer System placed in their hands. Any other person employed by the City in the collection or handling of monies derived from the operation of the Sewer System 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 System, and they shall secure the faithful accounting of all monies.

Section 9. The City will maintain the Sewer System in good condition and operate the same in an efficient manner and at a reasonable cost. The City agrees with the holder or holders from time to time of the 2022 Bond that the City will continue to own, free from all liens and encumbrances, except the liens and pledges provided for in this Ordinance and will adequately maintain and efficiently operate said Sewer; provided, however, the City may dispose of property which is recommended for disposal by the manager or superintendent of the utilities, or an independent Consulting Engineer and which is determined as a matter of record by the Council to have become obsolete, non-productive or otherwise unusable to the advantage of the City.

Section 10. Nothing in this Ordinance shall be construed in such a manner as to prevent the issuance by the City of La Vista of Additional Bonds payable from the revenues of the Sewer System, which Additional Bonds shall be on a parity with the lien of the 2022 Bond and equally and ratably secured therewith and entitled to the security and benefits of this Ordinance; provided that the issuance of such Additional Bonds is permitted pursuant to the terms of this ordinance, the NDEE Agreement and any ordinance authorizing Additional Bonds then outstanding.

Section 11. Nothing herein contained shall prevent the City from issuing bonds, revenue notes, or other forms of indebtedness, the payment of principal and interest of which is a charge upon all or a portion of the revenues of the Sewer System, junior or

inferior to the 2022 Bond herein authorized, and to the payments to be made into the Operation and Maintenance Account, Sewer Revenue Bond Account described in Section 6 hereof 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 System or from other funds which are available for such debt service.

Section 12. The City will not hereafter grant any franchise or right to any person, firm or corporation to own or operate a water or sewer plant or system in competition with those owned by the City.

Section 13. 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 holder of the 2022 Bond by an instrument in writing signed by such holder 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 holder of the 2022 Bond and interest thereon 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 holder of said bond shall be binding upon such holder and upon the City as fully as though such action were specifically and expressly authorized by the terms of this Ordinance. Any modification of the provisions of this Ordinance made as aforesaid shall be set forth in a supplemental ordinance to be adopted by the Mayor and Council of said City.

Section 14. So long as the 2022 Bond is 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 the holder of said bond, and this Ordinance and every provision and covenant hereof shall constitute a contract of the City with every holder from time to time of said bond. Any holder of the 2022 Bond 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 System, the segregation of the revenues of the Sewer System and the application thereof to the respective Fund, Accounts and sub-accounts referred to and described in Section 6 of this Ordinance. Any holder of the 2022 Bond herein authorized or Additional Bonds shall, after default in payment, have the right to request the appointment of a receiver for the Sewer System.

Section 15. The City's obligations under this Ordinance and the liens, pledges, covenants and agreements of the City herein made or provided for with respect to the 2022 Bond, shall be fully discharged and satisfied and such bond shall no longer be deemed outstanding hereunder if such bond shall have been purchased and cancelled by the City or when payment of the principal of and interest thereon to the respective date of maturity or redemption (a) shall have been made or caused to be made in accordance with the terms thereof, or (b) shall have been provided for by depositing with a national or state bank having trust powers or trust company, in trust solely for such payment, (i) sufficient money to make such payment and/or (ii) direct general obligations of the United States government or obligations guaranteed by the United States government ("Deposit Securities") 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 ensure the availability of sufficient money to make such payment; provided, however, that, with respect to the 2022 Bond if it is to be paid prior to maturity, the City shall have duly given notice of redemption of such bond as provided by law or made irrevocable provisions for the giving of such notice. Any such money so deposited with a bank or trust company may be invested and reinvested in Deposit Securities and all interest and income from such Deposit Securities in the hands of such bank or trust company, in excess of the amount required to pay principal of and interest on the bond for which such monies were deposited, shall be paid over to the City as and when collected. With respect to any deposit made for purposes of satisfying the 2022 Bond under this Section 17, 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 2022 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 Wastewater Facilities Construction Loan Fund 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 2022 Bond unless the 2022 Bond is to be prepaid and redeemed within 60 days from the time of such deposit.

