

# MCCOOK CITY COUNCIL

## REGULAR MEETING

**Monday, April 4, 2022**  
**5:30 PM - City Council Chambers**

Roll Call.

Excuse Absences.

Open Meetings Act Announcement.

Pledge of Allegiance.

Call to Order.

Items.

1. Announcements & Recognitions.
2. Public Hearings.
  - A. Conduct a public hearing on the application of Hurling Hatchets, LLC; dba "The Axe House", for Class "C" License #124768 - (Beer, Wine Distilled Spirits, On and Off Sale) License under the Nebraska Liquor Control Commission, to be located at 219 Norris Avenue, McCook, Nebraska.
    1. Reconvene as a City Council.
  - B. Recommend approval to the Nebraska Liquor Control Commission the application of Hurling Hatchets, LLC; dba "The Axe House", for Class "C" License #124768 - (Beer, Wine Distilled Spirits, On and Off Sale) License under the Nebraska Liquor Control Commission, to be located at 219 Norris Avenue, McCook, Nebraska.
3. Proclamations.
  - A. Approve the proclamation designating the week of April 3 - 9, 2022 as "National Library Week" in the City of McCook and authorize the Mayor to sign.
  - B. Approve the proclamation designating the week of April 10 through 16, 2022, as "National Public Safety Telecommunicators Week" and authorize the Mayor to sign.
4. Consent Agenda.
  - A. Approve the minutes of the March 21, 2022 regular City Council meeting.
  - B. Approve bid specifications and documents for a Fire Safety Trailer Simulator and set the date to receive bids as April 25, 2022, at 2:00 P.M.
  - C. Approve an application from Pinpoint Communications, Inc. of Cambridge, Nebraska to occupy city right-of-way for the purpose of installing underground

conduit and a vault for fiber optic cable starting at East "J" Street and East 11th Street, continuing north approximately 2900 feet.

- D. Approve the Encroachment Agreement with Black Hills Nebraska Gas, LLC(BHENEG) for the sole purpose of gathering soil samples, along West 1st Street, West 2nd Street, West 3rd Street, West 4th Street and the alley connecting West 2nd Street and West 3rd Street south of West "B" Street and north of West "A" Street and authorize the Mayor to sign.
  - E. Receive and file the confirmation of an emergency purchase of one (1) new Manitex A62 truck mounted aerial work platform mounted on a 2022 Ford F550 Chassis for the Street Department, from Crane and Machinery at a cost of \$176,400.00, due to the ongoing supply chain issues.
5. Regular Agenda.
- A. Approve the job description for an assistant city manager position and associated pay grade.
  - B. Approve a request from Adamark Investments, LLC to allow the former St. Catherine's Apartments facility to be rehabilitated contingent upon: 1) Adamark Investments, LLC developing a rehabilitation plan by April 1, 2023; 2) upon completion of the rehabilitation plan, Adamark Investments, LLC beginning the process of physically rehabilitating the structure; and 3) during the course of its ownership, Adamark Investments, LLC maintaining the exterior portions of the lot in a condition that conforms with the City of McCook's Code of Ordinances.
  - C. Consider on its second reading Ordinance No. 2022-3036 providing for the amendment of Chapter 38: Fee Schedule - Appendix E, Water Department Rates and Fees.
    - 1. Chairperson asks Clerk to read Ordinance by title.
    - 2. Consider approval of Ordinance No. 2022-3036 upon its second reading.
  - D. Consider on its first reading Ordinance No. 2022-3037 providing for the amendment of Chapter 38: Appendix D, Sewer Department Rates and Fees.
    - 1. Chairperson asks Clerk to read Ordinance by title.
    - 2. Consider approval of Ordinance No. 2022-3037 upon its second reading.
  - E. Consider Ordinance No. 2022-3038 amending Ordinance No. 2021-3016 to correct certain provisions related to defined terms.
    - 1. Chairperson asks Clerk to read Ordinance by title.
    - 2. Consider statutory rule requiring reading on three separate occasions be suspended. Motion to suspend the rule must be adopted by three-fourths of the Council.
    - 3. Final passage of Ordinance No. 2022-3038.
    - 4. Chairperson declaration after vote and passage, if approved under suspension of the rule.
  - F. Consider Ordinance No. 2022-3039 authorizing an amendment of an existing loan agreement between the city of McCook and the Nebraska Department of Environment and Energy to adjust prepayment provisions.
    - 1. Chairperson asks Clerk to read Ordinance by title.
    - 2. Consider statutory rule requiring reading on three separate occasions be suspended. Motion to suspend the rule must be adopted by three-fourths of the Council.

3. Final passage of Ordinance No. 2022-3039.
  4. Chairperson declaration after vote and passage, if approved under suspension of the rule.
- G. Consider Ordinance No. 2022-3040 authorizing and providing for the issuance of a \$2,490,000 aggregate principal amount Combined Utilities Revenue Bond, Series 2022, in the form of a promissory note of the City of McCook, to pay the costs of acquiring, constructing, improving, extending, equipping, and furnishing improvements to the City's water works plant and water system, as well as, approving the execution and delivery of a loan agreement with the Nebraska Department of Environment and Energy.
1. Chairperson asks Clerk to read Ordinance by title.
  2. Consider statutory rule requiring reading on three separate occasions be suspended. Motion to suspend the rule must be adopted by three-fourths of the Council.
  3. Final passage of Ordinance No. 2022-3040.
  4. Chairperson declaration after vote and passage, if approved under suspension of the rule.
- H. Council Comments.
- I. Meeting of the McCook Community Development Agency.
1. Recess as a City Council and convene as the McCook Community Development Agency for consideration of the CDA Agenda.
  2. Call to Order and Roll Call.
  3. Open Meetings Act Announcement.
  4. Approve Resolution No. CDA 2022-01 making a minor modification and amendment to the MEDC Infill Housing Project Redevelopment Plan Amendment to correct the legal description identified therein.
  5. Approve Resolution No. CDA 2022-02 authorizing and approving the first amendment to the redevelopment agreement for the MEDC Infill Housing Project to adjust the Effective Date contemplated in the original Redevelopment Agreement.
  6. Adjourn the McCook Community Development Agency meeting.
- J. An Executive Session may be held upon a majority vote of the Council for the protection of public interest for a strategy session with respect to litigation as evidenced by communication of notice of appeal from SBA Towers IV, LLC of the special exception granted to Parallel Infrastructure for a telecommunications tower.
1. Nebraska Open Meetings Act statement, if a motion to close passes.
  2. If moved into Executive Session, motion to close.
- K. An Executive Session may be held upon a majority vote of the Council for the protection of public interest for a strategy session with respect to litigation Case No. CI 21-159, City of McCook vs. Sarah L. Wederski.
1. Nebraska Open Meetings Act statement, if a motion to close passes.
  2. If moved into Executive Session, motion to close.

Adjournment.

**CITY MANAGER'S REPORT  
APRIL 4, 2022 CITY COUNCIL MEETING**

---

**ITEM:**            2.

**RECOMMENDATION:**

ITEM A            Conduct a public hearing on the application of Hurling Hatchets, LLC; dba "The Axe House", for Class "C" License #124768 - (Beer, Wine Distilled Spirits, On and Off Sale) License under the Nebraska Liquor Control Commission, to be located at 219 Norris Avenue, McCook, Nebraska.

ITEM B            Recommend approval to the Nebraska Liquor Control Commission the application of Hurling Hatchets, LLC; dba "The Axe House", for Class "C" License #124768 - (Beer, Wine Distilled Spirits, On and Off Sale) License under the Nebraska Liquor Control Commission, to be located at 219 Norris Avenue, McCook, Nebraska.

---

**BACKGROUND:**

Upon notice from the Liquor Control Commission, the City has 45 days to conduct a hearing concerning the requested license. The Council may choose not to make a recommendation of approval or denial to the Commission.

Per §53-133, the Liquor Control Commission shall set for hearing any application wherein:

- 1) There is a recommendation of denial from the local governing body.
- 2) A citizens protest; or
- 3) Statutory problems that the Commission discovers.

**FISCAL  
IMPACT:**        None.

**APPROVALS:**

  
\_\_\_\_\_  
Lea Ann Doak, City Clerk-Treasurer

March 27, 2022

  
\_\_\_\_\_  
Nathan Schneider, City Manager

March 27, 2022

**EXHIBIT #1**

**PAGE(S) - 1**

## NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that Hurling Hatchets, LLC; dba "The Axe House", has filed an application for Class "C" License #124768 - (Beer, Wine, Distilled Spirits, On and Off Sale) under the Nebraska Liquor Control Commission, to be located at 219 Norris Avenue, McCook, Nebraska.

All persons desiring to give evidence before the McCook City Council in support of or protest against the issuance of such license may do so at the time of this hearing to be held Monday, April 4, 2022 at 5:30 P.M., C.D.S.T.; in the City Council Chambers, 505 West "C" Street, McCook, Nebraska.

-s- Lea Ann Doak  
City Clerk

Publish: March 25, 2022.

**EXHIBIT #2**

**PAGE(S) - 1**



**Pete Ricketts**  
Governor

STATE OF NEBRASKA

NEBRASKA LIQUOR CONTROL COMMISSION

**Hobert B. Rupe**  
Executive Director  
301 Centennial Mall South, 5<sup>th</sup> Floor  
P.O. Box 95046  
Lincoln, Nebraska, 68509-5046  
Phone (402) 471-2571  
Fax (402) 471-2814 or (402) 471-2374  
TSR USER 800-833-7252 (TTY)  
Web Address <http://www.lcc.nebraska.gov/>

# RECEIPT

From: NLCC -KIM FREDERICK  
To: CITY OF MCCOOK  
Re: HURLING HATCHETS, LLC  
DBA: THE AXE HOUSE  
License #: C 124768

Please complete this page immediately and fax or email to us acknowledging you have received the application. Signatures are not required.

Lea Ann Dool  
Clerk's Name (Acknowledgement of receipt of the application)

3/7/2022  
Date Received

**EXHIBIT #3**

**PAGE(S) - 2**

**Kim Lowe**  
Commissioner

**Bruce Bailey**  
Chairman

**Harry Hoch**  
Commissioner

## Lea Ann Doak

---

**From:** Lea Ann Doak  
**Sent:** Monday, March 7, 2022 2:43 PM  
**To:** 'Frederick, Kim'; Tracy Burkey  
**Subject:** RE: 124768 The Axe House  
**Attachments:** receipt.pdf

Attached is a signed copy of the receipt.

### **Lea Ann Doak, CMC**

City Clerk-Treasurer  
505 West "C" Street  
PO Box 1059  
McCook NE 69001-1059  
308-345-2022 ext. 226  
308-345-1461 (Fax)

---

**From:** Frederick, Kim  
**Sent:** Monday, March 7, 2022 8:33 AM  
**To:** BURKEY@CITYOFMCCOOK.COM; ldoak@cityofmccook.com  
**Subject:** 124768 The Axe House

### ***Kim Frederick***

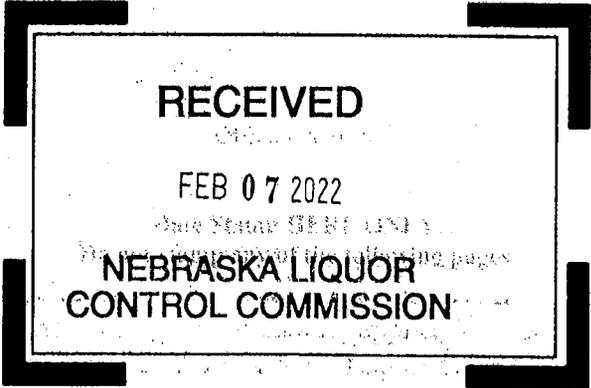
Licensing Division  
**Nebraska Liquor Control Commission**  
301 Centennial Mall South  
Lincoln, NE 68509  
[kim.frederick@nebraska.gov](mailto:kim.frederick@nebraska.gov)  
(402) 471-4885  
(402) 471-2814 (Fax)  
<https://lcc.nebraska.gov>

# APPLICATION FOR LIQUOR LICENSE CHECKLIST RETAIL

NEBRASKA LIQUOR CONTROL COMMISSION  
301 CENTENNIAL MALL SOUTH  
PO BOX 95046  
LINCOLN, NE 68509-5046  
PHONE: (402) 471-2571  
FAX: (402) 471-2814  
EMAIL: [lcc.frontdesk@nebraska.gov](mailto:lcc.frontdesk@nebraska.gov)  
WEBSITE: [www.lcc.nebraska.gov](http://www.lcc.nebraska.gov)

License Class: C

License Number:  
**124768**



**Office Use Only**

NEW / REPLACING  TOP Yes /  No

Hot List Yes /  No Initial: BH

## PLEASE READ CAREFULLY

See directions on the next page. Provide all the items requested. Failure to provide any item will cause this application to be returned or placed on hold. All documents must be legible. Any false statement or omission may result in the denial, suspension, cancellation or revocation of your license. If your operation depends on receiving a liquor license, the Nebraska Liquor Control Commission cautions you that if you purchase, remodel, start construction, spend or commit money that you do so at your own risk. Prior to submitting your application review the application carefully to ensure that all sections are complete, and that any omissions or errors have not been made. You may want to check with the city/village or county clerk, where you are making application, to see if any additional requirements must be met before submitting application to the Nebraska Liquor Control Commission.

APPLICANT NAME Ben Springer Hurling Hatchets LLC

TRADE (DBA) NAME The Axe House

PREVIOUS TRADE (DBA) NAME N/A

CONTACT PHONE NUMBER 308 340 0795

CONTACT EMAIL ADDRESS ben.springer@hotmail.com

Cumhx  
CTE  
Need info - 0047

1-31-2012

See attached  
Form 100 pg 2  
etc?

Office use only

PAYMENT TYPE Check 3428

AMOUNT \$400 RCPT \_\_\_\_\_

RECEIVED: [Signature]

DATE DEPOSITED \_\_\_\_\_

2200002634

EXHIBIT #4  
PAGE(S) - 29



# DIRECTIONS

Each item must be included with your application

1. Application fee of \$400 (nonrefundable), please pay online thru our PAYPORT system or enclose payment made payable to the Nebraska Liquor Control Commission
2. Enclose the appropriate application forms
  - Individual License (Form 104)
  - Partnership License (Form 105)
  - Corporate License (Form 101 & Form 103)
  - Limited Liability Company (LLC) (Form 102 & Form 103)Corporation or Limited Liability Company (LLC) must be active with the Nebraska Secretary of State
3. For citizenship enclose U.S. birth certificate; U.S. passport or naturalization paper
  - a. For residency enclose proof of registered voter in Nebraska
  - b. If permanent resident include Employment Authorization Card or Permanent Resident Card
  - c. See Applicant Guidelines for further assistance
4. Form 147 - Fingerprints are required for each person as defined in new application guide, found on our website under "Licensing Tab" in "Guidelines/Brochures".
5. If purchasing an already licensed business; include Form 125—Temporary Operating Permit (TOP)
  - a. Form 125 must be signed by the seller (current licensee) and the buyer (applicant)
  - b. Provide a copy of the business purchase agreement from the seller (current licensee sells "the business currently licensed" to applicant)
  - c. Provide a copy of alcohol inventory being purchased (must include quantity, brand name and container size)
  - d. Enclose a list of the assets being purchased (furniture, fixtures and equipment)
6. If building is owned or being purchased send a copy of the deed or purchase agreement in the name of the applicant.
7. If building is being leased, send a copy of signed lease in the name of the applicant. Lease term must run through the license year being applied for.
8. Submit a copy of your business plan.

**CLASS OF LICENSE FOR WHICH APPLICATION IS MADE AND FEES**  
**CHECK DESIRED CLASS**

RETAIL LICENSE(S) Application Fee \$400 (nonrefundable)  
CLASS C LICENSE TERM IS FROM NOVEMBER 1 – OCTOBER 31  
ALL OTHER CLASSES TERM IS MAY 1 – APRIL 30

- A BEER, ON SALE ONLY
- B BEER, OFF SALE ONLY\*\*
- C BEER, WINE, DISTILLED SPIRITS, ON AND OFF SALE\*\*  
Do you intend to sale cocktails to go as allowed under Neb Rev. Statute 53-123.04(4) YES  NO
- D BEER, WINE, DISTILLED SPIRITS, OFF SALE ONLY\*\*
- F BOTTLE CLUB,
- I BEER, WINE, DISTILLED SPIRITS, ON SALE ONLY  
Do you intend to sale cocktails to go as allowed under Neb Rev. Statute 53-123.04(5) YES  NO
- J LIMITED ALCOHOLIC LIQUOR, OFF SALE – MUST INCLUDE SUPPLEMENTAL FORM 120
- AB BEER, ON AND OFF SALE
- AD BEER ON SALE ONLY, BEER, WINE, DISTILLED SPIRITS OFF SALE
- IB BEER, WINE, DISTILLED SPIRITS ON SALE, BEER OFF SALE ONLY
- Class K Catering endorsement (Submit Form 106) – Catering license (K) expires same as underlying retail license
- Class G Growler endorsement (Submit Form 165) – Class C licenses only

\*\*Class B, Class C, Class D license do you intend to allow drive through services under Neb Rev. Statute 53-178.01(2) YES  NO

**ADDITIONAL FEES WILL BE ASSESSED AT THE CITY/VILLAGE OR COUNTY LEVEL WHEN THE LICENSE IS ISSUED**

**CHECK TYPE OF LICENSE FOR WHICH YOU ARE APPLYING**

- Individual License (requires insert FORM 104)
- Partnership License (requires insert FORM 105)
- Corporate License (requires FORM 101 & FORM 103)
- Limited Liability Company (LLC) (requires FORM 102 & FORM 103)

**NAME OF ATTORNEY OR FIRM ASSISTING WITH APPLICATION (if applicable)**

Name Bryant Brooks Phone Number 308-345-  
Firm Name Mousel, Brooks, Schneider, & Mustian, P.C., L.L.C.  
Email address jbbrooks@mbgsllaw.com  
Should we contact you with any questions on the application? YES  NO

**PREMISES INFORMATION**

Trade Name (doing business as) The Axe House

Street Address 219 Norris Avenue

City McCook County Red Willow 48 Zip Code 69001 <sup>T</sup>3704

X Premises Telephone number \_\_\_\_\_

Business e-mail address n/muirheld@yahoo.com

Is this location inside the city/village corporate limits YES X NO \_\_\_\_\_

**MAILING ADDRESS (where you want to receive mail from the Commission)**

Check if same as premises

Name The Axe House

Street Address 219 Norris Avenue

City McCook State NE Zip Code 69001 <sup>T</sup>3704

**DESCRIPTION AND DIAGRAM OF THE AREA TO BE LICENSED**

IN THE SPACE PROVIDED BELOW OR ATTACH A DRAWING OF THE AREA TO BE LICENSED.  
DO NOT SEND BLUEPRINTS, ARCHITECT OR CONSTRUCTION DRAWINGS  
PROVIDE LENGTH X WIDTH IN FEET (NOT SQUARE FOOTAGE)  
INDICATE THE DIRECTION OF NORTH AND THE NUMBER OF FLOORS OF THE BUILDING.

Building length 120 x width 30 in feet

Is there a basement? Yes \_\_\_\_\_ No \_\_\_\_\_ If yes, length \_\_\_\_\_ x width \_\_\_\_\_ in feet

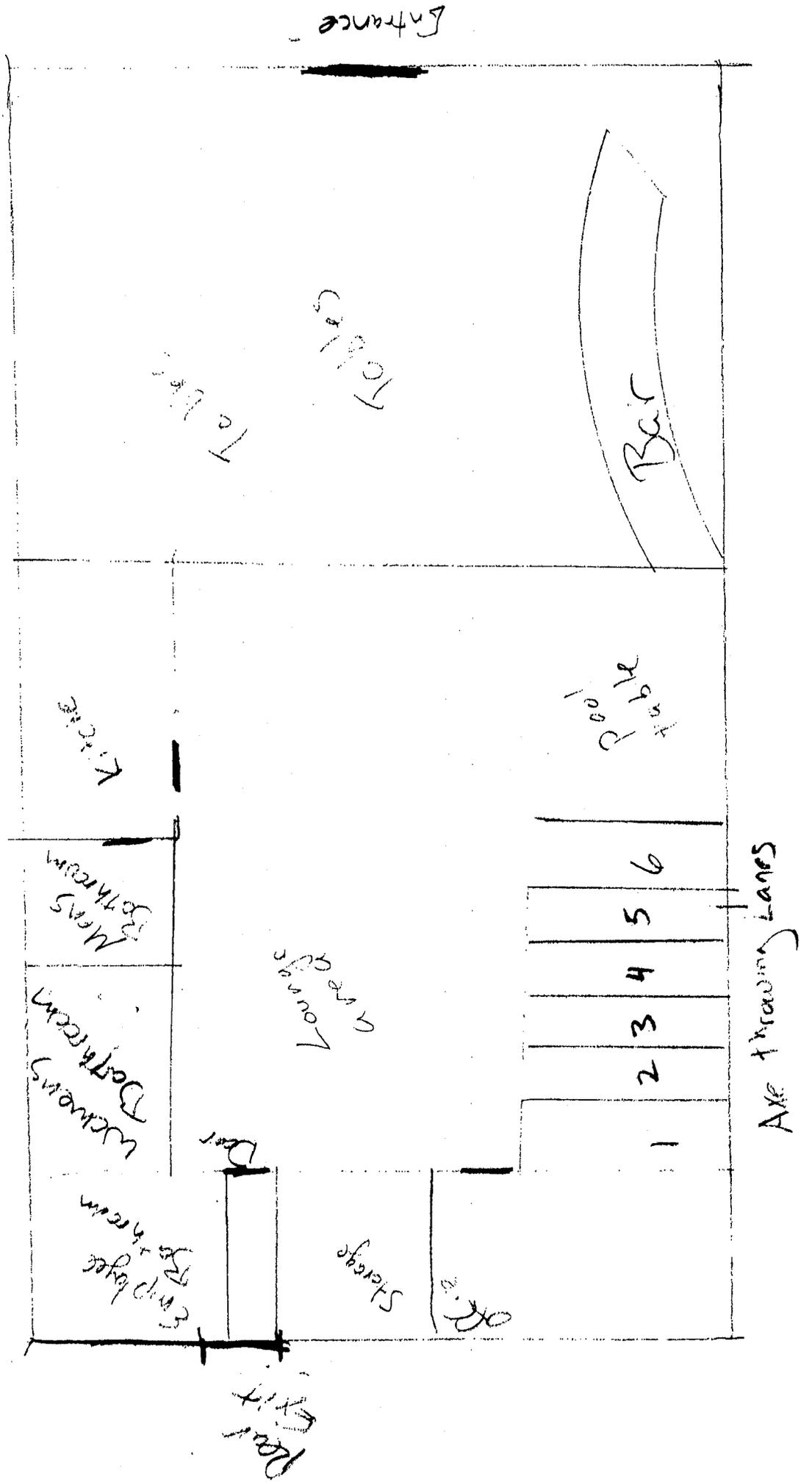
Is there an outdoor area? Yes \_\_\_\_\_ No X If yes, length \_\_\_\_\_ x width \_\_\_\_\_ in feet

**PROVIDE DIAGRAM OF AREA TO BE LICENSED BELOW OR ATTACH SEPARATE SHEET**

*Attached*

*One story bldg approx 120 x 30*

# The Axe House



**APPLICANT INFORMATION**

**1. READ CAREFULLY. ANSWER COMPLETELY AND ACCURATELY §53-125(5)**

Has anyone who is a party to this application, or their spouse, **EVER** been convicted of or plead guilty to any charge. Charge means any charge alleging a felony, misdemeanor, violation of a federal or state law; a violation of a local law, ordinance or resolution. List the nature of the charge, where the charge occurred and the year and month of the conviction or plea. Also list any charges pending at the time of this application. If more than one party, please list charges by each individual's name.

**Include traffic violations.** Commission must be notified of any arrests and/or convictions that may occur after the date of signing this application.

YES  NO If yes, please explain below or attach a separate page

Name of Applicant	Date of Conviction (mm/yyyy)	Where Convicted (city & state)	Description of Charge	Disposition
Ben Springer	05/1998	rural NE	speeding	
Nicole Springer	5/7/16	rural CO	Defective Equipment	
Nicole Springer	6/15/13	Yuma, CO	Fail to drive single lane	
Nicole Springer	11/18/11	Yuma, CO	Rolling Thru STOP sign	

**2. Was this premise licensed as liquor licensed business within the last two (2) years?**

YES  NO

If yes, provide business name and license number \_\_\_\_\_

**3. Are you buying the business of a current retail liquor license?**

YES  NO

If yes, give name of business and liquor license number \_\_\_\_\_

**4. Are you filing a temporary operating permit (TOP) to operate during the application process?**

YES  NO

If yes

**a) Attach temporary operating permit (TOP) (Form 125)**

a) Submit a copy of the business purchase agreement

b) Include a list of alcohol being purchased, list the name brand, container size and how many

c) Submit a list of the furniture, fixtures and equipment

5. Are you borrowing any money from any source, include family or friends, to establish and/or operate the business?

YES  NO

If yes, list the lender(s) Bank Financing First Central Bank

6. Will any person or entity, other than applicant, be entitled to a share of the profits of this business?

YES  NO

If yes, explain. (all involved persons must be disclosed on application)

Nicole Springer, wife of applicant

**No silent partners** 019.01E Silent Partners; Profit Sharing: No licensee or partner, principal, agent or employee of any Retail Liquor License shall permit any other person not licensed or included as a partner, principal, or stockholder of any Retail Liquor License to participate in the sharing of profits or liabilities arising from any Retail Liquor License. (53-1,100)

7. Will any of the furniture, fixtures and equipment to be used in this business be owned by others?

YES  NO

If yes, list such item(s) and the owner. \_\_\_\_\_

8. Is premises to be licensed within 150 feet of a church, school, hospital, home for indigent persons or for veterans, their wives, and children; or within 300 feet of a college or university campus?

YES  NO

If yes, provide name and address of such institution and where it is located in relation to the premises (Nebraska Revised Statute 53-177(1) **AND PROVIDE FORM 134 – CHURCH OR FORM 135 – CAMPUS AND LETTER OF SUPPORT FROM CHURCH OR CAMPUS**

9. Is anyone listed on this application a law enforcement officer? If yes, list the person, the law enforcement agency involved and the person's exact duties. (Nebraska Revised Statute 53-125(15))

YES  NO

10. List the primary bank and/or financial institution (branch if applicable) to be utilized by the business.

a) List the individual(s) who are authorized to write checks and/or withdrawals on accounts at this institution.

First Central Bank (McCook) Ben Springer and Nicole Springer

11. List all past and present liquor licenses held in Nebraska or any other state by any person named in this application. Include license holder name, location of license and license number. Also list reason for termination of any license(s) previously held.

none

12. List the alcohol related training and/or experience (when and where) of the person(s) making application. Those persons required are listed as followed:

- Individual: Applicant and spouse; spouse is exempt if they filed Form 116 – Affidavit of Non-Participation.
- Partnership: All partners and spouses, spouses are exempt if they filed Form 116 – Affidavit of Non-Participation.
- Limited Liability Company: All member of LLC, Manager and all spouses; spouses are exempt if they filed Form 116 – Affidavit of Non-Participation.
- Corporation: President, Stockholders holding 25% or more of shares, Manager and all spouses; spouses are exempt if they filed Form 116 – Affidavit of Non-Participation.

NLCC certified training program completed

Applicant Name	Date (mm/yyyy)	Name of program (attach copy of course completion certificate)
<del>Nicole Springer</del>		
Nicole Springer	3/26/22	Will attend training scheduled on 3/26/22

Experience

Applicant Name/Job Title	Date of Employment	Name & Location of Business
Nicole Springer		waitress Pizza Hut, Yuma Colorado

13. If the property is owned, submit a copy of the deed or proof of ownership. If leased, submit a copy of the lease covering the entire license year.

Documents must be in the name of applicant as owner or lessee

Lease expiration date 1-31-72  
 Deed  
 Purchase Agreement

14. When do you intend to open for business? May 2022

15. What will be the main nature of business? Axe Throwing and Lounge

16. What are the anticipated hours of operation? 5-11 Wednesday - Sunday

17. List the principal residence(s) for the past 10 years for **ALL** persons required to sign, including spouses.

RESIDENCES FOR THE PAST 10 YEARS					
APPLICANT CITY & STATE	YEAR		SPOUSE CITY & STATE	YEAR	
	FROM	TO		FROM	TO
Danbury NE	1979	2017	Yuma CO	2015	2012
Indianok NE	2017	2022	Danbury NE	2012	2017
			Indianok NE	2017	2022

If necessary, attach a separate sheet

**PERSONAL DATA AND CONSENT OF INVESTIGATION**

**SIGNATURE PAGE -**

**PLEASE READ CAREFULLY**

The undersigned applicant(s) hereby consent(s) to an investigation of his/her background and release present and future records of every kind and description including police records, tax records (State and Federal), and bank or lending institution records, and said applicant(s) and spouse(s) waive(s) any right or causes of action that said applicant(s) or spouse(s) may have against the Nebraska Liquor Control Commission, the Nebraska State Patrol, and any other individual disclosing or releasing said information. Any documents or records for the proposed business or for any partner or stockholder that are needed in furtherance of the application investigation of any other investigation shall be supplied immediately upon demand to the Nebraska Liquor Control Commission or the Nebraska State Patrol. The undersigned understand and acknowledge that any license issued, based on the information submitted in this application, is subject to cancellation if the information contained herein is incomplete, inaccurate or fraudulent.

Individual applicants agree to supervise in person the management and operation of the business and that they will operate the business authorized by the license for themselves and not as an agent for any other person or entity. Corporate applicants agree the approved manager will superintend in person the management and operation of the business. Partnership applicants agree one partner shall superintend the management and operation of the business. All applicants agree to operate the licensed business within all applicable laws, rules, regulations, and ordinances and to cooperate fully with any authorized agent of the Nebraska Liquor Control Commission.

**Applicant Notification and Record Challenge:** Your fingerprints will be used to check the criminal history records of the FBI. You have the opportunity to complete or challenge the accuracy of the information contained in FBI identification record. The procedures for obtaining a change, correction, or updating an FBI identification record are set forth in Title 28, CFR, 16.34.

**Must be signed in the presence of a notary public by applicant(s) and spouse(s).**

**(YOU MAY NEED TO PRINT MULTIPLE SIGNATURE PAGES)**

*[Handwritten Signature]*

Signature of **APPLICANT**

(Do not sign until in the presence of the Notary Public)

*Ben Springer*

Printed Name of **APPLICANT**

*[Handwritten Signature]*

Signature of **SPOUSE**

(Do not sign until in the presence of the Notary Public)

*Nicole Springer*

Printed Name of **SPOUSE**

State of Nebraska, County of RED WILLOW

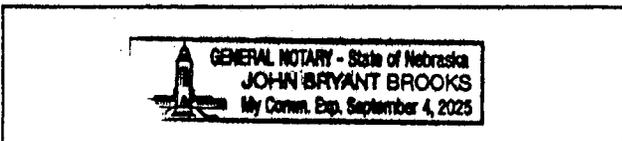
The foregoing instrument was acknowledged before me this

January 31, 2022

(Date)

By *[Signature]* Ben Springer  
Name of person(s) signing document in front of Notary

*[Signature]*  
Notary Public Signature



State of Nebraska, County of RED WILLOW

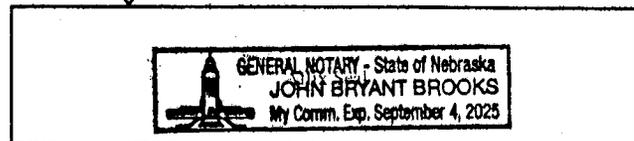
The foregoing instrument was acknowledged before me this

January 31, 2022

(Date)

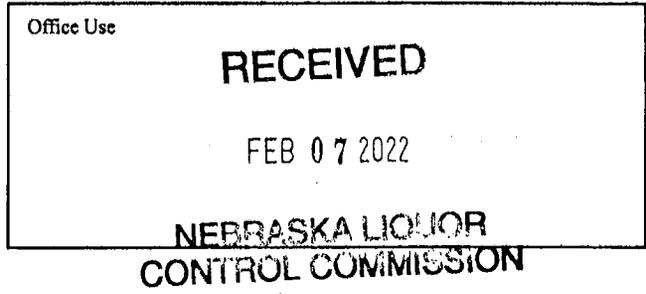
By *[Signature]* Nicole Springer  
Name of person(s) signing document in front of Notary

*[Signature]*  
Notary Public Signature



**APPLICATION FOR LIQUOR LICENSE  
LIMITED LIABILITY COMPANY (LLC)  
INSERT - FORM 3b**

NEBRASKA LIQUOR CONTROL COMMISSION  
301 CENTENNIAL MALL SOUTH  
PO BOX 95046  
LINCOLN, NE 68509-5046  
PHONE: (402) 471-2571  
FAX: (402) 471-2814  
Website: [www.lcc.nebraska.gov](http://www.lcc.nebraska.gov)



All members including spouse(s), are required to adhere to the following requirements:

- 1) All members spouse(s) must be listed
- 2) Managing/Contact member and all members holding over 25% interest and their spouse(s) (if applicable) must submit fingerprints. See Form 147 for further information, this form MUST be included with your application.
- 3) Managing/Contact member and all members holding over 25 % shares of stock and their spouse (if applicable) must sign the signature page of the Application for License form 100 (even if a spousal affidavit has been submitted)

Attach copy of Articles of Organization (must show electronic stamp or barcode receipt by Secretary of States office)

Name of Registered Agent: Nicole Springer

Name of Limited Liability Company that will hold license as listed on the Articles of Organization

LLC Address: 39735 Drive 717

City: Indianola State: NE Zip Code: 69034 +5001

LLC Phone Number: 970-630-4494 LLC Fax Number \_\_\_\_\_

Name of Managing/Contact Member

Name and information of contact member must be listed on following page

Last Name: Springer First Name: Nicole MI: L

Home Address: 39735 Drive 717 City: Indianola

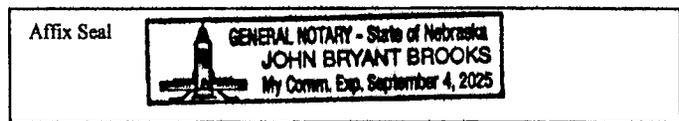
State: NE Zip Code: 69034 +5001 Home Phone Number: 970-630-4494

Signature of Managing/Contact Member

**ACKNOWLEDGEMENT**

State of Nebraska  
County of Red Willow  
January 31, 2022  
Date

The foregoing instrument was acknowledged before me this  
by Nicole Springer  
name of person acknowledge



... names of all members and their spouses (even if a spousal affidavit has been submitted)

Last Name: Springer First Name: Benjamin MI: S

Social Security Number: [REDACTED] Date of Birth: [REDACTED]

Spouse Full Name (indicate N/A if single): Nicole Lynn Springer

Spouse Social Security Number: [REDACTED] Date of Birth: [REDACTED]

Percentage of member ownership 50%



Last Name: Springer First Name: Nicole MI: L

Social Security Number: [REDACTED] Date of Birth: [REDACTED]

Spouse Full Name (indicate N/A if single): Benjamin Springer

Spouse Social Security Number: [REDACTED] Date of Birth: [REDACTED]

Percentage of member ownership 50%

Last Name: \_\_\_\_\_ First Name: \_\_\_\_\_ MI: \_\_\_\_\_

Social Security Number: \_\_\_\_\_ Date of Birth: \_\_\_\_\_

Spouse Full Name (indicate N/A if single): \_\_\_\_\_

Spouse Social Security Number: \_\_\_\_\_ Date of Birth: \_\_\_\_\_

Percentage of member ownership \_\_\_\_\_

Last Name: \_\_\_\_\_ First Name: \_\_\_\_\_ MI: \_\_\_\_\_

Social Security Number: \_\_\_\_\_ Date of Birth: \_\_\_\_\_

Spouse Full Name (indicate N/A if single): \_\_\_\_\_

Spouse Social Security Number: \_\_\_\_\_ Date of Birth: \_\_\_\_\_

Percentage of member ownership \_\_\_\_\_

List names of all members and their spouses (even if a spousal affidavit has been submitted)

Last Name: \_\_\_\_\_ First Name: \_\_\_\_\_ MI: \_\_\_\_\_

Social Security Number: \_\_\_\_\_ Date of Birth: \_\_\_\_\_

Spouse Full Name (indicate N/A if single): \_\_\_\_\_

Spouse Social Security Number: \_\_\_\_\_ Date of Birth: \_\_\_\_\_

Percentage of member ownership \_\_\_\_\_

---

Last Name: \_\_\_\_\_ First Name: \_\_\_\_\_ MI: \_\_\_\_\_

Social Security Number: \_\_\_\_\_ Date of Birth: \_\_\_\_\_

Spouse Full Name (indicate N/A if single): \_\_\_\_\_

Spouse Social Security Number: \_\_\_\_\_ Date of Birth: \_\_\_\_\_

Percentage of member ownership \_\_\_\_\_

---

Last Name: \_\_\_\_\_ First Name: \_\_\_\_\_ MI: \_\_\_\_\_

Social Security Number: \_\_\_\_\_ Date of Birth: \_\_\_\_\_

Spouse Full Name (indicate N/A if single): \_\_\_\_\_

Spouse Social Security Number: \_\_\_\_\_ Date of Birth: \_\_\_\_\_

Percentage of member ownership \_\_\_\_\_

---

Last Name: \_\_\_\_\_ First Name: \_\_\_\_\_ MI: \_\_\_\_\_

Social Security Number: \_\_\_\_\_ Date of Birth: \_\_\_\_\_

Spouse Full Name (indicate N/A if single): \_\_\_\_\_

Spouse Social Security Number: \_\_\_\_\_ Date of Birth: \_\_\_\_\_

Percentage of member ownership \_\_\_\_\_

---

Is the applying Limited Liability Company controlled by another corporation/company?

YES

NO

If yes, provide the following:

- 1) Name of corporation \_\_\_\_\_
- 2) Supply an organizational chart of the controlling corporation named above
- 3) Controlling corporation **MUST** be registered with the Nebraska Secretary of State, copy of articles must be submitted with application §53-126

---

Indicate the company's tax year with the IRS (Example January through December)

Starting Date: \_\_\_\_\_ Ending Date: \_\_\_\_\_

---

Is this a Non Profit Corporation?

YES

NO

If yes, provide the Federal ID #. \_\_\_\_\_

In compliance with the ADA, this corporation insert form 3a is available in other formats for persons with disabilities. A ten day advance period is requested in writing to produce the alternate format.

# Nebraska Secretary of State

## HURLING HATCHETS, LLC

Mon Feb 7 11:23:22 2022

**SOS Account Number**

2201016368

**Status**

Active

**Principal Office Address**

No address on file

**Registered Agent and Office Address**

NICOLE SPRINGRER

219 NORRIS AVENUE

MCCOOK, NE 69001

**Designated Office Address**

219 NORRIS AVENUE

MCCOOK, NE 69001

**Nature of Business**

Not Available

**Entity Type**

Domestic LLC

Qualifying State: NE

**Date Filed**

Jan 20 2022

**Next Report Due Date**

Jan 01 2023

### Filed Documents

Filed documents for HURLING HATCHETS, LLC may be available for purchase and downloading by selecting the Purchase Now button. Your Nebraska.gov account will be charged the indicated amount for each item you view. If no Purchase Now button appears, please contact Secretary of State's office to request document(s).

Document	Date Filed	Price	
Certificate of Organization	Jan 20 2022	\$0.45 = 1 page(s) @ \$0.45 per page	<input type="button" value="Purchase Now"/>

### Good Standing Documents

- If you need your Certificate of Good Standing Apostilled or Authenticated for use in another country, you must contact the Nebraska Secretary of State's office directly for information and instructions. Documents obtained from this site cannot be Apostilled or Authenticated.

**Online Certificate of Good Standing with Electronic Validation**

**\$6.50**

This certificate is available for immediate viewing/printing from your desktop. A Verification ID is provided on the certificate to validate authenticity online at the Secretary of State's website.

**CERTIFICATE OF ORGANIZATION  
FOR  
HURLING HATCHETS, LLC**

The undersigned, desiring to form a limited liability company for the purposes hereinafter set forth, under and in conformity with the laws of the State of Nebraska, does hereby make this written certificate in duplicate, and hereby verifies:

1. **NAME:** The name of the Company shall be Hurling Hatchets, LLC

2. **PURPOSE:** The purpose for which the Company is organized is to operate, conduct and engage in, and to do any lawful act concerning any and all lawful business, other than banking or insurance, for which a limited liability company may be organized under the laws of the State of Nebraska, and for all other purposes authorized by law.

3. **POWERS:** The Company shall have and exercise all powers and rights conferred upon a limited liability company by the Nebraska Uniform Limited Liability Company Act and any enlargement of such powers conferred by subsequent legislative acts.

4. **INITIAL DESIGNATED OFFICE/PRINCIPAL PLACE OF BUSINESS:** The address of the initial designated office and principal place of business of the Company is:

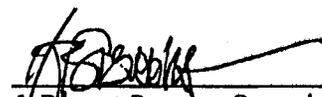
219 Norris Avenue  
McCook, NE 69001

5. **INITIAL AGENT FOR SERVICE OF PROCESS:** The name and address of the Company's initial agent for service of process office is:

Nicole Springer  
219 Norris Avenue  
McCook, NE 69001

The undersigned, being the organizer of the Company, hereby adopts and signs the foregoing Certificate of Organization for the purpose of forming the Company under the Act.

DATED this 11th day of January, 2022

  
\_\_\_\_\_  
J. Bryant Brooks, Organizer  
MOUSEL, BROOKS, SCHNEIDER,  
MUSTION, & SHIFFLET, P.C., L.L.O.  
101 West C St.  
McCook, NE 69001  
(308)345-1600

**MANAGER APPLICATION  
INSERT - FORM 3c**

NEBRASKA LIQUOR CONTROL COMMISSION  
301 CENTENNIAL MALL SOUTH  
PO BOX 95046  
LINCOLN, NE 68509-5046  
PHONE: (402) 471-2571  
FAX: (402) 471-2814  
Website: www.lcc.nebraska.gov

Office Use

RECEIVED

FEB 07 2022

NEBRASKA LIQUOR  
CONTROL COMMISSION

**FORM MUST BE COMPLETELY FILLED OUT IN ORDER FOR APPLICATION TO BE PROCESSED**

**MANAGER MUST:**

- Complete all sections of the application. Be sure it is signed by a **member or corporate officer**, corporate officer or member must be an individual on file with the Liquor Control Commission
- Fingerprints are required. See form 147 for further information, read form carefully to avoid delays in processing, this form **MUST** be included with your application.
- Provide a copy of one of the following: US birth certificate, naturalization papers or current US passport (even if you have provided this before)
- Be a registered voter in the State of Nebraska, include a copy of voter card or print document from Secretary of State website with application

Spouse who **will not** participate in the business, **spouse must:**

- Complete the Spousal Affidavit of Non Participation Insert (must be notarized). The non-participating spouse completes the top half; the manager completes the bottom half. **Be sure to complete both halves of this form.**
- Need not answer question #1 of the application

Spouse who **will** participate in the business, the **spouse must:**

- Sign the application
- Fingerprints are required. See form 147 for further information, read form carefully to avoid delays in processing, this form **MUST** be included with your application.
- Provide a copy of one of the following: birth certificate, naturalization papers or current US passport (even if you have provided this before)
- Be a registered voter in the state of Nebraska, include a copy of voter card with application
- Spousal Affidavit of Non Participation Insert **not** required

BARCODE

**MANAGER APPLICATION  
INSERT - FORM 3c**

NEBRASKA LIQUOR CONTROL COMMISSION  
301 CENTENNIAL MALL SOUTH  
PO BOX 95046  
LINCOLN, NE 68509-5046  
PHONE: (402) 471-2571  
FAX: (402) 471-2814  
Website: www.lcc.nebraska.gov

Office Use

**RECEIVED**

FEB 07 2022

NEBRASKA LIQUOR  
CONTROL COMMISSION

**MUST BE:**

- ✓ Include copy of US birth certificate, naturalization paper or current US passport
- ✓ Nebraska resident. Include copy of voter registration card or print out document from Secretary of State website
- ✓ Fingerprinted. See form 147 for further information, read form carefully to avoid delays in processing, this form MUST be included with your application
- ✓ 21 years of age or older

**Corporation/LLC information**

Name of Corporation/LLC: Hurling Hatchets LLC

**Premise information**

Liquor License Number: \_\_\_\_\_ Class Type \_\_\_\_\_ (if new application leave blank)

Premise Trade Name/DBA: The Axe House

Premise Street Address: 219 Norris Avenue

City: McCook County: Red Willow Zip Code: 69001  
+ 3704

Premise Phone Number: \_\_\_\_\_

Premise Email address: n/muirheid@yahoo.com

**The individual whose name is listed as a corporate officer or managing member as reported on insert form 3a or 3b or listed with the Commission. To see authorized officers or members search your license information [here](#).**



**SIGNATURE REQUIRED BY CORPORATE OFFICER / MANAGING MEMBER**  
(Faxed signatures are acceptable)

**Manager's information must be completed below PLEASE PRINT CLEARLY**

Last Name: Springer First Name: Benjamin MI: S  
 Home Address: 39735 Drive 717  
 City: Indianola County: Red Willow Zip Code: 69034 + 5001  
 Home Phone Number: 308 - 340 - 0795  
 Driver's License Number & State: [REDACTED] Nebraska  
 Social Security Number: [REDACTED]  
 Date Of Birth: [REDACTED] Place Of Birth: McCook, NE  
 Email address: ben-springer@hotmail.com

Are you married? If yes, complete spouse's information (Even if a spousal affidavit has been submitted)

YES  NO

**Spouse's information**

Spouses Last Name: Springer First Name: Nicole MI: L  
 Social Security Number: 529 [REDACTED]  
 Driver's License Number & State: [REDACTED] NE  
 Date Of Birth: [REDACTED] Place Of Birth: Colorado

**APPLICANT & SPOUSE MUST LIST RESIDENCE(S) FOR THE PAST TEN (10) YEARS**

APPLICANT			SPOUSE		
CITY & STATE	YEAR FROM	YEAR TO	CITY & STATE	YEAR FROM	YEAR TO
Danbury NE	1979	2017	Yuma, CO	2010	2012
Indianola NE	2017	2022	Danbury, NE	2012	2017
			Indianola, NE	2017	2022

**MANAGER'S LAST TWO EMPLOYERS**

YEAR FROM TO		NAME OF EMPLOYER	NAME OF SUPERVISOR	TELEPHONE NUMBER

**1. READ CAREFULLY. ANSWER COMPLETELY AND ACCURATELY.**

**Must be completed by both applicant and spouse, unless spouse has filed an affidavit of non-participation.**

Has anyone who is a party to this application, or their spouse, **EVER** been convicted of or plead guilty to any charge. Charge means any charge alleging a felony, misdemeanor, violation of a federal or state law; a violation of a local law, ordinance or resolution. List the nature of the charge, where the charge occurred and the year and month of the conviction or plea, **include traffic violations**. Also list any charges pending at the time of this application. If more than one party, please list charges by each individual's name. Commission must be notified of any arrests and/or convictions that may occur after the date of signing this application.

YES       NO

If yes, please explain below or attach a separate page.

Name of Applicant	Date of Conviction (mm/yyyy)	Where Convicted (City & State)	Description of Charge	Disposition
Ben Springer	05/1998	Red Willow Co Nebraska	speeding	
Nicole Springer	05/2016	rural CO	Defective equipment	
Nicole Springer	06/2013	Puma, CO	Failure to drive single lane	
Nicole Springer	11/2011	Puma, CO	Rolling thru stop sign	

**2. Have you or your spouse ever been approved or made application for a liquor license in Nebraska or any other state?**

YES       NO

**IF YES, list the name of the premise(s):**

---

**3. Do you, as a manager, qualify under Nebraska Liquor Control Act (§53-131.01) and do you intend to supervise, in person, the management of the business?**

YES       NO

4. List the alcohol related training and/or experience (when and where) of the person making application.

\*NLCC Training Certificate Issued: \_\_\_\_\_ Name on Certificate: \_\_\_\_\_

Applicant Name	Date (mm/yyyy)	Name of program (attach copy of course completion certificate)
Nicole Springer	03/2022	will attend training

\*For list of NLCC Certified Training Programs see training

Experience:

Applicant Name / Job Title	Date of Employment:	Name & Location of Business:

5. Have you enclosed form 147 regarding fingerprints?

YES       NO

**PERSONAL OATH AND CONSENT OF INVESTIGATION**

The above individual(s), being first duly sworn upon oath, deposes and states that the undersigned is the applicant and/or spouse of applicant who makes the above and foregoing application that said application has been read and that the contents thereof and all statements contained therein are true. If any false statement is made in any part of this application, the applicant(s) shall be deemed guilty of perjury and subject to penalties provided by law. (Sec §53-131.01) Nebraska Liquor Control Act.

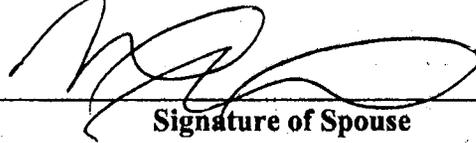
The undersigned applicant hereby consents to an investigation of his/her background including all records of every kind and description including police records, tax records (State and Federal), and bank or lending institution records, and said applicant and spouse waive any rights or causes of action that said applicant or spouse may have against the Nebraska Liquor Control Commission and any other individual disclosing or releasing said information to the Nebraska Liquor Control Commission. If spouse has **NO** interest directly or indirectly, a spousal affidavit of non-participation may be attached.

The undersigned understand and acknowledge that any license issued, based on the information submitted in this application, is subject to cancellation if the information contained herein is incomplete, inaccurate, or fraudulent.

**Applicant Notification and Record Challenge:** Your fingerprints will be used to check the criminal history records of the FBI. You have the opportunity to complete or challenge the accuracy of the information contained in FBI identification record. The procedures for obtaining a change, correction, or updating an FBI identification record are set forth in Title 28, CFR, 16.34.