Section 16. 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 17. The Mayor and Council hereby expressly declare the intent and understanding that interest on the 2022 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 2022 Bond pursuant to Section 149(e) of said Code.

Section 18. All ordinances, resolutions or orders or parts thereof in conflict with the provisions of this Ordinance are to the extent of such conflict hereby repealed.

Section 19. This Ordinance shall be published in pamphlet form and take effect as provided by law.

PASSED AND APPROVED this 5th day of April, 2022.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

[SEAL]

Exhibit "A"

Loan Agreement

Exhibit "A"

Loan Agreement

---

**LOAN AGREEMENT  
(Governmental Borrower)**

**Between the**

**NEBRASKA DEPARTMENT OF ENVIRONMENT AND ENERGY**

**and**

**CITY OF LA VISTA, NEBRASKA**

**NDEE PROJECT NO. C318045**

**DATED AS OF \_\_\_\_\_**

---

LOAN AGREEMENT  
BETWEEN THE  
NEBRASKA DEPARTMENT OF ENVIRONMENT AND ENERGY  
AND  
THE CITY OF LA VISTA, NEBRASKA  
PROJECT NO. C318045

This LOAN AGREEMENT with SRF Number C318045 (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 La Vista, 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 La Vista, 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.

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.

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 La Vista, 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 Repayments" means the payments of the Loan required to be made by the Borrower pursuant to Section 2.06 of this Loan Agreement.
- (w) "Loan Terms" means the terms as established by this Loan Agreement.
- (x) "NDEE" means the Nebraska Department of Environment and Energy established pursuant to Neb. Rev. Stat. §81-1501 et. seq, as amended.
- (y) "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.
- (z) "Note" means a promissory note of the Borrower with respect to the Loan in the form of Attachment F to this Loan Agreement.
- (aa) "Project" means an eligible item for funding under the Act and is as described in Exhibit 1 of this Loan Agreement.
- (bb) "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.

- (cc) "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.
- (dd) "Retainage" means construction costs held back by the Borrower from the payments due to the contractor to assure satisfactory completion of the construction agreement.
- (ee) "Revenue Obligation" means, without duplication, (i) the Loan; (ii) any Existing Revenue Obligation; and (iii) any Additional Revenue Obligation.
- (ff) "Sanitary Sewer Collection System" means the structures, equipment, and processes required to collect and transport sanitary sewer wastewater to the wastewater treatment facility.
- (gg) "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.
- (hh) "State" means the State of Nebraska acting, unless otherwise specifically indicated, by and through the NDEE and its successors and assignees.
- (ii) "Subsidies" means Loan Forgiveness Grant and Small Town 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.
- (jj) "System Revenues" means all revenues derived by the Borrower from the User Charge System.
- (kk) "Trustee" means the trustee under any trust indenture with respect to revenue bonds the proceeds of which are deposited in the Fund.
- (ll) "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.
  - (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.
- (mm) "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 two million, seven hundred forty-five thousand dollars (\$2,745,000) to the Borrower to pay a portion of the Project Costs described in Attachment B hereto.

The final actual amount of the Loan 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 (20) 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 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.** 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.

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.

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.

Additional requirements for disbursement include:

- (a) 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.
- (b) 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:
  - (1) An inventory of critical assets that are part of the Wastewater Treatment Works.
  - (2) An evaluation of the condition and performance of inventoried assets or asset groupings.
  - (3) A certification that the Borrower has evaluated and will be implementing water and energy conservation efforts as part of the plan; and
  - (4) 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.

- (c) 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.

#### **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 or Small Town Grant, 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 or Small Town Grant, 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 – April 2022
- (b) Substantial Completion of Construction – May 2023
- (c) Estimated Initiation of Operation – May 2023

**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 obtain approval from the NDEE of its Sewer User Ordinance and its User Charge System, and to adopt and implement any necessary changes before the Project is placed in operation.
- (b) The Borrower agrees that it shall not modify, amend, make additions to, or deletions from its 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.