Signature of Manager Applicant



Signature of Spouse

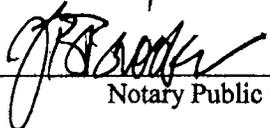
ACKNOWLEDGEMENT

State of Nebraska  
County of RED WILLOW

The foregoing instrument was acknowledged before me this

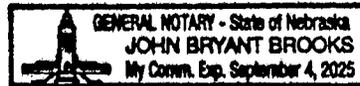
JANUARY 31, 2022  
date

by Ben Springer and Nicole Sarver  
NAME OF PERSON BEING ACKNOWLEDGED



Notary Public signature

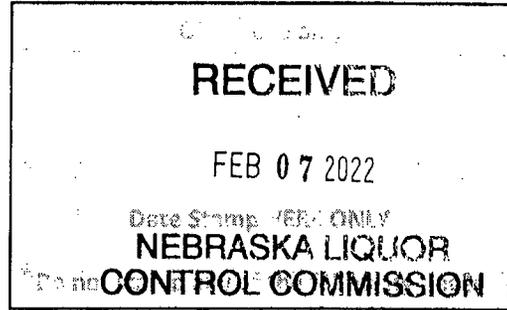
Affix Seal



In compliance with the ADA, this application is available in other formats for persons with disabilities. A ten day advance period is required in writing to produce the alternate format.

**PRIVACY ACT STATEMENT/  
SUBMISSION OF FINGERPRINTS /  
PAYMENT OF FEES TO NSP-CID**

NEBRASKA LIQUOR CONTROL COMMISSION  
301 CENTENNIAL MALL SOUTH  
PO BOX 95046  
LINCOLN, NE 68509-5046  
PHONE: (402) 471-2571  
FAX: (402) 471-2814  
Website: www.lcc.nebraska.gov



**THIS FORM IS REQUIRED TO BE SIGNED BY EACH PERSON BEING FINGERPRINTED:  
DIRECTIONS FOR SUBMITTING FINGERPRINTS AND FEE PAYMENTS:**

- **FAILURE TO FILE FINGERPRINT CARDS AND PAY THE REQUIRED FEE TO THE NEBRASKA STATE PATROL WILL DELAY THE ISSUANCE OF YOUR LIQUOR LICENSE**
- Fee payment of **\$45.25 per person** **MUST** be made **DIRECTLY** to the Nebraska State Patrol;  
It is recommended to make payment through the **NSP PayPort** online system at [www.ne.gov/go/NSP](http://www.ne.gov/go/NSP)  
Or a check made payable to **NSP** can be mailed directly to the following address:  
**\*\*\*Please indicate on your payment who the payment is for (the name of the person being fingerprinted) and the payment is for a Liquor License\*\*\***  
The Nebraska State Patrol – CID Division  
4600 Innovation Drive  
Lincoln, NE 68521
- Fingerprints taken at NSP LIVESCAN locations will be forwarded to NSP – CID  
*Applicant(s) will not have cards to include with license application.*
- Fingerprints taken at local law enforcement offices may be released to the applicants;  
*Fingerprint cards should be submitted with the application.*

*Applicant Notification and Record Challenge: Your fingerprints will be used to check the criminal history records of the FBI. You have the opportunity to complete or challenge the accuracy of the information contained in the FBI identification record. The procedures for obtaining a change, correction, or updating a FBI identification record are set forth in Title 28, CFR, 16.34.*

\*\*\*\*Please Submit this form with your completed application to the Liquor Control Commission\*\*\*\*

Trade Name \_\_\_\_\_

Name of Person Being Fingerprinted: Benjamin Spinyer

Date of Birth: [REDACTED] Last 4 SSN: 8728

Date fingerprints were taken: 1/5/22

Location where fingerprints were taken: McCook Police Department

How was payment made to NSP?

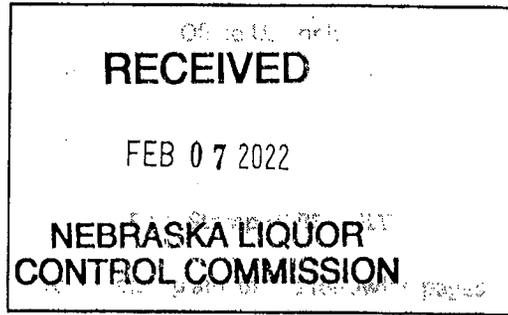
NSP PAYPORT  CASH  CHECK SENT TO NSP CK # \_\_\_\_\_

My fingerprints are already on file with the commission – fingerprints completed for a previous application less than 2 years ago? YES

[Signature]  
SIGNATURE REQUIRED OF PERSON BEING FINGERPRINTED

**PRIVACY ACT STATEMENT/  
SUBMISSION OF FINGERPRINTS /  
PAYMENT OF FEES TO NSP-CID**

NEBRASKA LIQUOR CONTROL COMMISSION  
301 CENTENNIAL MALL SOUTH  
PO BOX 95046  
LINCOLN, NE 68509-5046  
PHONE: (402) 471-2571  
FAX: (402) 471-2814  
Website: www.lcc.nebraska.gov



**THIS FORM IS REQUIRED TO BE SIGNED BY EACH PERSON BEING FINGERPRINTED:  
DIRECTIONS FOR SUBMITTING FINGERPRINTS AND FEE PAYMENTS:**

- **FAILURE TO FILE FINGERPRINT CARDS AND PAY THE REQUIRED FEE TO THE NEBRASKA STATE PATROL WILL DELAY THE ISSUANCE OF YOUR LIQUOR LICENSE**
- Fee payment of **\$45.25 per person** **MUST** be made **DIRECTLY** to the Nebraska State Patrol; It is recommended to make payment through the **NSP PayPort** online system at [www.ne.gov/go/nsp](http://www.ne.gov/go/nsp) Or a check made payable to **NSP** can be mailed directly to the following address:  
**\*\*\*Please indicate on your payment who the payment is for (the name of the person being fingerprinted) and the payment is for a Liquor License\*\*\***

The Nebraska State Patrol – CID Division  
4600 Innovation Drive  
Lincoln, NE 68521

- Fingerprints taken at NSP LIVESCAN locations will be forwarded to NSP – CID  
*Applicant(s) will not have cards to include with license application.*
- Fingerprints taken at local law enforcement offices may be released to the applicants;  
*Fingerprint cards should be submitted with the application.*

***Applicant Notification and Record Challenge:** Your fingerprints will be used to check the criminal history records of the FBI. You have the opportunity to complete or challenge the accuracy of the information contained in the FBI identification record. The procedures for obtaining a change, correction, or updating a FBI identification record are set forth in Title 28, CFR, 16.34.*

**\*\*\*\*Please Submit this form with your completed application to the Liquor Control Commission\*\*\*\***

Trade Name \_\_\_\_\_

Name of Person Being Fingerprinted: Nicole Springer

Date of Birth: [REDACTED] Last 4 SSN: 3367

Date fingerprints were taken: 1-5-22

Location where fingerprints were taken: McCook Police Department

How was payment made to NSP?

NSP PAYPORT  CASH  CHECK SENT TO NSP CK # \_\_\_\_\_

My fingerprints are already on file with the commission – fingerprints completed for a previous application less than 2 years ago? YES

  
SIGNATURE REQUIRED OF PERSON BEING FINGERPRINTED



# We the People

*Of the United States,  
in Order to form a more perfect Union,  
establish Justice, insure domestic Tranquility,  
provide for the common defense,  
promote the general Welfare, and secure  
the Blessings of Liberty to ourselves and  
our Posterity, do ordain and establish this  
Constitution for the United States of America.*



SIGNATURE OF BEARER / SIGNATURE / TITULAIRE / FIRMA DEL TITULAR

PASSPORT  
PASSE  
PASAPORTE

UNITED STATES OF AMERICA



Surname / Nom  
**SPRINGER**  
Given Names / Prénoms / Nombres  
**LE LYNN**  
Nationality / Nationalité / Nacionalidad  
**UNITED STATES OF AMERICA**

Issued at / Emitido en / Emitido en  
**GRAND RAPIDS, U.S.A.**  
Date of issue / Fecha de expedición / Fecha de expedición

Authority / Autoridad / Autoridad  
**Department of State**

SEE PAGE 2

USA

P<USASPRINGER<CHI DO  
6498884788US48712  
305270



[Back to Lookup](#) / [Registrant Detail](#)

# Benjamin Scott Springer

Political Party  
Republican

Precinct  
Indianola

## Election Details

05/10/2022 2022 Primary Election

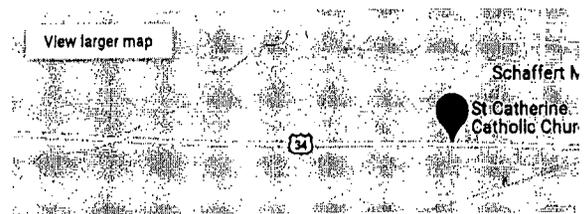
We did not find an absentee or provisional ballot associated with the selected election. This website does not track the status of a traditional ballot voted at the polls. If you voted a traditional ballot at the polls, your ballot has been accepted and counted.

## Polling Location

St. Catherine's Hall

Behind St. Catherine's Catholic Church Indianola, NE 69034

[View larger map](#)



## Districts

[Show](#)

© Copyright 2022 - ESSVR, LLC. All rights reserved.



[Back to Lookup](#) / [Registrant Detail](#)

# Nicole Lynn Springer

Political Party  
Republican

Precinct  
Indianola

## Election Details

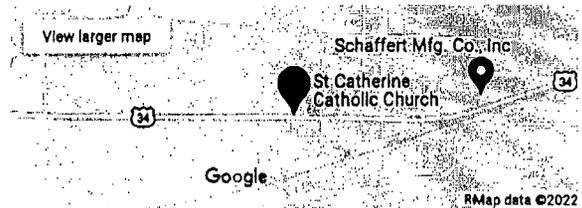
05/10/2022 2022 Primary Election

We did not find an absentee or provisional ballot associated with the selected election. This website does not track the status of a traditional ballot voted at the polls. If you voted a traditional ballot at the polls, your ballot has been accepted and counted.

## Polling Location

St. Catherine's Hall

Behind St. Catherine's Catholic Church Indianola, NE 69034



## Districts

Show

© Copyright 2022 - ESSVR, LLC. All rights reserved.

**AFTER RECORDING RETURN TO:**

McCook Abstract Company  
318 Norris Avenue  
McCook, NE 69001

**WARRANTY DEED**

Classic Hair Properties, LLC, GRANTOR, in consideration of One Dollar (\$1.00) and other good and valuable consideration, conveys to GRANTEE, Benjamin Scott Springer and Nicole Lynn Springer, husband and wife, as joint tenants and not as tenants in common, the following described real estate (as defined in Neb. Rev. Stat. § 76-201):

Lot 16, Block 22, Original Town of McCook, Red Willow County, Nebraska

GRANTOR covenants (jointly and severally, if more than one) with GRANTEE that GRANTOR:

1. is lawfully seized of such real estate and that it is free from encumbrances, EXCEPT subject to easements, reservations, and restrictions of record;
2. has legal power and lawful authority to convey the same;
3. warrants and will defend title to the real estate against the lawful claims of all persons.

Executed: January 12, 2022.

Classic Hair Properties, LLC

Jennifer D. Friehe  
By Jennifer D. Friehe, Manager and Member

Bradley R. Friehe  
By Bradley R. Friehe, Manager and Member

Chessney L. Eckhardt  
By Chessney L. Eckhardt f/k/a  
Chessney L. Friehe, Manager and Member

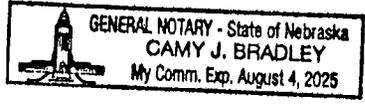
STATE OF Nebraska )  
COUNTY OF Red Willow )

The foregoing instrument was acknowledged before me this 12 day of January, ~~2020~~ by Jennifer D. Friehe, Bradley R. Friehe, and Chessney L. Eckhardt, Managers and Members of Classic Hair Properties, LLC.

Camy J. Bradley  
Notary Public

My Commission Expires: 8-4-25

File No. M016431-



**RESTRICTED: This information not to be released to other than authorized personnel.**

**LIQUOR APPLICATION REPORT**

**POLICE DEPARTMENT REPORT**

DATE REQUESTED: March 7, 2022

DUE DATE: March 14, 2022

APPLICANT: Hurling Hatchets, LLC

DBA: The Axe House

APPLICANT'S ADDRESS:

PHONE NUMBER (HOME):

(BUSINESS):

PROPOSED LICENSE ADDRESS: 219 Norris Avenue

TYPE OF LICENSE: Class "C" - License #124768

(Beer, Wine & Distilled Spirits, On and Off Sale)

TYPE OF INVESTIGATION:

- |  |  |
|--|--|
| <input type="checkbox"/> Purchase of Business          | <input checked="" type="checkbox"/> New and Additional License |
| <input type="checkbox"/> Upgrade of Existing License   | <input type="checkbox"/> Transfer of Location                  |
| <input type="checkbox"/> Expansion of Present Business | <input type="checkbox"/> Manager                               |
| <input type="checkbox"/> Renewal - Long Form           |  |

TYPE OF BUSINESS:

- |  |  |
|--|--|
| <input type="checkbox"/> Hotel/Motel                   | <input type="checkbox"/> Restaurant/Food Service   |
| <input checked="" type="checkbox"/> Liquor/On-Off Sale | <input type="checkbox"/> Liquor/On-Sale Only       |
| <input type="checkbox"/> Liquor/Off-Sale Only          | <input type="checkbox"/> Entertainment/Bottle Club |
| <input type="checkbox"/> Other - Convenience Store     |  |

TYPE OF OWNERSHIP:  Corporation  Partnership  Individual

Limited Liability Company (LLC)

\*\*\*\*\*

Investigation Completed by:                     K. HODGSON                    

Date:           3-10-22          

**EXHIBIT #5**

**PAGE(S) - 6**

**PREMISE:**

1. Type of Neighborhood:       Commercial;  Industrial;  Residential.
2. Condition:
  - a) Traffic: **Normal traffic for this area of downtown McCook**
  - b) Parking: **On street angle parking**
3. Designation of Adjacent Street (Local, Collector, Minor or Major Arterial, Highway):
4. Street Width and Profile:  
**Normal curb to normal crown to normal curb**  
**65' in width**
5. Speed Limit: **20mph**
6. Average Daily Traffic Count:  
**11,000 – 12000 ADT on B St. at Norris Ave. ; 2800 on Norris Ave near F St.**  
**(2017 numbers)**
7. Accident Report at Adjacent Intersections:  
**One traffic crash reported in the last 6 months**
8. Analysis of Traffic Effects:  
**The space was formerly a business, so no anticipated adverse effects**
9. Ready for Operation:  Yes       No  
If no, estimated date: **Estimated at May or June 2022**
10. Type of Food Service:       Microwave       Grill       Kitchen
11. Number of Employees:      Full Time: **3**      Part Time: **2**
12. Does premise comply with legal distance from churches, schools, etc.?  
 Yes       No  
If No, specify:
13. The Business has been inspected within the last three (3) months by the City's Building Inspector.       Yes       No      (If yes, attach report)

14. The Business has been inspected within the last three (3) months by the City's Fire Department. ( ) Yes ( X ) No (If yes, attach report)
15. Estimated Seating Capacity: **Information not available yet**
16. Estimated Number of Customers per Day: **Estimated 50/day**
17. Hours of Operation: **5p – 11p Wednesday thru Sunday**

**FINANCING:**

18. Purchase Price:
19. Property/Equipment Value:
20. Previous Year's Gross Receipts:
21. Amount Financed:                      Source:  
       Collateral:    Co-Signers:
22. Lease Agreement:
23. Estimated Annual Payroll:
24. Estimated Gross Income:                      %Food:                      %Liquor:

**MISCELLANEOUS:**

25. Number of Licenses and Types within competitive distance:  
**El Puerto, Class I; Fuller's, Class C; Tequila's Mexican Grill, Class I;**  
**The Bottle Shop, Class D**
26. Is another person responsible for Daily Operation? ( ) Yes ( X ) No  
 If yes, who?  
 (complete investigation of manager form)

**PERSONAL HISTORY:**

27. Applicant's name: **Ben Springer**
28. Date of Birth: **07-01-1979**
29. Sex: **M**
30. Home address: **39735 Dr. 717 Indianola, NE 69034**
31. Citizen of the United States? (  ) Yes ( ) No  
If Naturalized, Certificate Number:  
Place:
32. Proper Residence has been Established? (  ) Yes ( ) No  
If no, explain:
33. Criminal History – Has applicant been arrested and/or pled guilty to any  
( ) misdemeanor? **None** ( ) felony? **None** (If felony, attach detailed description.)
34. Has applicant been cited for and/or been found in violation of the Liquor Laws of the  
State of Nebraska or other State in which previously licensed?  
( ) Yes (  ) No (If yes, attach detailed description)
35. Has applicant had a beneficial interest in another liquor license? ( ) Yes (  ) No  
If yes, Name, City, Address, Type of License:
36. Records Check Made (civil history): ( ) Yes (  ) No (Attach Records)
37. Investigation made of character/reputation of applicant, report details of investigation:  
**No criminal history within MPD records**
38. Number of Hours that will be spent by applicant at license premises each week?  
**25 / week**
39. Number of hours that will be spent by applicant working in occupation other than  
licensed premises each week?  
**25-30 / week**
41. Applicant will oversee in person the management of licensed premises? (  ) Yes ( ) No

42. Another person will be responsible for the management of the licensed premises?  
( ) Yes ( **X** ) No (If yes, attach investigative report for manager)

**PERSONAL HISTORY – SPOUSE:**

43. Spouses Name: **Nicole Springer**
44. Date of Birth: **12-08-1987**
45. Sex: **F**
46. Home Address: **39735 Dr. 717 Indianola, NE 69034**
47. Citizen of the United States? ( **X** ) Yes ( ) No  
If no, explain:
48. Proper residence has been established? ( **X** ) Yes ( ) No  
If no, explain:
49. Criminal History – Has spouse been arrested and/or pled guilty to any ( ) misdemeanor?  
( ) felony? (If felony, attach detailed description.) **None and None**
50. Has spouse been cited for and/or been found in violation of the Liquor Laws of the State of Nebraska or other State in which previously licensed?  
( ) Yes ( **X** ) No (If yes, attach detailed description.)
51. Has spouse had a beneficial interest in another liquor license? ( ) Yes ( **X** ) No  
If yes, Name, City, Address, Type of License:
52. Records check made (civil history). ( ) Yes ( **X** ) No (attach records)
53. Investigation made of character/reputation of spouse, report details of investigation:  
**No criminal history within MPD records**
54. Number of Hours that will be spent by spouse at licensed premises each week?  
**50 / week**
55. Number of Hours that will be spent by spouse working in occupation other than license premises each week?  
**10 / week**
56. Spouse will oversee in person the management of the licensed premises?  
( **X** ) Yes ( ) No

57. Another person will be responsible for the management of the licensed premises?  
( ) Yes (X) No (If yes, attach investigative report for manager.

**PERSONAL HISTORY – MANAGER: *No manager at this time***

58. Manager's Name:  
59. Date of Birth:  
60. Sex:  
61. Home Address:  
62. Citizen of the United States? ( ) Yes ( ) No  
If Naturalized, Certificate Number:  
Place:  
63. Proper residence has been established? ( ) Yes ( ) No  
If no, explain:  
64. Criminal History – Has manager been arrested and/or pled guilty to any  
( ) misdemeanor? ( ) felony? (If felony, attach detailed description.)  
65. Has manager been cited for and/or found in violation of the Liquor Laws of the State of  
Nebraska or other State in which previously licensed?  
( ) Yes ( ) No  
66. Has manager had a beneficial interest in another liquor license? ( ) Yes ( ) No  
If yes, Name, City, Address, Type of License:  
67. Records check made (civil history). ( ) Yes ( ) No (attach records)  
68. Investigation made of character/reputation of manager, report details of investigation:  
69. Number of Hours that will be spent by manager at licensed premises each week:  
70. Number of Hours that will be spent by manager working in occupation other than  
licensed premises each week:

LIQUOR APPLICATION REPORT

PLANNING REPORT

DATE REQUESTED: March 7, 2022 DUE DATE: March 14, 2022

PROPOSED LICENSED PREMISES  X  IS,   IS NOT WITHIN THE CORPORATE LIMITS OF THE MUNICIPALITY.

IF NOT, DO NOT PROCEED WITH THIS REPORT. SIGN AND DATE BELOW AND RETURN THIS FORM TO THE CITY CLERK.

\*\*\*\*\*

APPLICANT: Hurling Hatchets, LLC, dba "The Axe House"

LOCATION: 219 Norris Avenue

REQUESTED LICENSE: Class "C" - (Beer, Wine & Distilled Spirits, On and Off Sale)

EXISTING ZONING: Central Business District

The proposed licensed premises  X  is,   is not a permitted use in this zoning classification.

EXISTING LAND USE: Hair Salon

NORTH: Lincoln Federal Savings + Loan Assoc.

SOUTH: Boutique

EAST: W Design Assoc.

WEST: MNB Bank

GENERAL NEIGHBORHOOD/AREA LAND USES: Mixed uses + Retail shopping, restaurants, financial institutions.

PROXIMITY TO SCHOOLS, CHURCHES, HOSPITALS, LIBRARIES, HOMES FOR THE AGED AND PUBLIC INSTITUTIONS (please specify):

School: 4 1/2 blocks, Church: 2 blocks, Hospital: 10 blocks, Library: 5 blocks, Home for the Aged: 6 blocks, Public Institutions: 12 blocks

ANALYSIS OF NEIGHBORHOOD EFFECTS: Will compare with existing businesses  
as well as the same parking opportunities as the existing businesses  
currently have. Minimal effect due to small occupant load.

---

---

PARKING REQUIREMENTS/PROBLEMS: 30% of capacity in persons / Sharing  
spaces with existing surrounding businesses.

---

---

---

DATE: 3-10-2022

SIGNED:   
Building Official

RECOMMENDATION OF THE NEBRASKA LIQUOR CONTROL COMMISSION

Date Mailed from Commission Office: 3-7-2022

I, \_\_\_\_\_ Clerk of \_\_\_\_\_

(City, Village or County)

Nebraska, hereby report to the Nebraska Liquor Control Commission in accordance with Revised Statutes of Nebraska, Chapter 53, Sec. 134 (7) the recommendation of said city, village or county, as the case may be relative to the application for a license under the provisions of the Nebraska Liquor Control Act as applied for by:

HURLING HATCHETS, LLC dba THE AXE HOUSE  
219 NORRIS AVE, MCCOOK / RED WILLOW County, 69001

Application for Class C 124768  
45 days - 4-21-22

1. Notice of local hearing was published in a legal newspaper in or of general circulation in city, village or county, one time not less than 7 nor more than 14 days before time of hearing.

Check one Yes  No

The Statutes require that such hearing shall be held not more than 45 days after the date of receipt of this notice from the Commission.

2. Local hearing was held not more that 45 days after receipt of notice from the Nebraska Liquor Control Commission.

Check one Yes  No

3. Date of hearing of Governing Body: \_\_\_\_\_

4. Type or write the Motion as voted upon by the Governing Body. If additional Motions are made by the Governing Body, then use an additional page and follow same format.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

5. Motion was made by: \_\_\_\_\_ Seconded by: \_\_\_\_\_

6. Roll Call Vote: \_\_\_\_\_

7. Check one: The motion passed: \_\_\_\_\_ The motion failed: \_\_\_\_\_

8. If the motion is for recommendation of denial of the applicant, then list the reasons of the governing body upon which the motion was made.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Attached additional page if necessary)

\_\_\_\_\_  
Clerk's name DATE

CITY MANAGERS REPORT  
April 4, 2022, CITY COUNCIL MEETING

---

ITEM: 3.B.

RECOMMENDATION:

PROCLAIM THE WEEK OF APRIL 10-16, 2022, AS NATIONAL PUBLIC SAFETY TELECOMMUNICATORS WEEK AND AUTHORIZE THE MAYOR TO SIGN THE PROCLAMATION.

BACKGROUND:

Across the nation in times of intense personal crisis and community wide disasters, the first access point for those seeking all classes of emergency services and homeland security information is 9-1-1. The local and county public safety communications centers that receive these calls have emerged as the first and single point of contact for persons seeking immediate relief during an emergency.

In October 1991 Congress passed H. J. Resolution 284 designating the Second week of April of each year as National Public Safety Telecommunication's Week.

The McCook Police Department is celebrating the second full week of April (10-16, 2022) as National Public Safety Telecommunication's Week. This week honors the thousands of men and women who respond to calls, dispatch emergency professionals and equipment, and render lifesaving assistance to citizens in the United States. We are enlisting the support of the City Council of McCook in the form of a proclamation to honor these men and women in the City of McCook for

FISCAL IMPACT:

None

APPROVALS:

  
\_\_\_\_\_  
JOEL SMITH CHIEF OF POLICE

3/28/22  
DATE

  
\_\_\_\_\_  
NATHAN A. SCHNEIDER CITY MANAGER

3-29-22  
DATE

Office of the Mayor  
McCook, Nebraska

## Proclamation

### "NATIONAL PUBLIC SAFETY TELECOMMUNICATORS WEEK"

- WHEREAS, emergencies can occur at any time that require police, fire, or emergency medical services; and,
- WHEREAS, when an emergency occurs the prompt response of police officers, firefighters and paramedics is critical to the protection of life and preservation of property; and,
- WHEREAS, the safety of our police officers and firefighters is dependent upon the quality and accuracy of information obtained from citizens who telephone the McCook emergency communications center; and,
- WHEREAS, Public Safety Telecommunicators are the first and most critical contact our citizens have with emergency services; and,
- WHEREAS, Public Safety Telecommunicators are the single vital link for our police officers and firefighters by monitoring their activities by radio, providing them information, and ensuring their safety; and,
- WHEREAS, Public Safety Telecommunicators of the McCook Police Department have contributed substantially to the apprehension of criminals, suppression of fires and treatment of patients; and,
- WHEREAS, each dispatcher has exhibited compassion, understanding and professionalism during the performance of their job in the past year;
- NOW, THEREFORE, Be It Resolved that the City Council of the City of McCook declares the week of April 10 through 16, 2022, to be National Public Safety Telecommunicators Week in McCook, in honor of the men and women whose diligence and professionalism keep our city and citizens safe.

Dated this 4<sup>th</sup> day of April, 2022.



*In witness whereof I have hereunto set by  
hand and caused this seal to be affixed.*

\_\_\_\_\_  
Michael D. Gonzales, Mayor

ATTEST:

\_\_\_\_\_  
Lea Ann Doak, City Clerk

**CITY MANAGER'S REPORT**  
**APRIL 4, 2022 CITY COUNCIL MEETING**

---

**ITEM:            3.A.**

Approve the proclamation designating the week of April 3 - 9, 2022 as "National Library Week" in the City of McCook and authorize the Mayor to sign.

---

**BACKGROUND:**

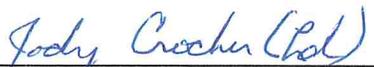
April 3-9, 2022 is National Library Week, a time to highlight the essential role libraries, librarians and library workers play in transforming lives and strengthening communities. The theme for this year's National Library Week is "Connect with Your Library," which promotes the idea that libraries are places to get connected to technology by using broadband, computers and other resources. Libraries also offer opportunities to connect with media, programs, ideas and classes, in addition to books. Most importantly, libraries also connect communities to each other.

Libraries of all types continue to go above and beyond to keep their communities connected by expanding resources and embracing inclusion in their programming, resources and collections. Libraries across the country are making a difference in people's lives by providing electronic learning resources like online homework help and wi-fi access for students and workers who may lack internet access at home.

This National Library Week, residents of McCook are encouraged to visit the McCook Public Library to show the library staff that their efforts and services provided are appreciated.

**FISCAL  
IMPACT:**       None.

**APPROVALS:**

  
\_\_\_\_\_  
Jody Crocker, Library Director

March 27, 2022

  
\_\_\_\_\_  
Nathan A. Schneider, City Manager

March 27, 2022

Office of the Mayor  
McCook, Nebraska

# Proclamation

## "NATIONAL LIBRARY WEEK 2022"

- WHEREAS, libraries are accessible and inclusive places that foster a sense of connection and build community;
- WHEREAS, libraries connect people to technology, providing access to broadband internet, computers, and training that are critical for accessing education and employment opportunities;
- WHEREAS, libraries offer opportunities for everyone to connect with new ideas and become their best selves through access to multimedia content, programs, and classes - in addition to books;
- WHEREAS, today's libraries and their services extend far beyond the four walls of a building and everyone is welcome to use their resources;
- WHEREAS, in times of crisis, libraries and library professionals play an invaluable role in supporting their communities both in person and virtually;
- WHEREAS, libraries strive to develop and maintain programs and collections that are as diverse as the populations they serve and ensure equity of access for all;
- WHEREAS, to adapt to our changing world, libraries are expanding their resources and continuing to meet the needs of their patrons;
- WHEREAS, libraries have long served as trusted and treasured institutions for all members of the community regardless of race, ethnicity, creed, ability, sexual orientation, gender identity, or socio-economic status;
- WHEREAS, libraries are cornerstones of democracy, promoting the free exchange of information and ideas for all;
- WHEREAS, libraries, librarians, and library workers are joining library supporters and advocates across the nation to celebrate National Library Week;

NOW, THEREFORE, be it resolved that I, Mike Gonzales, Mayor of the City of McCook, proclaim National Library Week, April 3-9, 2022. During this week, I encourage all residents to connect with their library by visiting online or in person to access resources and services.

Dated this 4<sup>th</sup> day of April, 2022.



*In witness whereof I have hereunto set by hand and caused this seal to be affixed.*

\_\_\_\_\_  
Michael D. Gonzales, Mayor

ATTEST:

\_\_\_\_\_  
Lea Ann Doak, City Clerk

**CITY MANAGER'S REPORT  
APRIL 4, 2022 CITY COUNCIL MEETING**

---

**ITEM:**        4.A.

Approve the minutes of the March 21, 2022 regular City Council meeting.

---

**BACKGROUND:**

Receive and approve the minutes.

**FISCAL  
IMPACT:**     None.

**APPROVALS:**

  
\_\_\_\_\_  
Lea Ann Doak, City Clerk

March 28, 2022

McCook City Council  
March 21, 2022  
5:30 P.M. Central

A MEETING OF THE MAYOR AND COUNCIL OF THE CITY OF MCCOOK, NEBRASKA convened in open, regular, and public session at 5:30 o'clock P.M. in the City Council Chambers.

Present: Mayor Gonzales, Councilmembers Calvin, Weedon, Muehlenkamp, Rambali.

Absent: None.

City Officials present: City Manager Schneider, City Attorney Mustion, City Clerk Doak, Library Director Crocker, Utilities Director Dutcher, Water Superintendent Fawver, Public Works Director Potthoff.

Notice of the meeting was given in advance thereof by publication in the McCook Daily Gazette on March 17, 2022, the designated method of giving notice, a copy of the proof of publication being attached to these minutes. Advance notice of the meeting was also given to the Mayor and members of the City Council and a copy of the Acknowledgement of Receipt of such notice is attached to these minutes. Availability of the agenda was communicated in the advance notice to the Mayor and Council. All proceedings hereafter shown were taken while the meeting was open to the attendance of the public.

Mayor Gonzales announced that a copy of the Open Meetings Act was posted by the entrance to the Council Chambers and available for public review. Following the Pledge of Allegiance to the flag of the United States of America, Mayor Gonzales called the meeting to order.

**1. Announcements & Recognitions.**

There were no announcements or recognitions.

**2. Presentations.**

- 2.A. Receive and file the Annual Cashflow Analysis for the Water and Sewer Utility Funds, as prepared by PFM Financial Advisory, LLC.

A telephone conference call was held with Matthew Stoffel, CFA for Public Financial Management (PFM) for review of the Cashflow analyses for the Water and Sewer Enterprise Funds. Some of the key points were Debt Coverage Ratios, the Ending Cash Balance, Cash Balance as percent of Operation and Maintenance, Net Operating Income. A 6% rate increase was proposed for Water and a 3% rate increase was proposed for Sewer.

Motion to receive and file the Annual Cashflow Analysis for the Water and Sewer Utility Funds, as prepared by PFM Financial Advisory, LLC. This motion, made by Gonzales and seconded by Calvin,

passed.

Gonzales: YEA, Calvin: YEA, Weedon: YEA, Muehlenkamp: YEA, Rambali: YEA  
YEA: 5, NAY: 0

- 2.B. Introduce and approve on its first reading Ordinance No. 2022-3036 providing for the amendment of Chapter 38: Fee Schedule - Appendix E, Water Department Rates and Fees.

Mayor Gonzales asked the Clerk to read Ordinance No. 2022-3036 by title.

AN ORDINANCE PROVIDING FOR THE AMENDMENT OF CHAPTER 38: FEE SCHEDULE - APPENDIX E , WATER DEPARTMENT RATES AND FEES; OF THE CITY OF MCCOOK CODE OF ORDINANCES; PROVIDING FOR A RATE TO BE CHARGED FOR WATER BY THE MCCOOK WATER DEPARTMENT; PROVIDING FOR THE REPEAL OF ORDINANCE NO. 2021-3014 AND ANY AND ALL ORDINANCES IN CONFLICT HEREWITH; AND PROVIDING FOR A TIME AND DATE FROM AND AFTER WHICH THIS ORDINANCE SHALL TAKE EFFECT AND BE IN FORCE.

Ordinance No. 2022-3036 has been introduced, read by title, and I move to approve upon its first reading. This motion, made by Calvin and seconded by Weedon.

Discussion was held regarding increasing the rate by 4.5% or 6% as presented in the proposed ordinance.

Motion on the floor passed.

Gonzales: YEA, Calvin: YEA, Weedon: YEA, Muehlenkamp: YEA, Rambali: YEA  
YEA: 5, NAY: 0

- 2.C. Introduce and approve on its first reading Ordinance No. 2022-3037 providing for the amendment of Chapter 38: Appendix D, Sewer Department Rates and Fees.

Mayor Gonzales asked the Clerk to read Ordinance No. 2022-3037 by title.

AN ORDINANCE PROVIDING FOR THE AMENDMENT OF CHAPTER 38: FEE SCHEDULE - APPENDIX D, SEWER DEPARTMENT RATES AND FEES, OF THE CITY OF MCCOOK CODE OF ORDINANCES; PROVIDING FOR THE REPEAL OF ORDINANCE NO. 2021-3015 AND ANY AND ALL ORDINANCES IN CONFLICT HEREWITH; AND PROVIDING A TIME AND DATE FROM AND AFTER WHICH THIS ORDINANCE SHALL TAKE EFFECT AND BE ENFORCED.

Ordinance No. 2022-3037 has been introduced, read by title, and I move to approve upon its first reading. This motion, made by Calvin and seconded by Rambali, passed.

Gonzales: YEA, Calvin: YEA, Weedon: YEA, Muehlenkamp: YEA, Rambali: YEA  
YEA: 5, NAY: 0

### 3. Consent Agenda.

Councilmember Weedin requested that Item G be removed from the Consent Agenda and placed on the Regular Agenda.

Motion to approve the remaining consent agenda. This motion, made by Weedin and seconded by Gonzales, passed.

Gonzales: YEA, Calvin: YEA, Weedin: YEA, Muehlenkamp: YEA, Rambali: YEA.  
YEA: 5, NAY: 0

- 3.A. Approve the minutes of the March 7, 2022 regular City Council meeting.
- 3.B. Receive and file the minutes of the January 12, 2022 Library Advisory Board meeting.
- 3.C. Receive and file the Financial Report for the period ending February 28, 2022.
- 3.D. Receive and file the claims for the month of January 2022, published February 11, 2022 and the month of February 2022, published March 15, 2022.
- 3.E. Appoint Gene Weedin, Jared Muehlenkamp, Jeff Crick, Sean Wolfe, Steve Renner, Kevin Hodgson, Lilia Dimas, Lea Ann Doak, and Nate Schneider to the health insurance brokerage consultant committee.
- 3.F. Terminate agreement with Quick Med Claims (QMC) and enter into an agreement with One Billing Solutions for ambulance billing.
- 3.H. Receive and file the minutes of the March 15, 2022 Parks Advisory Board meeting.

**4. Regular Agenda.**

- 3.G. Approve the bid from Shelco Construction of Elsie, Nebraska, in the amount of \$558,400.35 for the North Cherokee Paving Project and the Alter Bid in the amount of \$269,951.55 for the East 1st Street Overlay.

Motion to approve the bid from Shelco Construction of Elsie, Nebraska, in the amount of \$558,400.35 for the North Cherokee Paving Project and the Alter Bid in the amount of \$269,951.55 for the East 1st Street Overlay. This motion, made by Weedin and seconded by Muehlenkamp, passed.

Gonzales: YEA, Calvin: YEA, Weedin: YEA, Muehlenkamp: YEA, Rambali: YEA  
YEA: 5, NAY: 0

- 4.A. Discuss and determine a date setting a pool town hall meeting.

The Council set April 5, 2022 at 7:00 P.M. for the Pool Town Hall meeting. Staff will contact the McCook Christian Church to see if their meeting room would be available that day.

- 4.B. Council Comments.

Mayor Gonzales stated that he received an email from a resident thanking the Public Works staff cleaning the parking lot on West "B" Street after the recent snow.

**Adjournment.**

There being no further business to come before the Council, Mayor Gonzales declared the meeting adjourned at 6:57 P.M.

---

Michael D. Gonzales, Mayor

ATTEST:

---

Lea Ann Doak, City Clerk-Treasurer

**CITY MANAGER'S REPORT  
APRIL 4, 2022, CITY COUNCIL MEETING**

---

**ITEM # 4.B.**

**RECOMMENDATION:**

**Approve Bid Specifications and Documents for a Fire Safety Trailer Simulator and set the date to receive bids as April 25, 2022, at 2:00 P.M.**

---

**BACKGROUND:**

The City of McCook Fire Department received notification on September 3, 2021, that we were awarded a grant through the FEMA/Department of Homeland Security Assistance to Firefighters Grant Fire Prevention and Safety (FPS) in the amount of \$198,708. The total amount awarded to McCook is \$189,245.71. Our 5% required match is \$9,462.29. Funding for this project was approved in the 2021-22 fiscal budget in the amount of \$225,000. The City has also received donated funds from several area fire departments totaling \$9,000 to be used for maintenance and upkeep of the trailer. The specifications attached will allow for competitive bids for the project.

The new Fire Safety Trailer Simulator will come with state-of-the-art equipment including a solar charging system, UV disinfectant lighting, augmented reality fire extinguisher training, fire sprinkler system demo, industrial/utility package, severe weather package and custom graphic package. The trailer is also handicapped accessible and all on one level.

The new Fire Safety Trailer Simulator will replace the current Fire Safety Trailer that is over 20 years old.

**FISCAL**

**IMPACT:** The required 5% match is currently funded in the F.Y. 2021-22 budget.

**RECOMMENDATION:**

**Approve Bid Specifications and Documents for a Fire Safety Trailer Simulator and set the date to receive bids as April 25, 2022, at 2:00 P.M.**

**APPROVALS:**

  
\_\_\_\_\_  
Marc A. Harpham, Fire Chief

  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Nate Schneider, City Manager

  
\_\_\_\_\_  
Date

**CITY OF MCCOOK  
Fire Department**

**BID SPECIFICATIONS**

**FIRE SAFETY SIMULATOR**

**APRIL 4, 2022**

## NOTICE TO BIDDERS

The City of McCook is accepting sealed bids for one (1) new Fire Safety Simulator with Kitchen, Bedroom, BBQ Grill, and Industrial Type Props. Bids will be accepted by the City Clerk at the McCook City Offices until 2:00 P.M. on April 25, 2022 and then such bids shall be publicly opened and read aloud in the City Council Chambers, McCook Municipal Center. Specifications and instructions to bidders are on file in the office of the City Clerk.

The Council reserves the right to reject any or all bids and to waive any irregularities.

-s-      Lea Ann Doak  
            City Clerk  
            P.O. Box 1059  
            505 West "C" Street  
            McCook NE 69001-1059

Publish: April 8, 15, and 22, 2022.

# INSTRUCTIONS TO BIDDERS

## 1. Defined Terms.

Terms used in these Instructions to Bidders have the meanings indicated below which are applicable to both the singular and plural thereof.

- 1.1. Bidder - one who submits a Bid directly to the City as distinct from a sub-bidder, who submits a bid to a Bidder.
- 1.2. Issuing Office - the office from which the Bidding Documents are to be issued and where the bidding procedures are to be administered.
- 1.3. Successful Bidder - the lowest, responsible and responsive Bidder to whom the City (on the basis of the City's evaluation as hereinafter provided) makes an award.
- 1.4. Bidding Documents - includes the Advertisement or Invitation to Bid, Instructions to Bidders, and the Bid Form.

## 2. Qualifications of Bidders.

To demonstrate qualifications to perform the Work, each Bidder must be prepared to submit within five days after Bid opening upon the City's request detailed written evidence such as financial data, previous experience, present commitments and other such data as may be called for.

## 3. Interpretations and Addenda.

- 3.1. All questions about the meaning or intent of the Bidding Documents are to be directed to Marc Harpham, Fire Chief. Interpretations or clarifications in response to such questions will be issued by Addenda mailed or delivered to all parties recorded by the Clerk as having received the Bidding Documents. Questions received less than ten days prior to the date for opening of Bids may not be answered. Only questions answered by formal written Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.
- 3.2. Addenda may also be issued to modify the Bidding Documents as deemed advisable by the City.

## 4. Bid Form.

- 4.1. The Bid Form is included with the Bidding Documents.
- 4.2. All blanks on the Bid Form must be completed by printing in black ink or by typewriter.
- 4.3. The Bid shall contain an acknowledgment of receipt of all Addenda (the numbers of which must be filled in on the Bid Form).
- 4.4. The address and telephone number of communications regarding the Bid must be shown.

**5. Submission of Bids.**

Bids shall be submitted at the time and place indicated in the Advertisement for Bid and shall be enclosed in an opaque sealed envelope, marked with "BID ON ONE (1) FIRE SAFETY SIMULATOR", and name and address of Bidder. If the Bid is sent through the mail or other delivery system the sealed envelope shall be enclosed in a separate envelope with the notation "BID ENCLOSED" on the face of it.

**6. Modification and Withdrawal of Bids.**

Bids may be modified or withdrawn by an appropriate document fully executed (in the manner that a Bid must be executed) and delivered to the place where Bids are to be submitted any time prior to the opening of Bids.

**7. Opening of Bids.**

Bids will be opened and (unless obviously non-responsive) read aloud publicly in the City Council Chambers, McCook Municipal Center. An abstract of the amounts of the base Bids and major alternates (if any) will be made available to Bidders after the opening of Bids.

**8. Award of Bid.**

- 8.1. Owner reserves the right to reject any or all Bids, including without limitation the rights to reject any or all nonconforming, nonresponsive, unbalanced or conditional Bids and to reject the Bid of any Bidder if City believes that it would not be in its best interest to make an award to that Bidder, whether because the Bid is not responsive or the Bidder is unqualified or of doubtful financial ability or fails to meet any other pertinent standard or criteria established by the City. The City also reserves the right to waive all informalities not involving price, time or changes in the Work and to negotiate contract terms with the Successful Bidder. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum. Discrepancies between words and figures will be resolved in favor of the words.
- 8.2. In evaluating Bids, the City will consider the qualifications of Bidders, whether or not the Bids comply with the prescribed requirements, and such alternates, unit prices and other data, as may be requested in the Bid Form or prior to the Notice of Award.
- 8.3. The City may conduct such investigations as the City deems necessary to assist in the evaluation of any Bid and to establish the responsibility, qualifications and financial ability of Bidders.
- 8.4. If the bid is to be awarded, it will be awarded to the Bidder whose evaluation by the City indicates that the award will be in the best interests of the City.

**9. Delivery.**

- 9.1. The Fire Safety Simulator, shall be F.O.B., McCook, Nebraska, and shall not include any federal excise or state sales tax.
- 9.2. A tax exemption certificate will be furnished by the City of McCook.

# BID FORM

**NOTE:** All equipment shall be factory-installed and shall be considered to be under factory warranty.

FIRE SAFETY SIMULATOR WITH  
KITCHEN, BEDROOM, BBQ GRILL,  
AND INDUSTRIAL TYPE PROPS

\$ \_\_\_\_\_

DELIVERY DATE: \_\_\_\_\_

This Bid Submitted by:

\_\_\_\_\_  
(Company Name)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Title)

**CONTACT PERSON:** Fire Chief Marc Harpham  
at 308/345-5710 or email at [firechief@cityofmccook.com](mailto:firechief@cityofmccook.com)

The City of McCook reserves the right to reject any or all bids, to waive any informality in bids, to accept in whole or in part any bid, and to exercise its own judgement as to the best proposal received.

**NOTICE OF AWARD**

**TO:**

**PROJECT:** Fire Safety Simulator with Kitchen, Bedroom, BBQ Grill,  
and Industrial Type Props  
City of McCook Fire Department

The City has considered the BID submitted by you for the above described project in response to its Advertisement for Bids and Information for Bidders dated April 4, 2022.8, 2020.

You are hereby notified that your BID has been accepted for this equipment in the amount of \_\_\_\_\_. The expected delivery date is approximately \_\_\_\_\_ from order date.

Please acknowledge receipt of this NOTICE OF AWARD by return mail, email, or fax, to the City.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

**CITY OF MCCOOK**

Lea Ann Doak  
City Clerk

**ACCEPTANCE OF NOTICE**

Receipt of the above NOTICE OF AWARD is hereby acknowledged this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
(Authorized Signature)

\_\_\_\_\_  
(Title)

Specs Mailed to:

## **McCOOK CITY AND VOLUNTEER FIRE DEPARTMENT**

### **SPECIFICATION SHEET**

The McCook City and Volunteer Fire Department is accepting bids on **one Fire Safety Simulator with Kitchen, Bedroom, BBQ Grill, and Industrial Type Props.**

#### **INTENT OF SPECIFICATIONS**

It is the intent of these specifications to cover the furnishing and delivery to the purchaser of a complete Fire Safety Simulator equipped as hereinafter specified. With a view to obtaining the best results and the most acceptable equipment for service in the fire department, these specifications cover the general requirements as to the type of construction, together with certain details as to finish, equipment, and appliances with which the successful bidder must conform. Minor details of construction and materials where not otherwise specified are left to the discretion of the contractor, who shall be solely responsible for the design and construction of all features.

Bids shall only be considered from companies that have an established reputation in the field of fire safety simulator construction.

Each bidder shall furnish satisfactory evidence of his ability to construct the Fire Safety Simulator specified and shall state the location of the factory where the Fire Safety Simulator is to be built. The bidder shall also show that they are able to render prompt service and to furnish replacement parts for said apparatus.

#### **CONTRACTOR'S SPECIFICATIONS**

Each bid shall be accompanied by a set of "Contractor's Specifications" consisting of a detailed description of the Fire Safety Simulator and equipment proposed and to which the apparatus furnished under contract must conform.

These specifications shall indicate size, type, model and make of all component parts and equipment.

#### **LATE PROPOSALS**

It is the bidder's responsibility to see that their proposals arrive on time. Late proposals, facsimiles, telegraphed, or telephone bids shall not be considered.

The purchaser reserves the right to accept or reject any or all bids on such basis as the purchaser deems to be in its best interest.

#### **SAFETY REQUIREMENTS**

It is expected that the Bidder shall meet all State and Federal safety standards and laws that are in effect on the date of the bid for the item(s) that are being specified and the particular use for which they are meant.

## **ACQUAINTANCE WITH SPECIFICATIONS**

It is the responsibility of the bidder to review all the bidding requirements. Failure of a bidder to be acquainted with this information shall not relieve him/her from any obligations of the bid requirements.

## **QUALITY AND WORKMANSHIP**

The design of the Fire Safety Simulator shall embody the latest approved engineering practices.

The workmanship shall be of the highest quality in its respective field. Special consideration shall be given to the following points: accessibility of the various units, which require periodic maintenance operations, and ease of operation

Construction shall be rugged and ample safety factors shall be provided to carry loads as specified.

## **LIABILITY**

The bidder, if his bid is accepted, shall defend all suits, and assume all liability for the use of any patented process, device or article forming a part of the Fire Safety Simulator or any appliance furnished under the contract.

## **WARRANTY**

A copy of the warranties for the Fire Safety Simulator and any associated parts or systems shall be furnished with each bidder's proposal.

## **GENERAL CONSTRUCTION**

The Fire Safety Simulator shall be designed and the equipment mounted with due consideration to distribution of load between the front and rear axles.

## **BID FORMS / SPECIFICATIONS**

All bid forms shall be submitted on the attached bid form. The bid form and / or these specifications shall be filled out by checking either the "YES" or "NO" column for each and every section / paragraph. Failure to use this form and / or these specifications shall be cause for immediate rejection of any bid.

## **EXCEPTION TO SPECIFICATIONS**

The following specifications shall be strictly adhered to. Exceptions shall be allowed if they are equal to or superior to that specified (as judged by the purchaser), and provided they are listed and fully explained on a separate page entitled "EXCEPTIONS TO SPECIFICATIONS". Exception lists shall refer to the specification page number. Each check in the "NO" column shall be listed and fully explained. Where no check is made at a particular paragraph either "YES" or "NO", it shall be assumed the bidder is taking exception to that paragraph. Where a paragraph is checked in the "NO" column and the Exceptions to Specifications do not explain the check mark, it shall be assumed that the bidder does not wish to conform to the buyer's wishes.

**PROPOSALS TAKING TOTAL EXCEPTION TO THESE SPECIFICATIONS WILL BE IMMEDIATELY REJECTED.**

The buyer is aware that all bidders shall have to take some exceptions; therefore, BIDDERS THAT TAKE NO EXCEPTIONS shall BE REQUIRED TO MEET EVERY PARAGRAPH TO THE FULLEST EXTENT SHOULD THEIR BID BE ACCEPTED. It is the intent of the purchaser to receive bids that do not require telephone calls or other communications to ascertain what a bidder is intending to supply.

Upon delivery, the Fire Safety Simulator shall be inspected against THESE specifications and not those supplied by the bidder with their proposal. Deviations shall not be acceptable unless they were noted, as exceptions at the time of bid and the Fire Safety Simulator shall be rejected until said deviations are corrected to the satisfaction of the buyer.

Decisions regarding equal to or better than, shall be the sole responsibility of the recipient of the bids rather than those companies submitting bids.

When exceptions are not taken but inconsistencies are noted in the submitted detailed specifications the bid may be rejected.