**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 prior to award 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, bona fide 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](http://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) Prevailing Wage. All laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to the Public Law 111-88 shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code. With respect to the labor standards specified in this section, the Secretary of Labor shall have the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (64 Stat. 1267; 5 U.S.C.App.) and section 3145 of Title 40, United States Code.

The Borrower is responsible to ensure compliance with the prevailing wage requirements and will include the following information in the agreement documents:

Contractors and subcontractors on USEPA federally assisted construction projects are required to pay their laborers and mechanics not less than those established by the U.S. Department of Labor. A current wage decision containing the appropriate building and/or heavy type rates shall be included in the specifications. In addition, labor standard provisions, Davis Bacon and Related Acts, for federally assisted agreements shall be placed in the federal assurances of project specifications.

If an area wide decision or classification does not exist for the type of work to be performed, building or heavy, a decision or request for authorization of additional classification and rate must be requested from the Labor Department using the Standard Form 1444, Request for Authorization of Additional Classification and Rate available on the web and can be completed online at:

[www.gsa.gov/portal/forms/download/115906](http://www.gsa.gov/portal/forms/download/115906). These types of decisions or classifications are project specific, e.g. they are applicable only to the project for which they are requested and may not be used on any other project. Project decisions generally have an expiration date of 180 days after the date of issuance. Modifications or reissued decisions are applicable to a project if received by the NDEE not less than ten days prior to bid opening. Modifications to classification and wage rates after bid opening shall be paid to all workers performing work in the new or modified classification from the first day on which work is performed in the additional classification as approved by the Administrator of the Wage and Hour Division, Employment Standards Administration, US Department of Labor.

Weekly Payrolls will be submitted by the contractor to the Borrower or the Authorized Representative utilizing the Department of Labor Form WH-347. A web-form which can be completed on-line is found at <https://www.dol.gov/agencies/whd/forms/wh347>. Instructions are also found online. The Borrower may also be required to submit copies of the Weekly Payrolls to the NDEE. As to each payroll copy received, the Borrower shall provide written confirmation on a form supplied by the NDEE indicating whether or not the Project is in compliance with the requirements of 29 CFR 5.5(a)(1) based on the most recent payroll copies for the specified week. The Borrower or the Borrower's representative shall periodically interview a sufficient number of the contractor's or subcontractor's employees entitled to Davis Bacon prevailing wages to verify that contractors or subcontractors are paying the appropriate wage rates.

As provided in 29 CFR 5.6(a)(6), all interviews must be conducted in confidence. The Borrower must use Standard Form 1445 or equivalent documentation to memorialize the interviews. Copies of the SF 1445 form are available at <https://www.gsa.gov/forms-library/labor-standards-interview-0>. It is recommended that the Borrower or the Borrower's Representative should conduct interviews with a representative group of covered employees within two weeks of each contractor or subcontractor's submission of its initial weekly payroll data and two weeks prior to the estimated completion date for the contract or subcontract. EPA has issued a waiver from the two-week interview interval requirements by a November 16, 2012, EPA Memorandum, Class Deviation – Prevailing Wage Interview Interval Requirement in Clean Water and Drinking Water State Revolving Funds (CWSRF and DWSRF) Capitalization Grants. The provision for two-week interview intervals is not a regulatory or statutory requirement and has been superseded by the class deviation. The Borrower or Borrower's

representative should conduct such interviews if and when the Borrower or the Borrower's representative finds it necessary to ensure that contractors are complying with the prevailing wage requirements.

- (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; and
  - (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.