**BASIC LIMITED WARRANTY**

The Fire Safety Simulator shall be free of defects in material and workmanship for a period of three (3) years after the date the Fire Safety Simulator is first delivered to the original purchaser. Prorated warranties will not be considered or accepted, **No Exceptions.**

**Physical Specifications:**

The Fire Safety Simulator shall meet the following physical specifications as a minimum:

The length of the trailer shall be no longer than 27 feet in length.

EXCEPTIONS: YES \_\_\_\_\_ NO \_\_\_\_\_

The width of the trailer shall be no wider than 8.6 feet.

EXCEPTIONS: YES \_\_\_\_\_ NO \_\_\_\_\_

The interior height of the trailer shall be no less than 7 feet.

EXCEPTIONS: YES \_\_\_\_\_ NO \_\_\_\_\_

The exterior height of the trailer shall be no more than 11 feet

EXCEPTIONS: YES \_\_\_\_\_ NO \_\_\_\_\_

The GVWR of the trailer shall be no more than 14,000 pounds

EXCEPTIONS: YES \_\_\_\_\_ NO \_\_\_\_\_

**Construction Details:**

The Fire Safety Simulator shall meet or exceed the following construction details:

- All aluminum structure

EXCEPTIONS: YES \_\_\_\_\_ NO \_\_\_\_\_

- All aluminum framing

EXCEPTIONS: YES \_\_\_\_\_ NO \_\_\_\_\_

- 24" ATP Stoneguard

EXCEPTIONS: YES \_\_\_\_\_ NO \_\_\_\_\_

- 5200# Torsion Axles

EXCEPTIONS: YES \_\_\_\_\_ NO \_\_\_\_\_

- 3/4" Plywood Sub-Floors

EXCEPTIONS: YES \_\_\_\_\_ NO \_\_\_\_\_

- Easy clean walls

EXCEPTIONS: YES \_\_\_\_\_ NO \_\_\_\_\_

- 3/8" Plywood Interior Walls with FRP

EXCEPTIONS: YES \_\_\_\_\_ NO \_\_\_\_\_

- 32" Exterior Side Door

EXCEPTIONS: YES \_\_\_\_\_ NO \_\_\_\_\_

- 32" Interior Dividing Door

EXCEPTIONS: YES \_\_\_\_\_ NO \_\_\_\_\_

- Hanger Style Doors

EXCEPTIONS: YES \_\_\_\_\_ NO \_\_\_\_\_

- .030ga Aluminum Exterior with Enamel Finish

EXCEPTIONS: YES \_\_\_\_\_ NO \_\_\_\_\_

- Screw-less Exterior

EXCEPTIONS: YES \_\_\_\_\_ NO \_\_\_\_\_

- Minimum of one-year construction warranty on frame

EXCEPTIONS: YES \_\_\_\_\_ NO \_\_\_\_\_

- Power Rear Stabilizer

EXCEPTIONS: YES \_\_\_\_\_ NO \_\_\_\_\_

**Features:**

The Fire Safety Simulator shall come equipped with a minimum of the following features:

- ADA Accessibility

EXCEPTIONS: YES \_\_\_\_\_ NO \_\_\_\_\_

- Easy Towing

EXCEPTIONS: YES \_\_\_\_\_ NO \_\_\_\_\_

- One-Person Setup

EXCEPTIONS: YES \_\_\_\_\_ NO \_\_\_\_\_

- Health Safety Protocols

EXCEPTIONS: YES \_\_\_\_\_ NO \_\_\_\_\_

- Easy Clean, Walls, Floor and Ceiling

EXCEPTIONS: YES \_\_\_\_\_ NO \_\_\_\_\_

- UV Light Disinfecting System

EXCEPTIONS: YES \_\_\_\_\_ NO \_\_\_\_\_

- Advanced Solar Charging System

EXCEPTIONS: YES \_\_\_\_\_ NO \_\_\_\_\_

- Multi-Dimensional Hazard Props

EXCEPTIONS: YES \_\_\_\_\_ NO \_\_\_\_\_

- Wi-Fi Tablet Control System

EXCEPTIONS: YES \_\_\_\_\_ NO \_\_\_\_\_

- CCTV Camera System

EXCEPTIONS: YES \_\_\_\_\_ NO \_\_\_\_\_

- Generator Garage with Dual Fuel Generator

EXCEPTIONS: YES \_\_\_\_\_ NO \_\_\_\_\_

- Interior and Exterior SMART LED TV

EXCEPTIONS: YES \_\_\_\_\_ NO \_\_\_\_\_

- Modular Design to Accommodate Groups and People with Disabilities

EXCEPTIONS: YES \_\_\_\_\_ NO \_\_\_\_\_

- Custom Décor

EXCEPTIONS: YES \_\_\_\_\_ NO \_\_\_\_\_

- High Efficiency Smoke Machines

EXCEPTIONS: YES \_\_\_\_\_ NO \_\_\_\_\_

- Illuminated Windows

EXCEPTIONS: YES \_\_\_\_\_ NO \_\_\_\_\_

- Ground Lighting

EXCEPTIONS: YES \_\_\_\_\_ NO \_\_\_\_\_

- Scene Lighting

EXCEPTIONS: YES \_\_\_\_\_ NO \_\_\_\_\_

- Bluetooth Stereo

EXCEPTIONS: YES \_\_\_\_\_ NO \_\_\_\_\_

Safety Education:

- Dial 911 Phone System

EXCEPTIONS: YES \_\_\_\_\_ NO \_\_\_\_\_

- Fire Alarm Pull Station

EXCEPTIONS: YES \_\_\_\_\_ NO \_\_\_\_\_

- Smoke Alarm

EXCEPTIONS: YES \_\_\_\_\_ NO \_\_\_\_\_

- Low-Voltage Heated Door Hazard Prop

EXCEPTIONS: YES \_\_\_\_\_ NO \_\_\_\_\_

- Small and Large Appliance Hazard Prop

EXCEPTIONS: YES \_\_\_\_\_ NO \_\_\_\_\_

- Custom Hazard Props:
  - Kitchen.
  - Bedroom.
  - Laundry.
  - Utility Hazards and BBQ.
  - Industrial.
  - US Patented All-Ages Forcible Entry Simulator

EXCEPTIONS: YES \_\_\_\_\_ NO \_\_\_\_\_

- Severe Weather Package to include:
  - 4 Weather Functions:
    - Severe Thunderstorm
    - Tornado
    - Hurricane
    - Winter Weather
    - Breaking News Reports
  - Sound, lighting, and vibrations to simulate different weather emergencies

EXCEPTIONS: YES \_\_\_\_\_ NO \_\_\_\_\_

- A minimum of two FiAR Augmented Reality Fire Extinguisher Training System to include:
  - FiAR Extinguisher
  - iPad
  - Chargers

- Pelican Case
- Manuals and Training

EXCEPTIONS: YES \_\_\_\_\_ NO \_\_\_\_\_

- Virtual Reality Fire Sprinkler Demo to include:
  - 6x Oculus Quest 2 Headsets
  - 100 Disposable Face shields
  - Custom Carrying Case
  - Chargers
  - Preloaded Fire Sprinkler Demo Software

EXCEPTIONS: YES \_\_\_\_\_ NO \_\_\_\_\_

- Industrial/Utility Hazard Package to include:
  - Flammable liquids cabinet with hidden TV
  - Electrical Hazard
  - Leaking Gas Hazard
  - Lock-Out-Tag-Out
  - BBQ Simulator

• EXCEPTIONS: YES \_\_\_\_\_ NO \_\_\_\_\_

- Custom Graphic Package – Full Wrap

EXCEPTIONS: YES \_\_\_\_\_ NO \_\_\_\_\_

**Electrical and Parts:**

The Fire Safety Simulator shall meet or exceed the following electrical and parts details:

- 9000kw Dual Fuel Generator

EXCEPTIONS: YES \_\_\_\_\_ NO \_\_\_\_\_

- 110v Shoreline Connector

EXCEPTIONS: YES \_\_\_\_\_ NO \_\_\_\_\_

- Heavy Duty Gel Batteries (3)

EXCEPTIONS: YES \_\_\_\_\_ NO \_\_\_\_\_

- Advanced Solar Charging System

EXCEPTIONS: YES \_\_\_\_\_ NO \_\_\_\_\_

- High-Capacity Inverter / Charger

EXCEPTIONS: YES \_\_\_\_\_ NO \_\_\_\_\_

- Electric Tongue Jack

EXCEPTIONS: YES \_\_\_\_\_ NO \_\_\_\_\_

- XO Ratchet Jack

EXCEPTIONS: YES \_\_\_\_\_ NO \_\_\_\_\_

- Dome Lights (3)

EXCEPTIONS: YES \_\_\_\_\_ NO \_\_\_\_\_

- 12v Interior Light in Electrical Compartment

EXCEPTIONS: YES \_\_\_\_\_ NO \_\_\_\_\_

- 12v Master Power Switch

EXCEPTIONS: YES \_\_\_\_\_ NO \_\_\_\_\_

- 110v Breaker Box with GFI

EXCEPTIONS: YES \_\_\_\_\_ NO \_\_\_\_\_

- 25' Power Cable

EXCEPTIONS: YES \_\_\_\_\_ NO \_\_\_\_\_

- 5lb ABC Extinguisher

EXCEPTIONS: YES \_\_\_\_\_ NO \_\_\_\_\_

- 4-way Lug Wrench

EXCEPTIONS: YES \_\_\_\_\_ NO \_\_\_\_\_

- Mechanics Tools Set

EXCEPTIONS: YES \_\_\_\_\_ NO \_\_\_\_\_

- Spare Tire

EXCEPTIONS: YES \_\_\_\_\_ NO \_\_\_\_\_

- Smoke Alarm

EXCEPTIONS: YES \_\_\_\_\_ NO \_\_\_\_\_

The Fire Safety Simulator shall meet or exceed the following warranty details:

**Warranty:**

A minimum of a 3-year Extended Warranty to include:

- Onsite repairs and/or transportation cost

EXCEPTIONS: YES \_\_\_\_\_ NO \_\_\_\_\_

- **ADA:**

- The trailer is to be accessible to people for clearance, walk through and T-turn-around space.
- The trailer shall provide low incline access and full width 8 ft. ramp with 36" ATP extension to allow for easy access for multiple wheelchairs during an event.

- EXCEPTIONS: YES \_\_\_\_\_ NO \_\_\_\_\_

- **Safety:**

- The health and safety of the operator and visitors shall be a primary feature designed into this unit.
- Mandatory brake lights, taillights, backup lights and clearance lights shall be installed. These lights are to be LED 12-volt trailer lights.
- All necessary DOT lighting shall be provided and shall be 12-volt and LED in nature.
- A set of 12-volt safety light shall be located at any entrance to provide safety lighting when entering and exiting the structure.
- A 12-volt disconnect switch shall be installed. When switched to the "off" position, this shall stop all 12-volt power to the unit and will eliminate draining of the battery.

EXCEPTIONS: YES \_\_\_\_\_ NO \_\_\_\_\_

The Fire Safety Simulator shall include all of the following training and material as a minimum:

- **Training:**

- The manufacturer shall provide a minimum of 4 hours of training necessary to prepare members to operate any and all systems associated with the trailer.

EXCEPTIONS: YES \_\_\_\_\_ NO \_\_\_\_\_

- **Manuals:**

- Manufacturer shall supply digital copies of a manual and program guide.

EXCEPTIONS: YES \_\_\_\_\_ NO \_\_\_\_\_

The Manufacturer shall confirm delivery of the Fire Safety Simulator in a period not to exceed 180 days from the date of the signed order.

EXCEPTIONS: YES \_\_\_\_\_ NO \_\_\_\_\_

- **Delivery:**

- Delivery shall be within 180 days.

- EXCEPTIONS: YES \_\_\_\_\_ NO \_\_\_\_\_

The Fire Safety Simulator shall meet the following assembly requirements as a minimum:

- **Assembly:**

- Assembly and use must be done in accordance with the instructions included with the product and all local and national fire codes.

- EXCEPTIONS: YES \_\_\_\_\_ NO \_\_\_\_\_

CITY MANAGER'S REPORT  
APRIL 04 , 2022 CITY COUNCIL MEETING

ITEM: 4.C.

**RECOMMENDATION:**

APPROVE AN APPLICATION FROM PINPOINT COMMUNICATIONS, INC OF CAMBRIDGE, NE TO OCCUPY CITY RIGHT-OF-WAY FOR THE PURPOSE OF INSTALLING UNDERGROUND CONDUIT AND A VAULT FOR FIBER OPTIC CABLE STARTING AT EAST J STREET AND EAST 11TH CONTINUING NORTH APPROXIMATELY 2900 FEET.

**BACKGROUND:**

Pinpoint Communications is requesting to occupy City right-of-way to install buried conduit to provide fiber optic communications to customers along east 11th street and continuing to the calabria sub-division. The conduit will be installed underground using boring and open cut excavation. Starting on the south side of east j street going north under east 11th street. Then continuing north along the west side of east 11th running north until leaving the city limits. The route will involve installation of 6 vaults.

Work is scheduled to begin on April 5th, 2022 and conclude on May 1st, 2022.

**Vault Requirements:** Each vault is to be traffic rated (Tier 22) and constructed of polymer concrete. Where installed in an alley, vehicle or pedestrian path the vault will be situated as to not interfere with, impede, hinder or obstruct travel or maintenance of the surrounding area. In the event that a vault becomes damaged or in need repair or replaced it shall be the responsibility of Pinpoint Communications or it's agent or current equipment owner.

**FISCAL IMPACT:**(None) Pinpoint Communications, Inc. has provided the required \$2,500 performance deposit for these installations.

**APPROVALS:**

  
\_\_\_\_\_

Pat Fawver Utilities Dir.

March 25, 2022

  
\_\_\_\_\_

Kyle Potthoff, Public Works Dir.

March 25, 2022

  
\_\_\_\_\_

Nate Schneider, City Manager

March 25, 2022



P.O. BOX 1059 • 505 WEST C • McCook, NE 69001-1059 • PHONE (308) 345-2022 • FAX (308) 345-1461

### APPLICATION TO OCCUPY RIGHT-OF-WAY

APPLICANT NAME: Pinpoint Communications, Inc. DATE: 03/14/2022  
ADDRESS: 611 Patterson Street Cambridge, NE 69022 PHONE: 308-697-3375  
FAX: 308-697-3631 START DATE: 04/01/2022 FINISH DATE: 05/01/2022

#### A CASH BOND IS REQUIRED FOR ALL RIGHT-OF-WAY ENCROACHMENTS

Type: (circle)  
Over-Cross  
 Under-Cross  
 Occupy  
 Miscellaneous (Vaults)

With a: (circle)  
Water Line  
Sewer Line  
Gas Line  
 Telephone Line - Underground  
(Underground Aerial)  
Tree Trimming/Removal  
Grading  
 Other Vaults  
Electric Line  
(Underground Aerial)

See attached location descriptions.

Location: Beginning \_\_\_\_\_ feet (East West North South) of Intersection \_\_\_\_\_  
\_\_\_\_\_ and ending (East West North South) \_\_\_\_\_ feet of Intersection  
\_\_\_\_\_. See attached

**Requirements:** The applicant agrees to complete this work in accordance with the terms and conditions of the City of McCook. Any permit issued **will be cancelled** if the work specified is **not completed within the term listed on the permit** or within any **additional length of time granted**. Request for an extension of time to complete the work must be made in writing. Any extension granted will be acknowledged in writing by the City of McCook. **The Applicant may cancel the permit with written notification** at any time prior to beginning work on right-of-way.

**Performance Guarantee: (Make Payable to City of McCook)**

Amount: \$ \_\_\_\_\_ Check No. \_\_\_\_\_ Soc. Sec. No. Or FID No. 91-1800652  
This guarantee is for the faithful compliance by the Applicant to the terms of the permit. It is understood that should the Applicant fail to perform the work as set forth in the permit, the City of McCook will have the right to keep the performance guarantee as liquidated damages for its necessary supervisory and inspection expenses and to initiate such legal proceedings as are necessary to secure either performance of the work in compliance with the terms of the permit or the restoration of the right-of-way to its previous condition prior to the activities of the Applicant.

**NOTE:** Please provide a location plan for over-cross or under-cross of location to occupy City of McCook right-of-way. When your project requires engineering plans, please submit four sets of plans, no larger than 18"x24". The engineering plans shall show the general features of the work to be completed and all information such as sizes, distances, dimensions, sleeves, cuts and fills, erosion control measures, etc., when applicable. City of McCook Municipal Code §94.34.

Renee A. Holtze for Pinpoint Communications, Inc 03/14/2022  
Applicant's Signature Renee A. Holtze for Pinpoint Communications, Inc.

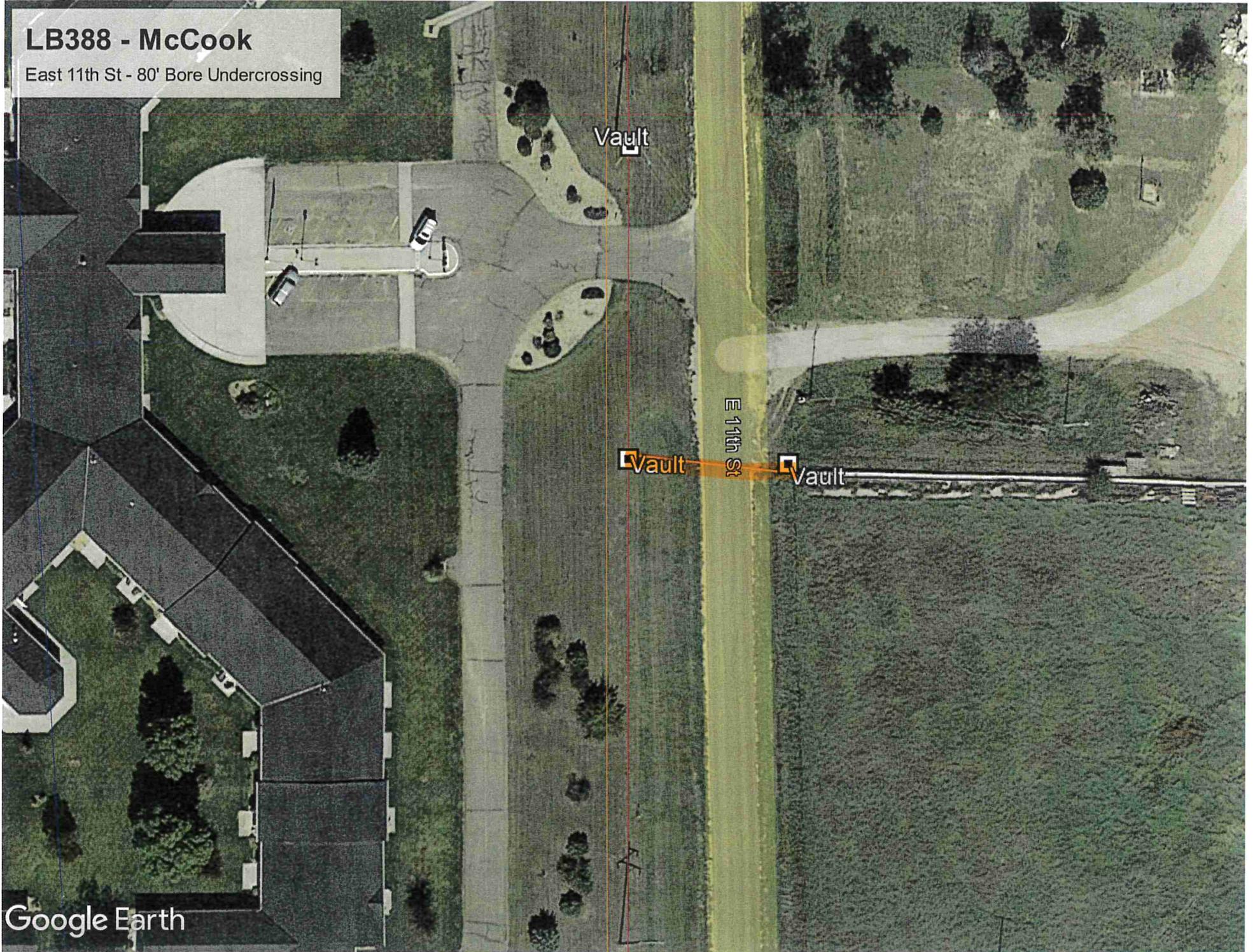
Recommended By \_\_\_\_\_ Date \_\_\_\_\_ Director of Public Works Approval \_\_\_\_\_

## LB388 McCook Northeast – City of McCook ROW Permit Application

1. Description: City ROW Bore Occupy of 11<sup>th</sup> Street 2,600'  
Location: Beginning 30' west of the east line of Section 20, T3N, R29W, Red Willow County, Nebraska. The work occupies 2,600' North to the City/County line. This beginning point is also 50' west and 60' north of the intersection of East J Street and East 11<sup>th</sup> Street.  
Type: Underground bore placing 1.25" duct, fiber and vaults.
  
2. Description: City ROW Bore Undercross of East 11<sup>th</sup> Street 80'  
Location: Beginning 30' west of the east line of Section 20, T3N, R29W, Red Willow County, Nebraska. The work undercrosses 11<sup>th</sup> St 80' to the east. This beginning point is also 50' west and 1,900' north of the intersection of East J Street and East 11<sup>th</sup> Street.  
Type: Underground bore placing 1.25" duct, fiber and vaults.
  
3. Description: City ROW Bore Undercross of East J Street Street 80'  
Location: Beginning 45' east of the west line of Section 21, T3N, R29W, Red Willow County, Nebraska. The work undercrosses East J Street 80' to the north. This beginning point is also 30' east and 40' south of the intersection of East J Street and East 11<sup>th</sup> Street. Type: Underground bore placing 1.25" duct, fiber and vaults.
  
4. Description: City ROW Bore Undercross of East 11<sup>th</sup> Street 80'  
Location: Beginning 45' east of the west line of Section 21, T3N, R29W, Red Willow County, Nebraska. The work undercrosses East 11<sup>th</sup> St 80' to the west. This beginning point is also 40' east and 30' north of the intersection of East J Street and East 11<sup>th</sup> Street.  
Type: Underground bore placing 1.25" duct, fiber and vaults.

# LB388 - McCook

East 11th St - 80' Bore Undercrossing



Vault

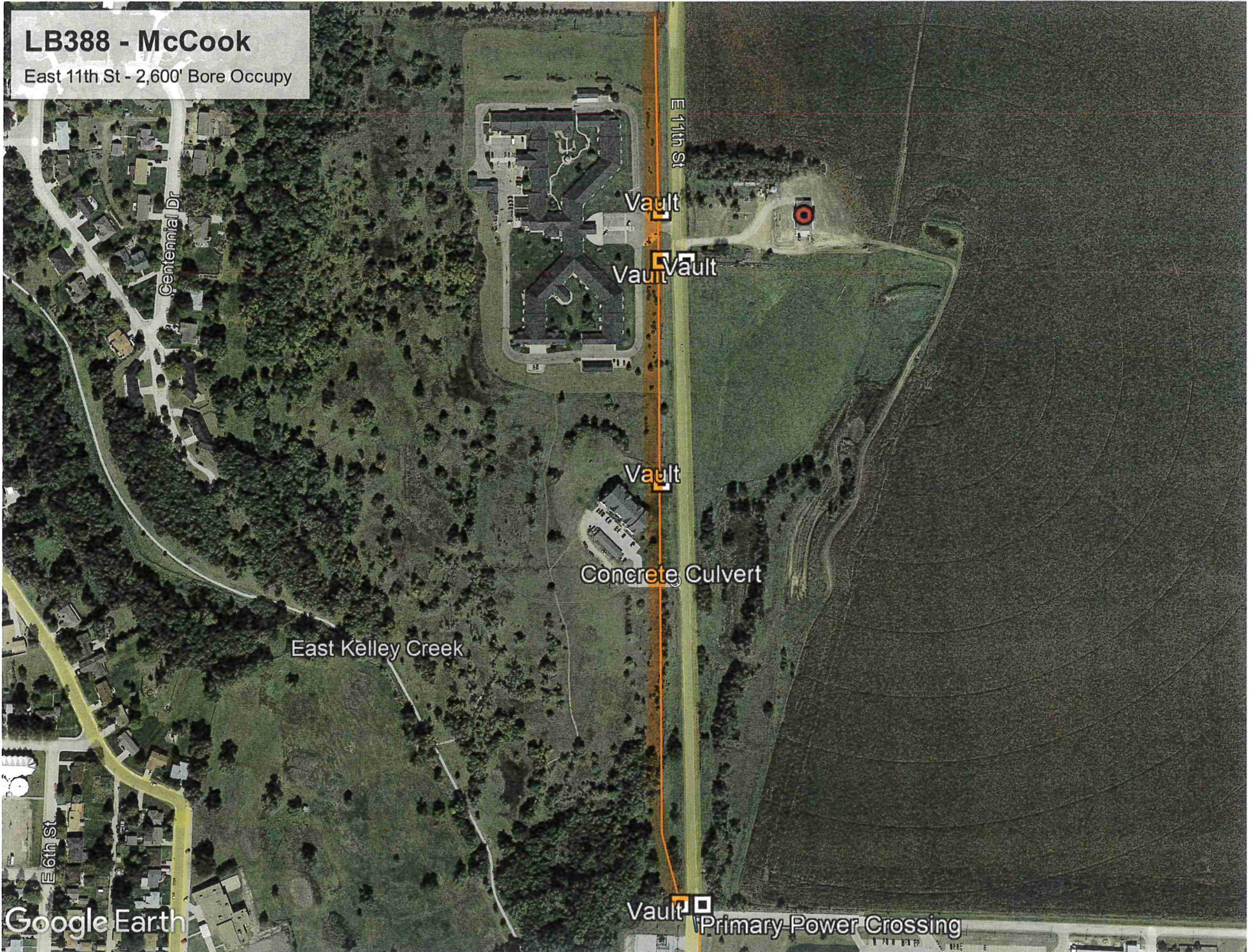
E 11th St

Vault

Vault

# LB388 - McCook

East 11th St - 2,600' Bore Occupy



E 11th St

Centennial Dr

E 6th St

Vault

Vault Vault

Vault

Concrete Culvert

East Kelley Creek

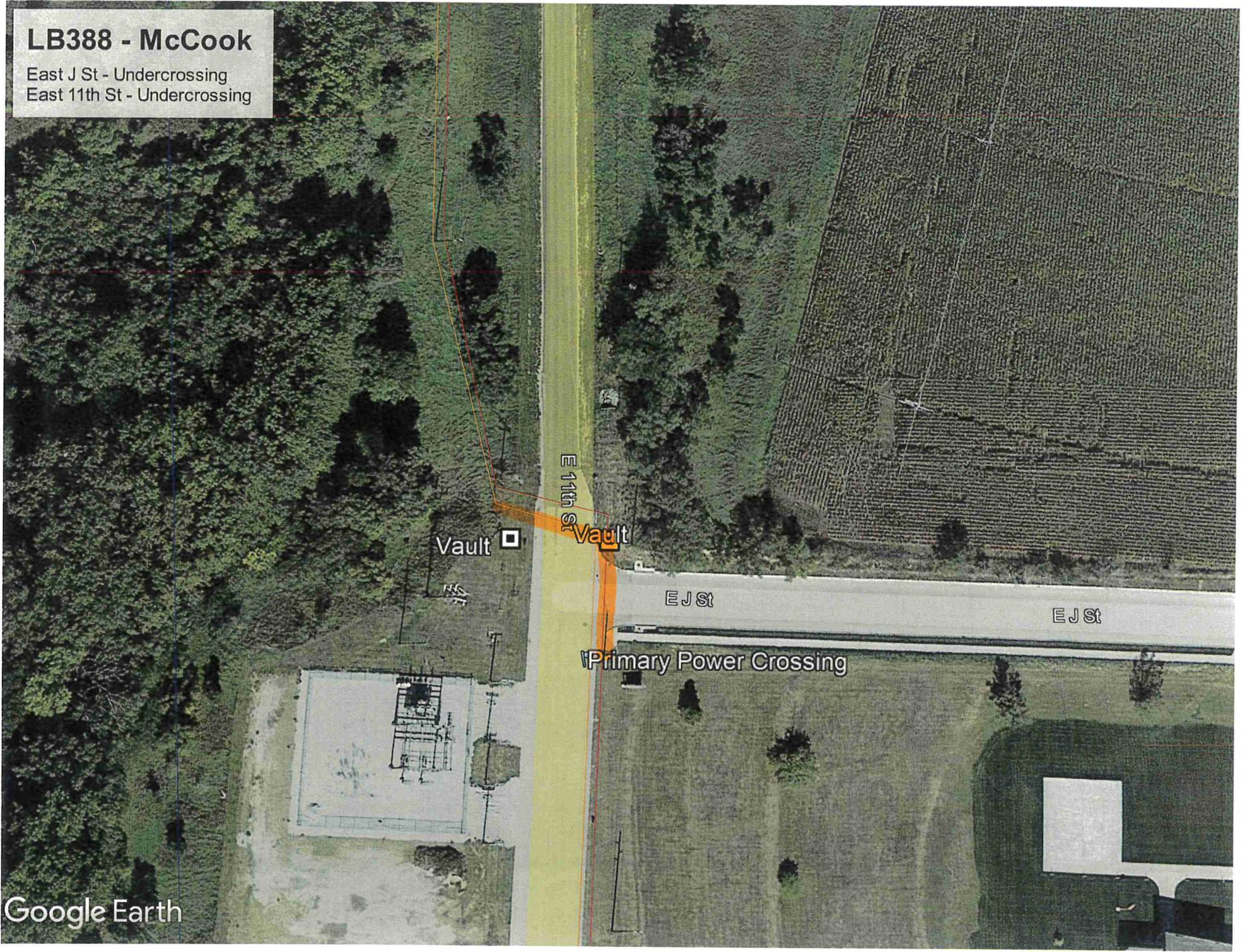
Vault

Primary Power Crossing

Google Earth

# LB388 - McCook

East J St - Undercrossing  
East 11th St - Undercrossing



# McCook Gazette

## Pinpoint Communications receives Nebraska Broadband Bridge Program grant funding

Tuesday, January 18, 2022

CAMBRIDGE, Neb. – The Nebraska Public Service Commission recently approved an Order awarding 60 grants to 19 providers totaling nearly \$18 million from the Nebraska Broadband Bridge Program. In total, Pinpoint Communications received more than \$2.2 million in funding (breakdown by location is as follows):

- Gothenburg East - \$222,159.00
- Harlan County Naponee - \$363,024
- McCook North East - \$181,141.25
- Nemaha County - \$870,400
- Orleans - \$242,607.50
- Peru - \$150,596.50
- Stamford - \$111,301.25
- Wilsonville - \$76,700

“Pinpoint is proud to continue their mission of providing high-speed broadband in our underserved areas of Nebraska,” said Tom Shoemaker, Pinpoint president. “We are thankful to receive this grant funding for 50% of the cost of our expansion efforts and look forward to serving these new customers.”

Pinpoint is slated to have the projects completed in 18 months from the date of the order by the Commission. The added investment will reach an estimated 1,100 homes throughout these areas.

Created by the Nebraska Broadband Bridge Act (Neb. Rev. Stat. § 86-1301- 86-1310) the NBBP provides up to \$40 million dollars over two grant cycles for the deployment of broadband networks capable of at least 100/100 Mbps (up/down) in unserved and underserved areas of the state.

For more information, visit [pnpt.com](http://pnpt.com).



**CITY MANAGER'S REPORT  
APRIL 4, 2022 CITY COUNCIL MEETING**

---

**ITEM:**            4.D.

**RECOMMENDATION:**

**APPROVE THE ENCROACHMENT AGREEMENT WITH BLACK HILLS NEBRASKA GAS, LLC(BHENEG) FOR THE SOLE PURPOSE OF GATHERING SOIL SAMPLES, ALONG WEST 1ST STREET, WEST 2ND STREET, WEST 3RD STREET, WEST 4TH STREET AND THE ALLEY CONNECTING WEST 2ND STREET AND WEST 3RD STREET SOUTH OF WEST "B" STREET AND NORTH OF WEST "A" STREET AND AUTHORIZE THE MAYOR TO SIGN.**

---

**BACKGROUND:**

Black Hills Nebraska Gas, LLC(BHENEG) is requesting permission to gather soil along West 4<sup>th</sup> Street, West 3<sup>rd</sup> Street, West 2<sup>nd</sup> Street, West 1<sup>st</sup> Street, and an alley connecting West 3<sup>rd</sup> Street and West 2<sup>nd</sup> Street South of West B Street and North of West A Street, as shown on Exhibit A of the attached encroachment agreement.

This encroachment agreement is for City owned property only. It is up to BH to get permission from the property owner for any work being conducted on private property.

As required by City code, Black Hills Energy, Inc. will be required to provide a compliance bond in the amount of \$2,500.00. Black Hills Energy will also provide a certificate of liability insurance.

**FISCAL  
IMPACT:**            None.

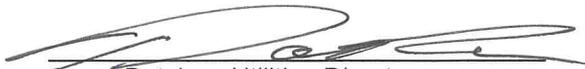
**RECOMMENDATION:**

**APPROVE THE ENCROACHMENT AGREEMENT WITH BLACK HILLS NEBRASKA GAS, LLC(BHENEG) FOR THE SOLE PURPOSE OF GATHERING SOIL SAMPLES, ALONG WEST 1ST STREET, WEST 2ND STREET, WEST 3RD STREET, WEST 4TH STREET AND THE ALLEY CONNECTING WEST 2ND STREET AND WEST 3RD STREET SOUTH OF WEST "B" STREET AND NORTH OF WEST "A" STREET AND AUTHORIZE THE MAYOR TO SIGN.**

**APPROVALS:**

  
\_\_\_\_\_  
Kyle Potthoff, Public Works Director

APRIL 4, 2022

  
\_\_\_\_\_  
Jesse Dutcher, Utilities Director

APRIL 4, 2022

  
\_\_\_\_\_  
Nate Schneider, City Manager

APRIL 4, 2022

## ENCROACHMENT AGREEMENT

THIS AGREEMENT (the "Agreement"), made this 4th day of April, 2022 (the "Effective date") by the City of McCook, Nebraska, a municipal corporation (the "City") and Black Hills Nebraska Gas, LLC(BHENEG), ("Licensee").

### RECITALS

WHEREAS, the City is the owner of property interests located in the City of McCook, Nebraska, including, but not limited to Street Rights-of-Way (ROW), park property, facilities – including water towers, buildings, traffic light poles, other traffic control devices, and other property interests.

WHEREAS, Licensee wishes to access property owned by the City of McCook for underground soil sampling.

WHEREAS, Licensee has requested permission from the City to complete soil sampling as described below, and the City has agreed to provide license to Licensee for such purpose, all in accordance with the terms and conditions of this Agreement.

### AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises and obligations contained herein, the parties hereby agree as follows:

1. *PROPERTY.* The City hereby grants to Licensee, the non-exclusive privilege to use the following property as follows:

The advancement of soil borings along West 4<sup>th</sup> Street, West 3<sup>rd</sup> Street, West 2<sup>nd</sup> Street, West 1<sup>st</sup> Street, and an alley connecting West 3<sup>rd</sup> Street and West 2<sup>nd</sup> Street South of West B Street and North of West A Street, as shown on Exhibit A, (exact locations may be moved to avoid utilities) attached hereto and incorporated herein by this reference (all of which is the "Property")

for the sole purpose described in Paragraph 3; provided that Licensee shall not interact with any public utility lines located within such areas such as water, sewer, electric, gas or telecommunications lines when gathering soil samples.

2. *TERM.* The term of this Agreement shall be five (5) years commencing on the first day of the month following the date this Agreement is executed by the parties. By mutual consent of the City and Licensee, this Agreement may be extended. Licensee shall notify the City in writing at least 180 days in advance of the date the agreement expires of its desire to extend the Agreement.
3. *USE.* The Licensee may use the City's Property for the sole purpose of gathering soil samples. Modifications to the soil sampling shall require prior City approval. Licensee shall be solely responsible for returning the property to the same condition as it was prior to the commencement of the soil sampling. Licensee shall comply with all applicable federal, state, and local laws, rules, statutes, and regulations relating to its use of the Property. It is understood and agreed that Licensee's use shall in all matters be subordinate to the City's and/or any governmental entity's use of the Property for any public purpose.
4. *ACCESS TO PROPERTY.* Authorized Licensee representatives shall provide City with no less than three days' prior written notice of the commencement of soil sampling. Such notice shall state the date and time that such work will be performed. For the purposes of

this Agreement, "authorized Licensee representatives" shall, mean persons covered by the general liability insurance policy described in Paragraph 5 in effect during the term of the Agreement. It is agreed that only authorized Licensee representatives who are covered by the general liability insurance policy shall be permitted to perform such work.

5. *INSURANCE AND BOND REQUIREMENTS.* It is understood and agreed by the parties that GHD, and/or its contractor(s) will be performing all work to gather soil samples as described in this agreement. BHENEG, and its contractor(s) shall procure and maintain at all times that this Agreement is in effect, general liability insurance, with the City of McCook named as an additional insured party, in the amount of \$1,000,000 for each occurrence, \$1,000,000 of coverage for personal injury and \$1,000,000 general aggregate coverage and \$300,000 coverage for damage to City property. BHENEG shall also procure and maintain a cash bond for the benefit of the City to insure the proper and timely maintenance and repair of the streets and alleys following excavation in the amount of two thousand five hundred dollars (\$2,500.00) insuring the workmanship of the soil sampling described in Paragraph 1 for the term of this agreement. In the event that BHENEG fails to provide and maintain the general liability insurance and cash bond described in this paragraph, Licensee shall immediately cure such deficiency and shall maintain such insurance and bond for the term of this agreement.
6. *PRESERVATION OF CITY PROPERTY AND FACILITIES.* Licensee shall refrain from causing any waste, damage, or injury to City property.
7. *INDEMNIFICATION OF THE CITY.* During the time this Agreement is in effect, Licensee agrees to indemnify, defend, and save the City, and the City's officers, agents, employees, grantees, and assigns, harmless from and against all claims, actions, liabilities, damages, costs, expenses, and judgments, including attorneys' fees, which relate to, arise from, or are in connection with Licensee's use or occupancy of the Property described herein, on account of any injury to persons or damage to property.
8. *TERMINATION.* The City and Licensee each reserve the right to terminate the permission granted by this Agreement at any time and for any reason by giving the other party at least six (6) months written notice of such termination. If Licensee fails to timely remove its personal property and trade fixtures upon termination of the Agreement, the City shall cause the same to be removed.
9. *DEFAULT.* Upon Licensee's failure to perform any of the terms or conditions of this Agreement, the City shall be entitled to give notice of default. Licensee shall have ten (10) days from the date of receipt of the notice to cure the default. The City may, if such default continues, terminate this Agreement without further notice. If Licensee causes a health or safety hazard on the Property governed by this Agreement, the City may immediately, without notice, suspend all access to the Property governed by this Agreement, and the City Council, with appropriate notice to Licensee, shall have the unilateral authority to terminate this Agreement upon a finding that the health or safety hazard is continuing or is likely to continue.
10. *NOTICE.* Notice under this Agreement, including denials or revocation or alteration of site specific approvals, Notice to remove equipment, and any other Notice, shall be provided in writing to the parties hereto as follows:

Notice to the City:  
McCook City Manager  
McCook Municipal Facility  
PO Box 1059  
McCook, NE 69001

Notice to the Licensee:  
Tara Regan  
Black Hills Energy  
1731 Windhoek Drive  
Lincoln, NE 68512

11. *ASSIGNMENT.* Licensee shall not transfer, assign, sublet, or pledge this Agreement without the prior written consent of the City.
12. *GOVERNING LAW.* This Agreement shall be construed and enforced in accordance with, and governed by, the laws of the State of Nebraska.
13. If any term of this Agreement is found to be void or invalid, such validity shall not affect the remaining terms of this Agreement, which shall continue in full force and effect.

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed as of the Effective Date.

Black Hills Nebraska Gas, LLC

CITY OF MCCOOK, NEBRASKA,  
A Nebraska corporation

By: Jana L. Rey  
Authorized Official

By: \_\_\_\_\_  
Mike Gonzales, Mayor

Attest: \_\_\_\_\_

Attest: \_\_\_\_\_  
Lea Ann Doak, City Clerk

# EXHIBIT A



Coordinate System:  
NEBRASKA STATE PLANE  
NAD83 FEET



NON-SELECTED BACKGROUND  
SAMPLING LOCATIONS



RANDOMLY SELECTED  
BACKGROUND SAMPLING  
LOCATIONS



PROPERTY BOUNDARY



**BLACK HILLS ENERGY COMPANY  
FORMER MANUFACTURED GAS PLANT SITE  
McCOOK, NEBRASKA**

**PROPOSED BACKGROUND SAMPLING  
LOCATION MAP**

Project No. 12561992  
Date February 2022

**FIGURE 3**

**CITY MANAGER'S REPORT  
APRIL 4, 2022 CITY COUNCIL MEETING**

---

**ITEM: 4.E.**

**RECOMMENDATION:**

**RECEIVE AND FILE THE CONFIRMATION OF AN EMERGENCY PURCHASE OF ONE NEW MANITEX A62 TRUCK MOUNTED AERIAL WORK PLATFORM MOUNTED ON A 2022 FORD F550 CHASSIS FOR THE STREET DEPARTMENT, FROM CRANE AND MACHINERY AT A COST OF \$176,400.00 DUE TO THE ONGOING SUPPLY CHAIN ISSUES.**

---

**BACKGROUND:**

With the supply chain as it is, we are in an environment that if you can locate a certain piece of equipment or supplies, you will have to commit to them immediately otherwise they more than likely will no longer be available.

In the FY 2021-2022 budget the street department has \$125,000.00 budgeted for a used bucket truck. Staff has been trying to locate a used bucket truck that fits our needs and budget. We have inquired about several used bucket trucks that we felt could work for us, but by the time we requested information the trucks had been sold. In all of these cases, the cost of the trucks exceeded our budget. We found that most used bucket trucks that appeared to be in good condition and would fall within our budget had excessive hours, mileage and use.

With the struggles that we were having locating a used truck that we felt comfortable with, staff began looking into new trucks. We found that new trucks were difficult to locate as well. The initial new truck that we identified was a new 2021 truck identical to the one identified above at a price of \$179,000.00, we researched and evaluated that truck and found that it would be ideal for our use. We spent that afternoon trying to come up with a funding source to make up the difference. By the time that we had come up with a plan to fund the truck, it had been sold. This all took place in a matter of hours.

A couple of days later we contacted a dealer inquiring about an identical unit. They stated that they had 3 of them being delivered within 7 to 10 days with one of them already sold. Again, we debated for a few hours to make sure that this is what we wanted to do and by the time we decided to commit, all of the trucks were spoken for. The dealer did inform us that he had another identical truck that was on order and scheduled to be delivered in April. With our recent history with the prior trucks, the decision was made to commit and put a deposit down to reserve the truck.

The truck that we are in the process of purchasing is a 2022 Manitex A62 aerial work platform that will be mounted on a 2022 Ford F550 Chassis with a maximum working height of 62 feet. The unit will come with a 3 year or 36,000 mile bumper to bumper warranty, 5 year warranty on the powertrain and a 1 year warranty on the lift. Delivery is included in the price and we anticipate that we will receive the truck sometime in April.

This truck will be used for a number of tasks including but not limited to traffic signal maintenance, tree work, maintenance at the ballparks and maintenance at the airport. The platform will allow for 2 employees to be lifted at the same time. This truck will provide a safe environment for the employees who are performing these tasks.

This truck will replace a 1998 bucket truck that was purchased used from NPPD more than 20 years ago. It's maximum height is 35 feet.

**FISCAL  
IMPACT:**

Additional funding will come from the following:

- \$10,000.00 - Ballpark Reserve
- \$10,000.00 - Hwy Maintenance Reserve
- \$10,000.00 - Airport ARPA
- \$19,400.00 - Safety Dividend
- \$ 2,000.00 - Street Fund

**APPROVALS:**



\_\_\_\_\_  
Kyle Potthoff, Public Works Director

March 25, 2022



\_\_\_\_\_  
Nate Schneider, City Manager

March 25, 2022



**CRANE & MACHINERY**  
A Manitex International Company

**SALES INVOICE**

**INVOICE NUMBER: M02998**

**DATE: March 15, 2022**

**Bill To:**  
City of McCook  
P.O. Box 1059  
505 West C Street  
McCook, NE 69001

**Ship To:**  
City of McCook  
111 South Street  
McCook, NE 69001

SALESPERSON	P.O. NUMBER	SHIP DATE	SHIP VIA	F.O.B. POINT	TERMS
Frank Carrasco	Kyle Potthoff	04/29/2022	Best Way	Winona, MN	See Below

QUANTITY	DESCRIPTION	UNIT PRICE	AMOUNT
1 (one)	<p><b>New 2022 Manitex Aerial Platform Model A62 Serial Number 304811</b> Equipped with all standard equipment &amp; the following:</p> <ul style="list-style-type: none"> <li>• Max. operating height: 62 ft</li> <li>• Max. operating outreach: 38 ft</li> <li>• Maximum capacity: 550 lbs/2 operators</li> <li>• Turret rotation: 700° (+/-350°)</li> <li>• Operator-platform rotation: 90° right + 90° left</li> <li>• Stabilization: 4 hydraulic stabilizers (7'-6" spread)</li> <li>• Machine length 29'-3"</li> <li>• Steel service body including an 11' lamp box</li> <li>• 110V power at basket</li> </ul> <p><b>Installed on: New 2022 Ford Truck model F550 4x2 VIN TBD</b> Equipped with all standard equipment &amp; the following options:</p> <ul style="list-style-type: none"> <li>• 6.7L Diesel Engine</li> <li>• 6 Speed Automatic Transmission</li> <li>• 19,500 lbs. GVWR</li> </ul> <p><b>New Manitex equipment &amp; Ford truck warranties apply.</b></p> <p><b>Payment Terms: 10% down, balance upon completion</b></p>	\$174,900.00	\$174,900.00

SUBTOTAL	\$174,900.00
SALES TAX	Inter-State
SHIPPING	\$ 1,500.00
<b>TOTAL DUE</b>	<b>\$176,400.00</b>

9725 Industrial Drive  
Bridgeview, IL 60455  
Phone: (708) 237-2094  
Fax: (708) 430-4056

E-mail: [info@craneandmachinery.com](mailto:info@craneandmachinery.com)  
Web: [www.craneandmachinery.com](http://www.craneandmachinery.com)



**CITY MANAGER'S REPORT**  
**APRIL 4, 2022 MCCOOK CITY COUNCIL MEETING**

---

ITEM NO. **5.A.** Approve the job description for an assistant city manager position and associated pay grade.

---

**BACKGROUND:**

During the 2021/2022 budget cycle, the McCook City Council created an assistant city manager position. City staff has reviewed its current organizational structure, as well as reviewed other communities' organizational structures, to determine which duties may best be suited for the newly created assistant city manager position. Per the proposed job description, there are duties that the city manager, city clerk, and public works director would delegate to the assistant city manager that would free each of those positions up to devote needed time to important duties within their purview.

Staff is recommending that the assistant city manager begin at the 265 paygrade, which correlates to a 12-month annual salary range of \$62,843 to \$89,700.

**APPROVALS:**

  
\_\_\_\_\_  
Nathan A. Schneider, City Manager

March 31, 2022

  
\_\_\_\_\_  
Kyle Potthoff, Public Works Director

March 31, 2022

  
\_\_\_\_\_  
Lea Ann Doak, City Clerk

March 31, 2022

## ASSISTANT CITY MANAGER

**Class Title:** Assistant City Manager  
**Department:** Administration  
**Pay Grade:** 265

**Date Approved:** April 4, 2022  
**Date Revised:** N/A

### NATURE OF WORK

Under general administrative direction, provides assistance and support to the City Manager including analyzing and implementing policies and procedures; assisting in the preparation of the budget and responding to and resolving public inquiries and complaints; and provides responsible staff assistance to the City Manager, City Council and department heads.

### SUPERVISION

Works under the supervision of the City Manager. May supervise personnel.

### RESIDENCY REQUIREMENTS

Shall live within the City limits unless an exception is granted by the City Manager.

### ESSENTIAL DUTIES AND RESPONSIBILITIES

*The following duties are typical for this classification. Incumbents may not perform all of the listed duties and/or may be required to perform additional or different duties from those set forth below to address business needs and changing business practices.*

- Provide assistance and support to the City Manager; analyze and implement policies and procedures; assist in the preparation of the budget; respond to and resolve public inquiries and complaints.
- Review and analyze legislation for impact on the City.
- Assist in developing and implementing the budget and long range goals for the City; monitor the assigned budget and approve expenditures as required.
- Generate reports and present financial data as required for the audit.
- Assists in the management of Tax Increment Financing (TIF) projects.
- Maintain contact with various media relations; update media on City or community issues.
- Prepare and administer grant applications and seek other alternate funding sources.
- Serve as project manager for assigned projects; facilitate project activities and resolve problems; develop and submit project reports to the City Manager.
- Serve as liaison for a variety of boards and commissions.
- Assists in the management of the McCook Ben Nelson Regional Airport.
- Maintain communication with other jurisdiction officials to coordinate regional issues and represent the City; serve as liaison with department heads, City Council, City Manager and other external agencies.
- Recommend policies and procedures.
- Attend meetings of the City Council and participate in official meetings as assigned.
- Perform related duties as required.

## **KNOWLEDGE, SKILLS, AND ABILITIES**

*The following generally describes the knowledge and ability required to enter the job- and/or be learned within a short period of time in order to successfully perform the assigned duties.*

### **Knowledge of:**

- Operations, services and activities of a municipality.
- Principles and practices of public administration.
- Principles and practices of budget preparation.
- Principles and practices of program development and administration.
- Office procedures, methods, and equipment including computers and applicable software applications.
- Business letter writing and report preparation techniques.
- Principles of supervision, training, and performance evaluation.
- Rules and regulations governing public meetings.
- Pertinent federal, state and local laws, codes and ordinances.

### **Ability to:**

- Interpret and apply City policies, procedures, laws and regulations relating to assigned activities.
- Independently perform the most difficult administrative support services.
- Provide responsible assistance to the City Manager.
- Analyze problems, identify alternative solutions, project consequences of proposed actions and implement recommendations in support of goals.
- Research, analyze and evaluate assigned service delivery methods and techniques.
- Understand the organization and operation of the City and of outside agencies as necessary to assume assigned responsibility.
- Interpret and apply federal, state and local policies, laws and regulations.
- Operate office equipment including computers and supporting software applications.
- Prepare clear and concise administrative and financial reports.
- Prepare and administer large and complex budgets.
- Communicate clearly and concisely, both orally and in writing.
- Establish and maintain effective working relationships with those contacted in the course of work.