### **ARTICLE III**

#### **LOAN CONDITIONS AND TERMS**

**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 User Charge System as the dedicated source of revenue for the repayment of the Loan. 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 Works, (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 revenue of the Borrower's outstanding Wastewater Treatment Facility revenue bonds and Sanitary Sewer Revenue Bonds now outstanding, if any, and any additional revenue bonds hereafter issued on parity with such outstanding revenue bonds. The Borrower hereby expressly reserves the right to issue Revenue Obligations on parity with the lien described in this Loan Agreement and the other outstanding Revenue Obligations, provided the Borrower complies with the covenants contained in this Subsection 3.02(a). These revenues shall be collected and maintained in separate accounts or ledgers for the operation and maintenance costs and for principal and interest payments on the Loan. The funds in such accounts or ledgers shall be restricted for their intended use, and the Loan obligation shall be reported on the financial statements of the Borrower. The Borrower agrees to develop a User Charge System based on actual or estimated use of 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 Public Water System 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) Nonpayment 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; and
- (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; and
- (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; and

- (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; and
- (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; and
- (b) Second, to pay interest on the Loan as the same becomes due and payable; and
- (c) Third, to pay principal due and payable on the Loan; and
- (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 La Vista  
8116 Park View Blvd.  
La Vista, NE 68128  
Phone: (402) 331-4343

(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 LA VISTA 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 LA VISTA, NEBRASKA

By \_\_\_\_\_  
(printed name)

\_\_\_\_\_  
(signature)

Title \_\_\_\_\_ Mayor

Date \_\_\_\_\_

NEBRASKA DEPARTMENT OF  
ENVIRONMENT AND ENERGY

By \_\_\_\_\_  
(printed name)

\_\_\_\_\_  
(signature)

Title \_\_\_\_\_ Director

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 being financed by the CWSRF is the installation of cast-in-place-pipe (CIPP) lining for all sewers, along with point repairs for areas with significant pipe damage or offset joints. Sanitary sewer laterals to the residences will be replaced from the sewer past the roadway to the curb. In addition, manhole rehabilitation will also be included in this project.

The project includes all related work, land testing, construction change orders, and engineering fees.

## ATTACHMENT A

### LOAN REPAYMENT SCHEDULE

Payments are due on June 15 and December 15 of each year. Interest and Administrative fees shall accrue at the applicable rate as established by Section 2.03 and Section 2.04 of this Loan Agreement and repayments of such accrued interest and administrative fees will be repaid after the effective date of this Loan Agreement. A commencement of principal repayment is estimated to start on December 15, 2023 (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;
- (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 (20) 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  
TO THE LOAN AGREEMENT BETWEEN NDEE AND  
THE COMMUNITY OF LA VISTA  
PROJECT NUMBER 8045  
LOAN AMORTIZATION SCHEDULE (PROJECTED)