## **DESIRED MINIMUM QUALIFICATIONS**

*Any combination of education and experience that would likely provide the required knowledge and abilities is qualifying. A typical way to obtain the knowledge and abilities would be:*

### **Education/Training:**

A Bachelor's degree from an accredited college or university with major course work in public administration, or a related field.

### **Experience:**

Five years of increasingly responsible administrative and analytical experience within a local government environment.

**SPECIAL REQUIREMENTS**

- Must be a citizen of the United States.
- Must be 21 years of age or older.
- Must possess, or be able to obtain by time of hire, a valid Nebraska Driver's License without record of suspension or revocation in any state.
- Must be insurable through the city's insurance carrier.

**PHYSICAL DEMANDS AND WORKING ENVIRONMENT**

*The conditions herein are representative of those that must be met by an employee to successfully perform the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential job functions.*

**Environment:** Work is performed primarily in a standard office environment with some travel to different sites; may work extended hours including evenings and weekends, and may be required to travel outside City boundaries to attend meetings.

**Physical:** Primary functions require sufficient physical ability and mobility to work in an office setting; to stand or sit for prolonged periods of time; to occasionally stoop, bend, kneel, crouch, reach, and twist; to lift, carry, push, and/or pull light to moderate amounts of weight; to operate office equipment requiring repetitive hand movement and fine coordination including use of a computer keyboard; to travel to other locations using various modes of private and commercial transportation; verbally communicate to exchange information.

\_\_\_\_\_  
Employee Signature

\_\_\_\_\_  
Date

**CITY MANAGER'S REPORT**  
**APRIL 4, 2022 MCCOOK CITY COUNCIL MEETING**

---

ITEM NO. **5.B.** Approve a request from Adamark Investments, LLC to allow the former St. Catherine's Apartments facility to be rehabilitated contingent upon: 1) Adamark Investments, LLC developing a rehabilitation plan by April 1, 2023; 2) upon completion of the rehabilitation plan, Adamark Investments, LLC beginning the process of physically rehabilitating the structure; and 3) during the course of its ownership, Adamark Investments, LLC maintaining the exterior portions of the lot in a condition that conforms with the City of McCook's Code of Ordinances.

---

**BACKGROUND:**

A request has been made by Adamark Investments, LLC to allow it the right to attempt to rehabilitate the former St. Catherine's Apartments facility. This request stems from a provision found within the City of McCook's Comprehensive Plan, stating, "The former St. Catherine's Apartments facility should be demolished and the site planned for residential redevelopment." While McCook's Comprehensive Plan serves to outline the City's future goals, some agencies use the Plan to determine whether or not a prospective course of action is feasible. Due to the fact the Plan states the facility should be demolished, a potential rehabilitation project becomes risky. Additionally, accessing outside funding becomes more complicated due to concerns about the long term viability of the structure.

As of today, there are no funds set aside to demolish the former St. Catherine's Apartments facility. Although a regional land bank has been discussed, there is no formal entity in existence that can assist with funding the demolition of the structure at this time, or in the immediate future, due to the weighty expenses associated with such a project. Additionally, other municipal funding sources (most notably a voter approved ½ cent sales tax increase) have not been targeted as a demolition funding option.

Due to these items, staff is comfortable giving Adamark Investments, LLC time to rehabilitate the former apartment structure, contingent upon the following: 1) Adamark Investments, LLC developing a rehabilitation plan by April 1, 2023; 2) upon completion of the rehabilitation plan, Adamark Investments, LLC beginning the process of physically rehabilitating the structure; and 3) during the course of its ownership, Adamark Investments, LLC maintaining the exterior portions of the lot in a condition that conforms with the City of McCook's Code of Ordinances. If these three conditions are met, staff is comfortable with amending the current McCook Comprehensive Plan's goals.

Of note, a new City of McCook Comprehensive Plan will need to be completed in 2023. If Adamark Investments, LLC complies with the conditions stated herein, McCook's new Comprehensive Plan can be modified to eliminate the language advocating demolition.

**APPROVALS:**



---

Nathan A. Schneider, City Manager

March 30, 2022

---

Lea Ann Doak, City Clerk

March 30, 2022

**Goal 3: Existing Owner and Rental Housing Stock.** Housing rehabilitation programs and activities in the City of McCook should strive to protect and preserve the existing housing stock of the Community.

- ◆ **Action Step 1:** The Community of McCook should establish a housing rehabilitation program for both owner and rental housing units, with emphasis on meeting the housing rehabilitation needs of the elderly, low income families and housing occupied by persons with special needs.
- ◆ **Action Step 2:** As needed, the City should establish a policy of condemning and demolishing housing of a dilapidated condition, not cost effective to rehabilitate. **The vacated lots could be set aside as part of a City-Wide Land Trust/Land Bank program to be used for future owner and rental housing development needs.**

\* **The former St. Catherine's Apartments facility should be demolished and the site planned for residential redevelopment.**



- ◆ **Action Step 3:** The Community of McCook should continue to preserve housing of historical significance. Housing that is architecturally significant or for its association with persons or families who played key roles in the development and growth of the City adds to the character and uniqueness of McCook neighborhoods.



**Goal 4: Financing Housing Development.** The City of McCook and housing developers should consider both public and private funding sources to both construct new housing and maintain the existing housing stock.

- ◆ **Action Step 1:** The City should pursue State and Federal Grants to assist in financing housing rehabilitation, housing purchase, rehabilitate and resale and first-time homebuyers programs. The City and private builders should pursue such funding from the Nebraska Investment Finance Authority and Nebraska Department of Economic Development.
- ◆ **Action Step 2:** The City should utilize Tax Increment Financing to assist in the financing of new housing developments, specifically public facility and utility requirements.
- ◆ **Action Step 3:** Housing developers in McCook should be encouraged to pursue securing any and all available tools of financing assistance in the development of new housing projects in the Community. This assistance is available with the Nebraska Investment Finance Authority, Nebraska Department of Economic Development, USDA-Rural Development, Federal Home Loan Bank and the Department of Housing and Urban Development, in the form of grants, tax credits and mortgage insurance programs.

**CITY MANAGER'S REPORT**  
**APRIL 04, 2022 CITY COUNCIL MEETING**

---

**ITEM: 5.C.**

**RECOMMENDATION:**

APPROVE ON SECOND READING ORDINANCE NO. 2022-3036 PROVIDING FOR THE AMENDMENT TO CHAPTER 38: APPENDIX E. SETTING THE RATE TO BE CHARGED FOR WATER BY THE MCCOOK WATER DEPARTMENT

---

**BACKGROUND:**

Based on data in the 2022 Water Enterprise Fund Cashflow Model, as prepared by Public Financial Management (PFM), City Staff is recommending that the current water rate be increased by six percent (6%). The rate increase provides funds to cover inflation, staff wages and pay for capital projects. The current rates have been in place since May of 2021. The Ready to Serve fee is \$18.82, first 5,000 cu. ft. is \$1.92 per 100 cu. ft. and over 5,000 cu ft costs \$1.423 per 100 cu. ft.

The proposed increase would see the ready-to-serve fee increase by \$1.129 to **\$19.949 per month**. The price per 100 cubic feet (748 gallons) would also increase. The first 5,000 cubic feet will cost **\$2.035** per 100 cubic feet an increase of **11.5** cents. Usage above 5,000 cubic feet will increase to **\$1.508** per 100 cubic feet an increase of **8.5** cents.

The attached spreadsheet shows the per month increase to customers using various amounts of water. The row, listing 2,289 cubic feet of usage demonstrates a customer that uses 557 cubic feet in the home and 1,732 cubic feet of water to irrigate the lawn. Based on applying 1 inch of water per week to 5,000 square feet of lawn, the customer will see an increase of **\$4.03** per month during the watering season. See attached sheet showing cost to various usage amounts.

During the March 21st council meeting it was asked how many water customers exceeded the 5000 cubic feet. Our records indicate that on average 61 customers in the winter and 487 customers in the summer exceed the 5000 cubic feet.

**FISCAL IMPACT:** based on a 6% rate increase and water sales at 70 million cu. ft. revenue should be \$2.4 million dollars. Slightly less than the \$2.5 million dollars during the 20/21 budget when 79.9 million cu. ft. were sold.

---

**APPROVALS:**

  
\_\_\_\_\_  
Lea Ann Doak, City Clerk

3/30/2022  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Pat Fawver, Utilities Director

3-28-22  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Nate Schneider, City Manager

3-29-22  
\_\_\_\_\_  
Date

ORDINANCE NO. 2022-3036

AN ORDINANCE PROVIDING FOR THE AMENDMENT OF CHAPTER 38: FEE SCHEDULE - APPENDIX E, WATER DEPARTMENT RATES AND FEES; OF THE CITY OF MCCOOK CODE OF ORDINANCES; PROVIDING FOR A RATE TO BE CHARGED FOR WATER BY THE MCCOOK WATER DEPARTMENT; PROVIDING FOR THE REPEAL OF ORDINANCE NO. 2021-3014 AND ANY AND ALL ORDINANCES IN CONFLICT HEREWITH; AND PROVIDING FOR A TIME AND DATE FROM AND AFTER WHICH THIS ORDINANCE SHALL TAKE EFFECT AND BE IN FORCE.

NOW, THEREFORE BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF MCCOOK, NEBRASKA:

SECTION 1. That Chapter 38: Fee Schedule - Appendix E, Water Department Rates and Fees; Section A - Water Rates, of the City of McCook Code of Ordinances, shall be and is hereby amended to read as follows:

A. Water Rates. The following rates for water have been set by the City Council in accordance with the provisions of Section 52.01 of this Code.

1. CUSTOMERS WITHIN THE CITY. The rates for water used by customers within the City shall be as follows:

(A) 2.035 dollars per one hundred cubic feet for the first five thousand (5,000) cubic feet of water used;

(B) 1.508 dollars per one hundred cubic feet for all water used over five thousand (5,000) cubic feet.

In addition to the above, a ready-to-serve fee of nineteen and 95/100 dollars (\$19.95) per month shall be charged to each customer.

2. CUSTOMERS OUTSIDE THE CITY. The amount to be charged for water used by customers outside the city boundaries shall be computed by taking the water consumption of the customer times the rates fixed in division (A)(1) above, plus additional charges as specified therein, and multiplying the final sum times the factor of one and one-half to get the total charge to be billed the customer.

3. BULK WATER. The rate for bulk water purchases shall be \$5.00 per one hundred cubic feet.

4. FIRE HYDRANT METER. Fire hydrant meter rent shall be \$50.00 per week, plus water usage charged at the rate for bulk water. The deposit required for a fire hydrant meter is set at \$250.00

SECTION 2. Ordinance No. 2021-3014 and any and all other ordinances or parts of ordinances in conflict herewith shall be and are hereby repealed and abrogated.

SECTION 3. This ordinance shall take effect with the bills dated May 1, 2022 and be in full force from and after its passage, approval and publication as required by law in its entirety or in pamphlet form, as the case may be.

PASSED AND APPROVED THIS \_\_\_\_\_ day of \_\_\_\_\_, 2022.

-s- Michael D. Gonzales  
Mayor

ATTEST:

-s- Lea Ann Doak  
City Clerk

WATER RATES

Rate \$\$\$\$	R-T-S fee	(May 2021) Current Rate				Total	6 %		May, 2022 Rate Increase			0.06 0.045		Per Month Saving 4.5 % Vs 6%
		Cubic Feet over 5,000		Sales Tax 7%	R-T-S Fee		First 5,000 Over 5,000		Sales Tax 7%	Total	Per Mo. Increase			
Usage Cu Ft		Cubic Feet						Cubic Feet						
	\$18.82	\$1.920	\$1.423			\$19.95	\$2.035	\$1.508						
<b>557</b>	\$18.82	\$10.69	\$0.00	\$2.07	\$31.58	\$19.95	\$11.34	\$0.00	\$2.19	\$33.48	\$1.89			
						\$19.67	\$11.18	\$0.00	\$2.16	\$33.00	\$1.42	(\$0.47)		
<b>1,802</b>	\$18.82	\$34.60	\$0.00	\$3.74	\$57.16	\$19.95	\$36.67	\$0.00	\$3.96	\$60.59	\$3.43			
						\$19.67	\$36.16	\$0.00	\$3.91	\$59.73	\$2.57	(\$0.86)		
<b>2,289</b>	\$18.82	\$43.95	\$0.00	\$4.39	\$67.16	\$19.95	\$46.59	\$0.00	\$4.66	\$71.19	\$4.03			
						\$19.67	\$45.93	\$0.00	\$4.59	\$70.18	\$3.02	(\$1.01)		
<b>3,768</b>	\$18.82	\$72.35	\$0.00	\$6.38	\$97.55	\$19.95	\$76.69	\$0.00	\$6.76	\$103.40	\$5.85			
						\$19.67	\$75.60	\$0.00	\$6.67	\$101.94	\$4.39	(\$1.46)		
<b>5,306</b>	\$18.82	\$96.00	\$4.35	\$8.34	\$127.52	\$19.95	\$101.76	\$4.62	\$8.52	\$134.84	\$7.33			
						19.67	100.32	4.55	8.40	132.94	\$5.42	(\$1.91)		
<b>13,651</b>	\$18.82	\$96.00	\$123.10	\$16.65	\$254.58	\$19.95	\$101.76	\$130.49	\$17.65	\$269.85	\$15.27			
						\$19.67	\$100.32	\$128.64	\$17.40	\$266.03	\$11.46	(\$3.82)		
<b>25,300</b>	\$18.82	\$96.00	\$288.87	\$28.26	\$431.95	\$19.95	\$101.76	\$306.20	\$29.95	\$457.86	\$25.92			
						\$19.67	\$100.32	\$301.87	\$29.53	\$451.38	\$19.44	(\$6.48)		

Lot Size 7,000 sq ft 50 ft X 140 ft Lot  
 Home Size 2,000 sq ft minus sq. ft of home  
 Area of Lawn 5,000 sq ft lawn area to receive 1 inch per week

1 inch water: 400 cu ft/5,000 sq ft of lawn

1 inch/week 1,732 cu ft/Month 1 inch of water on lawn per week for 1 month.

domestic use 557 cu ft/Month water used in home

**Total use 2,289 cu ft/Mont** total usage irrigation and domestic for 1 month  
 \$4.03 amount of increase for 1 month with irrigation

**CITY MANAGER'S REPORT  
APRIL 4, 2022 CITY COUNCIL MEETING**

---

**ITEM: 5.D.**

**RECOMMENDATION:**

APPROVE ON SECOND READING ORDINANCE NO. 2022-3037 PROVIDING FOR THE AMENDMENT TO CHAPTER 38: APPENDIX D. SEWER DEPARTMENT RATES AND FEES.

---

**BACKGROUND:**

Based on the Sewer Enterprise Fund Cashflow Model prepared by Public Financial Management (PFM), City Staff is recommending that the current sewer rate be increased by three percent (3%). The rate increase provides the funds to cover inflation, pay for capital projects and maintain a healthy bottom line.

The proposed increase would see the base fee for residential customers go from \$17.03 to **\$17.541** per month (51 cents). The commercial base fee will go from \$24.81 to **\$25.554** per month (74 cents). Both residential and commercial monthly base fees include 333 cubic feet of usage. The fee for usage above 333 cubic feet (2,490 gallons) would also increase by 3% from the current \$3.677 per 100 cubic feet (748 gallons) to **\$3.787** per 100 cubic feet of usage (11 cents). See attached sheet showing cost to various customers.

Using the PFM model as the guide, a 3% increase will not generate additional revenue for FY 21/22. What the increase does do is maintain a steady revenue stream if cubic feet sales drops back to the anticipated 31 million cu. ft range. If sales were to remain at or near 33.9 million cubic feet revenue could increase as much as \$45,000.

The higher than normal cubic feet sales for FY 20/21 can be attributed to industrial and commercial usage which has seen declines during the 4th quarter of 21 and 1st quarter of 22.

**FISCAL IMPACT: None, maintain current revenue for FY 21/22 based on sales at or near 31,000,000 cubic feet.**

---

**APPROVALS:**

  
\_\_\_\_\_  
Lea Ann Doak, City Clerk

\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Pat Fawver, Utilities Director

3-28-22  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Nate Schneider, City Manager

3-29-22  
\_\_\_\_\_  
Date

ORDINANCE NO. 2022-3037

AN ORDINANCE PROVIDING FOR THE AMENDMENT OF CHAPTER 38: FEE SCHEDULE - APPENDIX D, SEWER DEPARTMENT RATES AND FEES, OF THE CITY OF MCCOOK CODE OF ORDINANCES; PROVIDING FOR THE REPEAL OF ORDINANCE NO. 2021-3015 AND ANY AND ALL ORDINANCES IN CONFLICT HEREWITH; AND PROVIDING A TIME AND DATE FROM AND AFTER WHICH THIS ORDINANCE SHALL TAKE EFFECT AND BE ENFORCED.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF MCCOOK, NEBRASKA:

SECTION 1. That Chapter 38: Fee Schedule - Appendix D, Sewer Department Rates and Fees; shall be amended to read as follows:

- A. Sewer connection permit. The fee required for the obtaining of a sewer connection permit as required by § 51.020 is hereby set at \$500.
- B. Sewer connection fees. The fees required by § 51.022 pertaining to sewer connections are hereby set as follows:
  - 1. Where connection to an existing sewer main is requested, a sewer connection fee of \$150 will be required.
  - 2. In certain cases, where a larger than normal service connection is required, a fee will be charged to the applicant based on labor and material charges involved in installing the sewer connection.
  - 3. All fees required by this section are due and payable in advance of the inspection or sewer connection.
- C. Private sewage disposal permit. The fee required by § 51.055 pertaining to private sewage disposal permits is hereby set at \$10.
- D. Sewer Use Charges.
  - 1. Residential. The residential sewer use charges provided for in Section 51.072 are as follows:

Minimum Charges of \$17.54 per month based on the first 333 cubic feet of water usage.

Residential Rate - \$3.787 per 100 cubic feet for everything over 333 cubic feet water usage.
  - 2. Commercial. The commercial sewer use charges provided for in Section 51.072 are as follows:

Minimum Charge of \$25.55 per month based on the first 333 cubic feet of water usage.

Commercial Rate - \$3.787 per 100 cubic feet for everything over 333 cubic feet water usage.

3. Sewage Disposal at the Treatment Plant. All sewage that is transported by truck or any vehicle to the plant for disposal will be assessed a fee of \$0.10 per gallon during regular business hours. Non-business hours will be assessed an additional \$35.00 per load.

SECTION 2. Ordinance No. 2021-3015 and any and all other ordinances or parts of ordinances in conflict herewith shall be and are hereby repealed.

SECTION 3. This ordinance shall take effect with the bills dated May 1, 2022 and be in full force from and after its passage, approval, and publication as required by law in its entirety or in pamphlet form, as the case may be.

PASSED AND APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

- s - Michael D. Gonzales, Mayor

ATTEST:

-s- Lea Ann Doak, City Clerk

21/22

## SEWER RATES

4/4/22

Sewer Only Residential	SMALL user	20/21	2 persons	Current Amount		Increase 3.00%
		Rate	Usage		Rate	
Winter usage De, Ja, Fe	RTS Fee / 100 cu ft fee			<b>\$17.030</b>		<b>\$17.54</b>
	Sales Tax 7%	<b>\$3.677</b>	<b>356</b> cu. ft	\$0.85	<b>\$3.787</b>	\$0.87
	Monthly Total			\$1.25		\$1.29
				<b>\$19.13</b>		<b>\$19.70</b>
		Average Residential (Small)			Mo. Increase	<b>\$0.57</b>
Sewer Only Residential	Medium user	2018	4 persons	Current Amount		Increase 3.00%
		Rate	Usage		Rate	
Winter usage De Ja Fe	RTS Fee inc first 333 cu Ft.			<b>\$17.030</b>		<b>\$17.54</b>
	/ 100 cuft fee	<b>\$3.677</b>	<b>532</b> cu. ft	\$7.32	<b>\$3.787</b>	\$7.54
	Sales Tax			\$1.70		\$1.76
	<b>Monthly Total</b>			<b>\$26.05</b>		<b>\$26.83</b>
		Average Residential (Medium)			Mo. Increase	<b>\$0.78</b>
Sewer Only Residential	Large user	2018	6 persons	Current Amount		Increase 3.00%
		Rate	Usage		Rate	
Winter usage De Ja Fe	RTS Fee inc first 333 cu ft			<b>\$17.030</b>		<b>\$17.54</b>
	/ 100 cu. ft fee	<b>\$3.677</b>	<b>830</b> cu. ft	\$18.27	<b>\$3.787</b>	\$18.82
	Sales Tax			\$2.47		\$2.55
	<b>Monthly Total</b>			<b>\$37.78</b>		<b>\$38.91</b>
		Average Residential (Large)			Mo. Increase	<b>\$1.13</b>
Sewer Only Commercial	Small user	2018		Current Amount		Increase 3.00%
		Rate	Usage		Rate	
Winter usage De, Ja, Fe	RTS Fee inc first 333 cu ft			<b>\$24.81</b>		<b>\$25.55</b>
	/ 100 cuft fee	<b>\$3.677</b>	<b>234</b> cu. ft	\$0.00	<b>\$3.787</b>	\$0.00
	Sales Tax 7%			\$1.74		\$1.79
	<b>Monthly Total</b>			<b>\$26.55</b>		<b>\$27.34</b>
		Average Commercial (small)			Mo. Increase	<b>\$0.80</b>



**CITY MANAGER'S REPORT  
APRIL 4, 2022 MCCOOK CITY COUNCIL MEETING**

**5.E.**

ITEM NO. \_\_\_ Approve Ordinance No. 2022-3038 of the City of McCook, Nebraska, on first reading and under suspension of the rules, amending Ordinance No. 2021-3016 to correct certain provisions related to defined terms.

---

**BACKGROUND:**

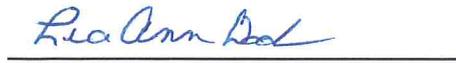
In August of 2021, the City of McCook issued its Combined Utilities Revenue Refunding Bonds, Series 2021, in the original aggregate principal amount of \$6,555,000. The issuance was conducted pursuant to Ordinance No. 2021-3016, which was passed on April 5, 2021. A copy of the corresponding City Manager's Report from April 5, 2021 is attached hereto for reference.

Currently, the City of McCook is working with the Nebraska Department of Environmental Quality (NDEE) to enter into a new loan agreement for the purpose of upgrading McCook's water system. During the City of McCook's review of the new agreement, it was determined that Ordinance No. 2021-3016 contained statements that should be amended in order to harmonize the bond language with McCook's actual practices. In particular, the definition of "Systems" (as defined in the Series 2021 bond issue) should be amended to exclude "electric systems." The City of McCook does not operate an electric system. McCook leases its electric system to NPPD, which in turn operates the electric system. NPPD is the sole entity that collects the revenue derived from the City of McCook's electric system. The only "Systems" included in the City of McCook's utilities are its water and sewer systems. The City of McCook receives revenue in return for providing water and sewer services. It is important that the Series 2021 bond holders are aware that the Combined Utilities Revenue Refunding Bonds are only backed by water and sewer revenue, not electric system revenue. Ordinance No. 2022-3038 corrects 2021-3016 and provides notice of the correct bond funding sources.

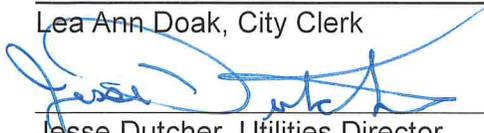
**APPROVALS:**

  
\_\_\_\_\_  
Nathan A. Schneider, City Manager

March 31, 2022

  
\_\_\_\_\_  
Lea Ann Doak, City Clerk

March 31, 2022

  
\_\_\_\_\_  
Jesse Dutcher, Utilities Director

March 31, 2022

  
\_\_\_\_\_  
Pat Fawver, Utilities Director

March 31, 2022

ORDINANCE NO. 2022-3038

AN ORDINANCE OF THE CITY OF MCCOOK, NEBRASKA, AMENDING ORDINANCE NO. 2021-3016 TO CORRECT CERTAIN PROVISIONS RELATED TO DEFINED TERMS; PROVIDING FOR THE PUBLICATION OF THE ORDINANCE IN PAMPHLET FORM; AND PRESCRIBING OTHER MATTERS RELATING THERETO.