17-Mar-2022

TOTAL PROJECT = 2,745,000.00  
LOAN AMT + FORGIVENESS = 2,745,000.00  
PRINCIPAL FORGIVENESS = 0.00  
CDBG GRANT = 0.00

LOAN AMOUNT = 2,745,000.00  
TERM YEARS = 20  
LOAN INTEREST RATE (%) = 0.50  
FEE RATE (%) = 0.50

DUE DATE OF PAYMENT	TOTAL PAYMENT	= FEE PAYMENT +	LOAN PAYMENT	LOAN PAYMENT	= INTEREST PAYMENT +	PRINCIPAL PAYMENT	BEGINNING BALANCE	-	PRINCIPAL PAYMENT	=	ENDING BALANCE
15-Dec-2023	79,061.60	= 6,862.50 +	72,199.10	72,199.10	= 6,862.50 +	65,336.60	2,745,000.00	-	65,336.60	=	2,679,663.40
15-Jun-2024	78,898.26	= 6,699.16 +	72,199.10	72,199.10	= 6,699.16 +	65,499.94	2,679,663.40	-	65,499.94	=	2,614,163.46
15-Dec-2024	78,734.51	= 6,535.41 +	72,199.10	72,199.10	= 6,535.41 +	65,663.69	2,614,163.46	-	65,663.69	=	2,548,499.77
15-Jun-2025	78,570.35	= 6,371.25 +	72,199.10	72,199.10	= 6,371.25 +	65,827.85	2,548,499.77	-	65,827.85	=	2,482,671.92
15-Dec-2025	78,405.78	= 6,206.68 +	72,199.10	72,199.10	= 6,206.68 +	65,992.42	2,482,671.92	-	65,992.42	=	2,416,679.50
15-Jun-2026	78,240.80	= 6,041.70 +	72,199.10	72,199.10	= 6,041.70 +	66,157.40	2,416,679.50	-	66,157.40	=	2,350,522.10
15-Dec-2026	78,075.41	= 5,876.31 +	72,199.10	72,199.10	= 5,876.31 +	66,322.79	2,350,522.10	-	66,322.79	=	2,284,199.31
15-Jun-2027	77,909.60	= 5,710.50 +	72,199.10	72,199.10	= 5,710.50 +	66,488.60	2,284,199.31	-	66,488.60	=	2,217,710.71
15-Dec-2027	77,743.38	= 5,544.28 +	72,199.10	72,199.10	= 5,544.28 +	66,654.82	2,217,710.71	-	66,654.82	=	2,151,055.89
15-Jun-2028	77,576.74	= 5,377.64 +	72,199.10	72,199.10	= 5,377.64 +	66,821.46	2,151,055.89	-	66,821.46	=	2,084,234.43
15-Dec-2028	77,409.69	= 5,210.59 +	72,199.10	72,199.10	= 5,210.59 +	66,988.51	2,084,234.43	-	66,988.51	=	2,017,245.92
15-Jun-2029	77,242.21	= 5,043.11 +	72,199.10	72,199.10	= 5,043.11 +	67,155.99	2,017,245.92	-	67,155.99	=	1,950,089.93
15-Dec-2029	77,074.32	= 4,875.22 +	72,199.10	72,199.10	= 4,875.22 +	67,323.88	1,950,089.93	-	67,323.88	=	1,882,766.05
15-Jun-2030	76,906.02	= 4,706.92 +	72,199.10	72,199.10	= 4,706.92 +	67,492.18	1,882,766.05	-	67,492.18	=	1,815,273.87
15-Dec-2030	76,737.28	= 4,538.18 +	72,199.10	72,199.10	= 4,538.18 +	67,660.92	1,815,273.87	-	67,660.92	=	1,747,612.95
15-Jun-2031	76,568.13	= 4,369.03 +	72,199.10	72,199.10	= 4,369.03 +	67,830.07	1,747,612.95	-	67,830.07	=	1,679,782.88
15-Dec-2031	76,398.56	= 4,199.46 +	72,199.10	72,199.10	= 4,199.46 +	67,999.64	1,679,782.88	-	67,999.64	=	1,611,783.24
15-Jun-2032	76,228.56	= 4,029.46 +	72,199.10	72,199.10	= 4,029.46 +	68,169.64	1,611,783.24	-	68,169.64	=	1,543,613.60
15-Dec-2032	76,058.13	= 3,859.03 +	72,199.10	72,199.10	= 3,859.03 +	68,340.07	1,543,613.60	-	68,340.07	=	1,475,273.53
15-Jun-2033	75,887.28	= 3,688.18 +	72,199.10	72,199.10	= 3,688.18 +	68,510.92	1,475,273.53	-	68,510.92	=	1,406,762.61
15-Dec-2033	75,716.01	= 3,516.91 +	72,199.10	72,199.10	= 3,516.91 +	68,682.19	1,406,762.61	-	68,682.19	=	1,338,080.42
15-Jun-2034	75,544.30	= 3,345.20 +	72,199.10	72,199.10	= 3,345.20 +	68,853.90	1,338,080.42	-	68,853.90	=	1,269,226.52
15-Dec-2034	75,372.17	= 3,173.07 +	72,199.10	72,199.10	= 3,173.07 +	69,026.03	1,269,226.52	-	69,026.03	=	1,200,200.49
15-Jun-2035	75,199.60	= 3,000.50 +	72,199.10	72,199.10	= 3,000.50 +	69,198.60	1,200,200.49	-	69,198.60	=	1,131,001.89
15-Dec-2035	75,026.60	= 2,827.50 +	72,199.10	72,199.10	= 2,827.50 +	69,371.60	1,131,001.89	-	69,371.60	=	1,061,630.29
15-Jun-2036	74,853.18	= 2,654.08 +	72,199.10	72,199.10	= 2,654.08 +	69,545.02	1,061,630.29	-	69,545.02	=	992,085.27
15-Dec-2036	74,679.31	= 2,480.21 +	72,199.10	72,199.10	= 2,480.21 +	69,718.89	992,085.27	-	69,718.89	=	922,366.38
15-Jun-2037	74,505.02	= 2,305.92 +	72,199.10	72,199.10	= 2,305.92 +	69,893.18	922,366.38	-	69,893.18	=	852,473.20
15-Dec-2037	74,330.28	= 2,131.18 +	72,199.10	72,199.10	= 2,131.18 +	70,067.92	852,473.20	-	70,067.92	=	782,405.28
15-Jun-2038	74,155.11	= 1,956.01 +	72,199.10	72,199.10	= 1,956.01 +	70,243.09	782,405.28	-	70,243.09	=	712,162.19
15-Dec-2038	73,979.51	= 1,780.41 +	72,199.10	72,199.10	= 1,780.41 +	70,418.69	712,162.19	-	70,418.69	=	641,743.50
15-Jun-2039	73,803.46	= 1,604.36 +	72,199.10	72,199.10	= 1,604.36 +	70,594.74	641,743.50	-	70,594.74	=	571,148.76
15-Dec-2039	73,626.97	= 1,427.87 +	72,199.10	72,199.10	= 1,427.87 +	70,771.23	571,148.76	-	70,771.23	=	500,377.53
15-Jun-2040	73,450.04	= 1,250.94 +	72,199.10	72,199.10	= 1,250.94 +	70,948.16	500,377.53	-	70,948.16	=	429,429.37
15-Dec-2040	73,272.67	= 1,073.57 +	72,199.10	72,199.10	= 1,073.57 +	71,125.53	429,429.37	-	71,125.53	=	358,303.84
15-Jun-2041	73,094.86	= 895.76 +	72,199.10	72,199.10	= 895.76 +	71,303.34	358,303.84	-	71,303.34	=	287,000.50
15-Dec-2041	72,916.60	= 717.50 +	72,199.10	72,199.10	= 717.50 +	71,481.60	287,000.50	-	71,481.60	=	215,518.90
15-Jun-2042	72,737.90	= 538.80 +	72,199.10	72,199.10	= 538.80 +	71,660.30	215,518.90	-	71,660.30	=	143,858.60
15-Dec-2042	72,558.75	= 359.65 +	72,199.10	72,199.10	= 359.65 +	71,839.45	143,858.60	-	71,839.45	=	72,019.15
15-Jun-2043	72,379.25	= 180.05 +	72,199.20	72,199.20	= 180.05 +	72,019.15	72,019.15	-	72,019.15	=	0.00
TOTALS	3,030,928.20	142,964.10	2,887,964.10	2,887,964.10	142,964.10	2,745,000.00			2,745,000.00		

Following the final disbursement and receipt of the initiation of Operation date, Attachment A shall be prepared by NDEE as provided in Section 2.05(a) of the Loan Agreement.

## ATTACHMENT B

### PROJECT COSTS

<u>COST CLASSIFICATION</u>	<u>ESTIMATED TOTAL COST</u>
1) Administrative	\$ 75,000
2) Land, structures, right-of-ways, appraisals, etc.	\$ 65,500
3) Relocation expenses and payments	\$ -
4) Architectural and engineering fees	\$ 137,500
5) Project inspection fees	\$ 298,000
6) Site work, demolition and removal	\$ 1,669,000
7) Construction	\$ -
8) Equipment	\$ -
9) Miscellaneous	\$ -
<b>10) SUBTOTAL (sum of lines 1-9)</b>	<b>\$ 2,245,000</b>
11) Contingencies	\$ 500,000
<b>12) SUBTOTAL (sum of lines 10-11)</b>	<b>\$ 2,745,000</b>
Less project (program) income	
<b>TOTAL PROJECT COSTS (line 12 minus 13)</b>	<b>\$ 2,745,000</b>
<u>SOURCE OF FUNDS</u>	
NDEE CWSRF Loan (Principal)	\$ 2,745,000
<b>TOTAL PROJECT ASSISTANCE</b>	<b>\$ 2,745,000</b>

*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

<u>MONTH - YEAR</u>	<u>ESTIMATED OUTLAY</u>
May 2022	\$ 888,000.00
June 2022	\$ 260,000.00
July 2022	\$ 307,000.00
August 2022	\$ 260,000.00
September 2022	\$ 260,000.00
October 2022	\$ 155,000.00
April 2023	\$ 460,000.00
May 2023	\$ 155,000.00
<b>TOTAL</b>	<b>\$ 2,745,000</b>

**ATTACHMENT C  
FINANCIAL ANALYSIS**

**CITY OF LA VISTA, NEBRASKA**

**CWSRF PROJECT NO. C318045**

The City of La Vista, Nebraska has requested CWSRF funding assistance of \$2,745,000 to finance sanitary sewer repairs and the installation of Cast-in-Place-Pipe (CIPP) lining within the 67-acre East La Vista residential neighborhood. The sanitary sewer infrastructure within this neighborhood is over 60 years old and has significant issues with joint displacement, root intrusion, and private lateral connection defects contributing to infiltration. This Financial Capability Analysis is intended to create an abbreviated general assessment of the City of La Vista's financial status and to assess potential impacts of the SRF's loan on the community and impact to user rates.

The following documents were reviewed and used to complete this analysis:

1. Audit reports of the City of La Vista for fiscal years 2018, 2019, and 2020
2. Water/Wastewater Pre-application for Federal/State Assistance; and
3. Miscellaneous correspondence from the City of La Vista and their representatives.

Analysis of the Sewer Utility:

Table 1 contains information pertaining to revenue, expenses, and net gains (losses) for each fiscal year ending September 30 for La Vista from 2018 to 2020. This data was derived from the audit report for each year.

**Table 1**

City of La Vista Sewer Fund Summary

<b>Audit Year</b>	<b>Revenue (includes interest income)</b>	<b>Expenses (excludes depreciation)</b>	<b>Revenue Minus Expenses</b>
2018	\$ 3,969,222	\$ 3,071,711	\$ 897,511
2019	\$ 4,227,078	\$ 3,313,290	\$ 913,788
2020	\$ 4,257,276	\$ 3,384,672	\$ 872,604

The City of La Vista manages their sewer utility which generates revenue by assessing user fees on the residents and businesses in La Vista. This revenue stream goes towards paying for the operation and maintenance expenses incurred to operate the sewer utility. The revenue stream is also used to pay the debt service due to outstanding sewer utility loans. The sewer utility ran an operating surplus from 2018 through 2020, as shown in Table 1. The Sewer Fund is currently the City's only business-type activity. As of September 30, 2020, the City had no outstanding debt for the Sewer Fund.

Analysis of the Sewer Utility User Rate Impact:

The City of La Vista is eligible for a 20-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 loan funding assistance of \$2,745,000 would have an annual debt service of \$157,960 plus the CWSRF contract required 10%

coverage or \$15,796 for delinquency or loss of users, as shown in the following table, totaling \$173,756 for the first-year debt service, including coverage.

**Table 2**

Proposed CWSRF Loan No. C318045, Principal Amount of \$2,745,000

Loan Term (Years)	Interest Rate	First Year Payment	110% of Payment
20	0.5% + 0.5% fee	\$157,960	\$173,756

The revenues from the La Vista's sewer utility will be dedicated to repaying the loan. The City of La Vista has a population of 16,746 according to the 2020 Census. The estimated number of users in the city is approximately 7,213 users. The current residential sewer rate is \$12.72 per month, with an added charge of \$4.16 per 748 gallons of flow, resulting in an average monthly sewer bill of \$40.53 for a typical 5,000-gallon monthly household water use. Based solely upon the number of estimated users for the City, a minimum of an additional \$2.01 per user, per month is recommended for proper debt coverage for the SRF Loan to maintain current levels of operational expenses. This would increase the average monthly sewer use rate to approximately \$42.52 per user, or \$510.45 annually. A final assessment of revenues and costs will be analyzed to determine the actual user charge adjustment as necessary.

The Median Household Income for the City of La Vista, according to the 5-year American Community Survey (2014 – 2018), is \$67,605. Therefore, the projected sewer rate of \$510.45 annually per user is 0.76% of the City's median household income and is below the EPA's 2.0% upper-level threshold 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](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 La Vista (the "Borrower"), of an Agreement for Loan No. C318045 (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; §§31-732, 31-739, and 31-740, and all other applicable statutes governing eligible municipalities, the Loan Agreement creates a valid lien on the funds pledged by the Borrower pursuant to Section 3.02 of the Loan Agreement for the security of the Loan Agreement and the Note and no other debt of the Borrower is secured by a superior lien on such funds.
6. The Borrower has obtained or made all approvals, authorizations, consents, or other actions of, and filings, registrations, or qualifications with, the Borrower or any other government authority which are legally required to allow the Borrower to enter into and perform its obligations under the Loan Agreement and the Note and borrow the full Principal Amount pursuant to the Loan Agreement and the Note.

Very truly yours,

---

ATTACHMENT F

**PROMISSORY NOTE OF THE CITY OF LA VISTA, 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 \$2,745,000 [less any Loan Forgiveness and Small Town Grant 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. C318045 ("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 of the City of La Vista, 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 User Charge System (as defined 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 this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

[SEAL] (if applicable)

CITY OF LA VISTA, NEBRASKA

NEBRASKA DEPARTMENT OF  
ENVIRONMENT AND ENERGY

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

ATTACHMENT F

PROMISSORY NOTE OF THE CITY OF LA VISTA, 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:

By \_\_\_\_\_  
(printed name)

\_\_\_\_\_  
(signature)

Title \_\_\_\_\_

Date \_\_\_\_\_

NEBRASKA INVESTMENT FINANCE  
AUTHORITY

By \_\_\_\_\_  
(printed name)

\_\_\_\_\_  
(signature)

Title Director

Date \_\_\_\_\_

**ATTACHMENT G**

**CERTIFICATE OF THE CITY OF LA VISTA**

The following certifications are made in connection with the Agreement for Loan No. C318045 (the "Loan Agreement") between the Nebraska Department of Environment and Energy ("NDEE") and the City of La Vista, 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 to construct a facility that will be owned and operated by the Borrower. There will be no Agreements for the use of the facility 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 La Vista, Nebraska

\_\_\_\_\_  
(signature)

Title \_\_\_\_\_ Mayor \_\_\_\_\_

Date \_\_\_\_\_

**ATTACHMENT H**

**RESOLUTION \_\_\_\_\_**

WHEREAS, the City of La Vista, 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.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Board of Trustees of the City of La Vista, Nebraska that they should execute the contract for loan between the Nebraska Department of Environment and Energy and the City of La Vista, Nebraska designated as Project No. C318045, incorporated by reference into this Resolution as if fully set forth; and

BE IT FURTHER RESOLVED, \_\_\_\_\_, 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 La Vista, Nebraska for the purpose of repairing and improving the city's sanitary sewer system; and

BE IT FURTHER RESOLVED THAT \_\_\_\_\_, 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 \_\_\_\_\_.

City of La Vista, 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**

These forms will be loan specific so will need to be added/removed separately for each agreement.