WHEREAS, the City of McCook, Nebraska (the “**Issuer**”), previously issued its Combined Utilities Revenue Refunding Bonds, Series 2021, dated August 24, 2021, in the original aggregate principal amount of \$6,555,000 (the “**Series 2021 Bonds**”), pursuant to Ordinance No 2021-3016, passed by the Mayor and City Council (the “**Council**”) of the Issuer on April 5, 2021 (the “**Bond Ordinance**”); and

WHEREAS, the Series 2021 Bond were offered to bondholders pursuant to an Official Statement dated July 13, 2021; and

WHEREAS, the defined terms in the Bond Ordinance were inconsistent with the description of such defined terms in the Official Statement, making it necessary and appropriate for the Council to adopt this amending ordinance for the purpose of curing such inconsistencies, which changes are not materially adverse to the interests of the Bondowners as such changes serve to conform the Bond Ordinance to the description of the Bond Ordinance in the Official Statement.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF MCCOOK, NEBRASKA, AS FOLLOWS:

**Section 1.** Article I of the Bond Ordinance is hereby repealed in its entirety and replaced with the following, which includes changes to the definitions of “Consultant”, “Debt Service Requirements”, “Interest Payment Date” and “System”:

ARTICLE I

DEFINITIONS

In addition to words and terms defined elsewhere herein, the following capitalized words and terms as used in this Ordinance shall have the following meanings:

“*Act*” means Sections 18–1803 through 18–1805 and Section 10-142 of the Reissue Revised Statutes of Nebraska, as amended.

“*Authorized Denominations*” means \$5,000 or whole multiples thereof.

“*Authorized Officer*” means the Mayor, the City Manager, the City Clerk, the City Treasurer or any individual authorized to act on behalf of any such officer.

**“Bond Counsel”** means Kutak Rock LLP, Omaha, Nebraska, or other attorney or firm of attorneys with a nationally recognized standing in the field of municipal bond financing selected by the Issuer.

**“Bondowner”** or **“Registered Owner”** when used with respect to any Bond means the Person in whose name such Bond is registered on the Bond Register.

**“Bond Payment Date”** means any date on which principal of or interest on any Bond is payable at the Maturity thereof or on any Interest Payment Date.

**“Bond Register”** means the books for the registration, transfer and exchange of Bonds kept at the office of the Paying Agent.

**“Bonds”** means the Issuer’s Combined Utilities Revenue Refunding Bonds, Series 2021, in the original aggregate principal amount not to exceed \$6,600,000, authorized and to be issued pursuant to this Ordinance.

**“Business Day”** means a day other than a Saturday, Sunday or holiday on which the Paying Agent is scheduled in the normal course of its operations to be open to the public for conduct of its operations.

**“Cede & Co.”** means Cede & Co., as nominee name of The Depository Trust Company, New York, New York.

**“City Clerk”** or **“Clerk”** means the Clerk of the Issuer, including any person authorized to act on his or her behalf.

**“City Manager”** means the City Manager of the Issuer, including any person authorized to act on his or her behalf.

**“Code”** means the Internal Revenue Code of 1986, as amended, and the applicable regulations of the Treasury Department proposed or promulgated thereunder.

**“Consultant”** means an independent financial advisor, engineer or engineering firm, having a favorable reputation for skill and experience in the construction, financing and operation of public utilities and the preparation of management studies and financial feasibility studies in connection therewith, selected by the Issuer for the purpose of carrying out the duties imposed on the Consultant by this Ordinance.

**“Council”** means the City Council of the Issuer, which governs the actions of the Issuer.

**“Debt Service Fund”** means the fund by that name created by Section 5.01 hereof.

**“Debt Service Requirements”** means the aggregate principal payments (whether at maturity or pursuant to scheduled mandatory sinking fund redemption requirements) and interest payments on all System Revenue Bonds for the period of time for which calculated; provided, however, that for purposes of calculating such amount, principal and interest

shall be excluded from the determination of Debt Service Requirements to the extent that such principal or interest is payable from amounts released from the Debt Service Reserve Fund as provided herein or deposited in trust, escrowed or otherwise set aside for the payment thereof with the Paying Agent or other commercial bank or trust company having full trust powers.

***“Debt Service Reserve Fund”*** means the fund by that name created by Section 5.01 hereof.

***“Debt Service Reserve Requirement”*** means the amount on the date of original issuance and delivery of the Bonds equal to or less than the least of (i) 10% of the stated principal amount of the Bonds, (ii) the maximum Debt Service Requirements for the Bonds during any fiscal year, or (iii) 125% of the average annual Debt Service Requirements for the Bonds over the term of the Bonds, subject to adjustment as described herein. The initial Debt Service Reserve Requirement for the Bonds shall be determined in accordance with Section 2.12 herein.

***“Defaulted Interest”*** means interest on any Bond that is payable but not paid on any Interest Payment Date.

***“Defeasance Obligations”*** means any of the following obligations:

(a) United States Government Obligations that are not subject to redemption in advance of their maturity dates; or

(b) obligations of any state or political subdivision of any state the interest on which is excluded from gross income for federal income tax purposes and which meet the following conditions:

(i) the obligations are (A) not subject to redemption prior to maturity or (B) the trustee for such obligations has been given irrevocable instructions concerning their calling and redemption and the issuer of such obligations has covenanted not to redeem such obligations other than as set forth in such instructions;

(ii) the obligations are secured by cash or United States Government Obligations that may be applied only to principal of, premium, if any, and interest payments on such obligations;

(iii) such cash and the principal of and interest on such United States Government Obligations serving as security for the obligations, plus any cash in the escrow fund, are sufficient to meet the liabilities of the obligations;

(iv) such cash and United States Government Obligations serving as security for the obligations are held in an escrow fund by an escrow agent or a trustee irrevocably in trust;

(v) such cash and United States Government Obligations serving as security for the obligations are not available to satisfy any other claims, including those against the trustee or escrow agent; and

(vi) the obligations are rated in at least the second highest rating category by Moody's Investors Service, Inc. (presently "Aa") or Standard & Poor's Ratings Group (presently "AA").

**"Expenses"** means all reasonable and necessary expenses of operation, maintenance and repair of the Systems and keeping the Systems in good repair and working order (other than interest paid on System Revenue Bonds and depreciation and amortization charges during the period of determination), determined in accordance with generally accepted accounting principles, including, without limiting the generality of the foregoing, current maintenance charges, expenses of reasonable upkeep and repairs, salaries, wages, costs of materials and supplies, Paying Agent fees and expenses, annual audits, periodic Consultant's reports, properly allocated share of charges for insurance, the cost of purchased water, gas and power, if any, obligations (other than for borrowed money or for rents payable under capital leases) incurred in the ordinary course of business, liabilities incurred by endorsement for collection or deposit of checks or drafts received in the ordinary course of business, short-term obligations incurred and payable within a particular fiscal year, other obligations or indebtedness incurred for the purpose of leasing (pursuant to a true or operating lease) equipment, fixtures, inventory or other personal property, and all other expenses incident to the operation of the Systems, but shall exclude all general administrative expenses of the Issuer not related to the operation of the Systems.

**"Insurance Consultant"** means an individual or firm selected by the Issuer qualified to survey risks and to recommend insurance coverage for entities engaged in operations similar to those of the Systems and having a favorable reputation for skill and experience in making such surveys and recommendations.

**"Interest Payment Date"** means the dates established by the Authorized Officer pursuant to Section 2.12 for the payment of interest on the Bonds, until maturity or earlier redemption, or any other date on which interest shall be paid.

**"Lender"** has the meaning set forth in Section 2.11 hereof.

**"Maturity Date"** when used with respect to any Bond means the date on which the principal of such Bond becomes due and payable as therein and herein provided, whether at the Stated Maturity thereof or call for optional or mandatory redemption or otherwise.

**"Maximum Annual Debt Service"** means the maximum amount of Debt Service Requirements as computed for the then current or any future fiscal year.

**"Mayor"** means the Mayor of the Issuer, including any person authorized to act on his or her behalf.

**"Net Revenues Available for Debt Service"** means, for the period of determination, all Revenues less all Expenses as determined in accordance with generally accepted accounting principles.

**"Operation and Maintenance Fund"** means the fund by that name created by Section 5.01 hereof.

**"Ordinance"** means this Ordinance as from time to time amended in accordance with the terms hereof.

**"Outstanding"** means, when used with reference to Bonds, as of any particular date, all Bonds theretofore issued and delivered hereunder, except the following Bonds:

(a) Bonds theretofore cancelled by the Paying Agent or delivered to the Paying Agent for cancellation;

(b) Bonds deemed to be paid in accordance with the provisions of Article XI hereof; and

(c) Bonds in exchange for or in lieu of which other Bonds have been registered and delivered hereunder.

**"Parity Bonds"** means any parity bonds or other long-term obligations payable out of the net income and revenues of the Systems hereafter issued or incurred in accordance with the provisions of this Ordinance and standing on a parity and equality with the Bonds with respect to the payment of principal and interest out of the net income and Revenues of the Systems, so long as any such bonds remain outstanding and unpaid or until provision is made for the payment and defeasance of such bonds.

**"Parity Ordinance"** means the ordinances under which any Parity Bonds are hereafter issued.

**"Participants"** means those financial institutions for which the Securities Depository effects book-entry transfers and pledges of securities deposited with the Securities Depository, as such listing of Participants exists at the time of such reference.

**"Paying Agent"** means Union Bank & Trust Company, in Lincoln, Nebraska, or such other paying agent as shall be determined by an Authorized Officer, and any successors and assigns.

**"Permitted Investments"** means any securities and obligations permitted under the laws, statues and Constitution of the State of Nebraska for investment of the Issuer's moneys held in the funds referred to in Section 5.01 hereof.

**"Person"** means any natural person, corporation, partnership, firm, joint venture, association, joint-stock company, trust, unincorporated organization, or government or any agency or political subdivision thereof or other public body.

**“Placement Agent”** has the meaning set forth in Section 2.11 hereof.

**“Private Purchaser”** has the meaning set forth in Section 2.11 hereof.

**“Purchaser”** means the Underwriter, the Private Purchaser or the Lender, as specified by an Authorized Officer in accordance with the provisions of Section 2.11 hereof.

**“Record Date”** for the interest payable on any Interest Payment Date means the fifteenth day (whether or not a Business Day) immediately preceding each Interest Payment Date.

**“Redemption Date,”** when used with respect to any Bond to be redeemed, means the date fixed for such redemption pursuant to the terms of this Ordinance; and when used with respect to the Series 2016 Bonds, means such date as shall be determined in accordance with the Call Resolution.

**“Redemption Price,”** when used with respect to any Bond to be redeemed, means the price at which such Bond is to be redeemed pursuant to the terms of this Ordinance, including the applicable redemption premium, if any, but excluding installments of interest whose Stated Maturity is on or before the Redemption Date.

**“Replacement Bonds”** means Bonds issued to the beneficial owners of the Bonds in accordance with Section 2.09(b) hereof.

**“Refunded Bonds”** has the meaning set forth in the recitals hereto.

**“Revenue Fund”** means the fund by that name created by Section 5.01 hereof.

**“Revenues”** means all income and revenues derived from the operation of the Systems, including investment and rental income, net proceeds from business interruption insurance (if any), the principal of gifts, bequests, contributions, grants and donations available to pay debt service of System Revenue Bonds and actually received during such period, and any amounts deposited in escrow in connection with the acquisition, construction, remodeling, renovation and equipping of facilities to be applied during the period of determination to pay interest on System Revenue Bonds, but excluding any profits or losses on the early extinguishment of debt or on the sale or other disposition, not in the ordinary course of business, of investments or fixed or capital assets, and also excluding the principal of gifts, bequests, contributions, grants and donations which are specifically restricted by the donor, testator or grantor to a particular purpose which is inconsistent with their use for the payment of debt service on System Revenue Bonds.

**“Securities Depository”** means, initially, The Depository Trust Company, New York, New York, and its successors and assigns.

**“Special Record Date”** means the date fixed by the Paying Agent pursuant to Section 2.04 hereof for the payment of Defaulted Interest.

“*State*” means State of Nebraska.

“*Stated Maturity*,” when used with respect to any Bond or any installment of interest thereon, means the date specified in such Bond and this Ordinance as the fixed date on which the principal of such Bond or such installment of interest is due and payable.

“*Surplus Fund*” means the fund by that name created by Section 5.01 hereof.

“*System or Systems*” means, collectively, the sanitary sewer system of the Issuer presently serving the sewer users (the “Sewer System”), the water distribution system of the Issuer presently serving the water users (the “Water System”), and the solid waste collection system of the Issuer presently serving the solid waste disposers (the “Solid Waste System”), including, respectively, the plants and all appurtenances thereto, together with all extensions, improvements and repairs thereto hereafter made or acquired by the Issuer.

“*System Revenue Bonds*” means, collectively, the Bonds, the Parity Bonds and all other revenue bonds which are payable out of, or secured by an interest in, the income and Revenues derived from the operation of the Systems.

“*United States Government Obligations*” means bonds, notes, certificates of indebtedness, treasury bills or other securities constituting direct obligations of, or obligations the principal of and interest on which are fully and unconditionally guaranteed as to full and timely payment by, the United States of America, including evidences of a direct ownership interest in future interest or principal payments on obligations issued or guaranteed by the United States of America (including the interest component of obligations of the Resolution Funding Corporation), or securities which represent an undivided interest in such obligations, which obligations are rated in the highest rating category by a nationally recognized rating service, and such obligations are held in a custodial or trust account for the benefit of the Issuer.

“*Underwriter*” has the meaning set forth in Section 2.11 hereof.

**Section 2.** The provisions of the Bond Ordinance are hereby confirmed in all respects, except to the extent modified or amended by the terms of this ordinance.

**Section 3.** This ordinance shall take effect and be in full force from and after its passage by the Council and approval by the Mayor and upon its publication in pamphlet form as provided by law.

PASSED AND APPROVED \_\_\_\_\_, 2022.

ATTEST:

\_\_\_\_\_  
Michael D. Gonzales, Mayor

\_\_\_\_\_  
Lea Ann Doak, City Clerk

**CITY MANAGER'S REPORT**  
**APRIL 5, 2021 MCCOOK CITY COUNCIL MEETING**

---

**ITEM 5.A.**

Adopt Resolution No. 2021- ~~08~~ calling for the early redemption of the City of McCook's outstanding Combined Utilities Revenue Refunding Bonds, Series 2016, in such maturities and in such amounts as shall be determined by an authorized officer of the City of McCook.

**ITEM 5.B.**

Adopt Ordinance No. 2021- ~~3016~~ under suspension of the rules, authorizing the issuance by the City of McCook, Nebraska of its Combined Utilities Revenue Refunding Bonds, Series 2021, in the aggregate principal amount not to exceed \$6,600,000.

---

**BACKGROUND:**

The City of McCook previously issued its Combined Utilities Revenue Refunding Bonds, Series 2016, on November 15, 2016, in the aggregate principal amount of \$8,825,000. Currently, \$7,100,000 in aggregate principal remains outstanding. The City issued the Series 2016 Bonds for the purpose of prepaying promissory notes of the City made payable to the Nebraska Department of Environmental Quality. The original NDEQ Notes were issued to pay the costs of improvements at the City's water and wastewater systems.

The Series 2016 Bonds mature on or after June 15, 2022. The Series 2016 Bonds are subject to redemption at the option of the City at any time on or after November 15, 2021. The redemption price would be equal to the principal amount of the Series 2016 Bonds called for redemption, plus accrued interest on such principal amount being redeemed to the date of redemption.

City Staff, with the assistance of Brad Slaughter of Piper Sandler & Co., have reviewed the potential cost savings associated with calling for an early redemption of the Series 2016 Bonds, and the issuing of new Combined Utilities Revenue Refunding Bonds, Series 2021 in an aggregate principal amount not to exceed \$6,600,000. The current interest rate associated with the Series 2016 Bonds is 2.625%. By refinancing the Series 2016 Bonds, it is forecasted that our interest cost would drop to 1.5850%. The all inclusive interest rate would sit at 1.610%. In terms of real dollars, the early redemption of the 2016 Series Bonds and issuance of new Series 2021 Bonds would save the City of McCook an estimated \$544,931.69 over the course of the next 15 years. The average annual savings is estimated at \$36,258.60.

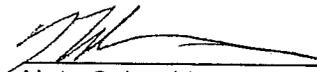
If the Council wanted to pursue a shortened amortization schedule by slightly increasing its yearly principal payments on the Series 2021 Bonds, the true interest cost would drop to an estimated 1.496%, with an all inclusive cost of approximately 1.532%. Under the shortened schedule, the 15<sup>th</sup> year of payment would be eliminated. In terms of real dollars, the shortened amortization schedule would result in an estimated total savings of \$650,299.78 for the City of McCook, the majority of which would be recognized at the end of the repayment period.

If the Council wishes to proceed with the attached Resolution and Ordinance, the City can prepare an offering statement and get things in order to lock rates as soon as the bonds are callable. Brad Slaughter will be present at the meeting to discuss the possible refinancing of the bonds.

**APPROVALS:**

  
\_\_\_\_\_  
Lea Ann Doak, City Clerk

March 30, 2021

  
\_\_\_\_\_  
Nate Schneider, City Manager

March 30, 2021

**CITY MANAGER'S REPORT**  
**APRIL 4, 2022 MCCOOK CITY COUNCIL MEETING**

---

ITEM **5.F.** Adopt Ordinance No. 2022-3039 on first reading and under suspension of the rules, authorizing an amendment of an existing loan agreement between the City of McCook and the Nebraska Department of Environment and Energy to adjust prepayment provisions.

---

**BACKGROUND:**

This ordinance is being added for house keeping purposes. At the February 7, 2022 McCook Council Meeting, the McCook City Council received, filed, and ratified Amendment No. 02 to the 2014 loan contract between the Nebraska Department of Environment and Energy (ie. NDEE) and the City of McCook. By entering into the amended agreement, the City of McCook qualifies for an additional \$79,601 in loan forgiveness which will be added to a new agreement with NDEE. Bond council has suggested that the McCook City Council adopt Ordinance No. 2022-3039 in order to legitimize the amended agreement.

A copy of the associated February 7, 2022 City Manager's Report and the loan amendment are attached hereto.

**APPROVALS:**

  
\_\_\_\_\_  
Nathan A. Schneider, City Manager

March 31, 2022

  
\_\_\_\_\_  
Lea Ann Doak, City Clerk

March 31, 2022

  
\_\_\_\_\_  
Jesse Dutcher, Utilities Director

March 31, 2022

  
\_\_\_\_\_  
Pat Fawver, Utilities Director

March 31, 2022

ORDINANCE NO. 2022-3039

AN ORDINANCE OF THE CITY OF MCCOOK, NEBRASKA, AUTHORIZING AN AMENDMENT OF AN EXISTING LOAN AGREEMENT BETWEEN THE ISSUER AND THE NEBRASKA DEPARTMENT OF ENVIRONMENT AND ENERGY TO ADJUST PREPAYMENT PROVISIONS; PROVIDING FOR THE PUBLICATION OF THIS ORDINANCE; AND AUTHORIZING CERTAIN ACTIONS AND DOCUMENTS AND PRESCRIBING OTHER MATTERS RELATING THERETO.

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

**Section 1.** The Mayor and Council (the “**Council**”) of McCook, Nebraska (the “**Issuer**”) hereby find and determine as follows:

**A.** The Issuer has outstanding a Promissory Note (the “**Note**”) issued to the Nebraska Department of Environment and Energy (formerly the Nebraska Department of Environmental Quality, “**NDEE**”) on April 9, 2014, in the principal amount of up to \$2,086,810, and in connection with the issuance of the Note has entered into a Loan Agreement (NDEQ Project No. D311560) dated as of April 9, 2014, as previously amended by a First Amendment to Loan Agreement dated as of November 15, 2016 (together, the “**Loan Agreement**”).

**B.** The Note was issued for the purpose of financing certain improvements to the Issuer’s Public Water Supply System (as defined in the Loan Agreement) and is payable from System Revenues (as defined in the Loan Agreement).

**C.** The Issuer finds it necessary and appropriate to amend the Note and the Loan Agreement to adjust prepayment terms of the Note and the Loan Agreement.

**Section 2.** The Loan Agreement and the Note are hereby authorized to be amended with such terms as reflected in Amendment No. 2 to Loan Agreement for NDEE Project No. D311560 (the “**Second Amendment**”), the form of which shall be approved by the Mayor or City Manager of the City (each, an “**Authorized Officer**”) for and on behalf of the Issuer. The Mayor of the Issuer is hereby authorized and directed to execute the Second Amendment for and on behalf of the Issuer, in the form approved by an Authorized Officer.

**Section 3.** The provisions of the Loan Agreement and the Note are hereby confirmed in all respects, except to the extent modified or amended by the terms of the Second Amendment.

**Section 4.** The officers of the Issuer, including the Mayor, City Manager and City Clerk, shall be, and they hereby are, authorized and directed to execute all documents and take such actions as they may deem necessary or advisable in order to carry out and perform the purposes of the Second Amendment, this ordinance and to make ministerial alterations, changes or additions in the foregoing agreements, statements, instruments and other documents herein

approved, authorized and confirmed which they may approve and the execution or taking of such action shall be conclusive evidence of such necessity or advisability.

**Section 5.** If any Section or other part of this ordinance, whether large or small, is for any reason held invalid, the invalidity thereof shall not affect the validity of the other provisions of this ordinance.

**Section 6.** This ordinance shall be governed by and constructed in accordance with the applicable laws of the State of Nebraska.

**Section 7.** This ordinance shall take effect and be in full force from and after its passage by the Council and approval by the Mayor and upon its publication in pamphlet form as provided by law.

**PASSED AND APPROVED** \_\_\_\_\_, 2022.

ATTEST:

\_\_\_\_\_  
Michael D. Gonzales, Mayor

\_\_\_\_\_  
Lea Ann Doak, City Clerk

NOTICE OF PUBLICATION  
OF ORDINANCE NO. 2022-\_\_\_\_\_  
IN PAMPHLET FORM

Public Notice is hereby given that at a meeting of the Mayor and City Council of the City of McCook, Nebraska, held at \_\_\_\_\_ p.m. on \_\_\_\_\_, 2022 in the City Council Chambers in the McCook Municipal Center, located at 505 West C Street, McCook, Nebraska there was passed and adopted Ordinance No. 2022-\_\_\_\_\_ entitled:

**AN ORDINANCE OF THE CITY OF MCCOOK, NEBRASKA, AUTHORIZING AN AMENDMENT OF AN EXISTING LOAN AGREEMENT BETWEEN THE ISSUER AND THE NEBRASKA DEPARTMENT OF ENVIRONMENT AND ENERGY TO ADJUST PREPAYMENT PROVISIONS; PROVIDING FOR THE PUBLICATION OF THIS ORDINANCE; AND AUTHORIZING CERTAIN ACTIONS AND DOCUMENTS AND PRESCRIBING OTHER MATTERS RELATING THERETO.**

Said Ordinance has been published in pamphlet form, and copies of said Ordinance as published in pamphlet form are available for inspection and distribution at the Office of the City Clerk at the City Office.

---

Lea Ann Doak, City Clerk

**CITY MANAGER'S REPORT**  
**FEBRUARY 7, 2022 MCCOOK CITY COUNCIL MEETING**

---

ITEM **3.G.** Receive, file, and ratify Amendment No. 02 to the loan contract between the Nebraska Department of Environment and Energy and the City of McCook, Project No. D311560.

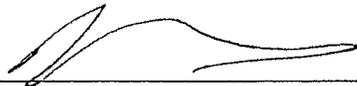
---

**BACKGROUND:**

In 2014, the City of McCook and NDEE entered into a loan agreement for drinking water projects. Currently, the City of McCook is working toward entering a new loan agreement with NDEE for new drinking water improvement projects. While working on the most recent loan agreement, NDEE proposed an amendment to the 2014 agreement. For drinking water loans, NDEE does not allow refinancing as a result of existing state statutes. However, loan forgiveness can be granted via an amendment when the parties enter into a new agreement. Amendment No. 2 to Project No. D311560 qualifies McCook for an additional \$79,601 in loan forgiveness which will be added to the new loan. This is equal to the amount McCook would save if we were able to reduce the older loan's interest and administration fee to the current rates of .5%. In order to qualify for the loan forgiveness, the existing 2014 loan's optional payment clause must be extended from five years to ten years from the amendment date. Staff worked with PFM when it reviewed the amendment and determined the loan forgiveness component outweighed the restriction on prepayment. The money saved can be used for other water projects.

Typically, this item would be brought to the Council while working through the new loan process. Bond council is still in the process of completing its work on the new loan. While waiting on a determination by bond council, NDEE notified Mayor Gonzales and City Manager Schneider that the DocuSign Amendment needed to be signed prior to February 4<sup>th</sup>, otherwise the amendment would have to go through NDEE again for authorization which would take time. NDEE informed staff that a resolution was not needed for the amendment, only a signature. A new ordinance will be required for the new SRF loan when all of the components of the contract are completed.

**APPROVALS:**



Nathan A. Schneider, City Manager

February 2, 2022



Lea Ann Doak, City Clerk

February 2, 2022

---

**AMENDMENT NO. 02**

**To**

**LOAN AGREEMENT  
(Governmental Borrower)**

**Between**

**NEBRASKA DEPARTMENT OF ENVIRONMENT AND ENERGY**

**and**

**CITY OF MCCOOK**

**NDEE Project No. D311560**

**DATED AS OF 02/02, 2022**

---

**AMENDMENT NO. 02  
LOAN CONTRACT BETWEEN  
NEBRASKA DEPARTMENT OF ENVIRONMENT AND ENERGY  
AND  
THE CITY OF MCCOOK  
PROJECT NO. D311560**

This Amendment No. 02 to the 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 MCCOOK (hereinafter "Borrower").

1. The Loan Agreement for Loan (Project No. D311560) (hereinafter "Loan Agreement") between the NDEE and the Municipality dated April 9, 2014, and signed by Patrick Rice, Interim Director of the NDEE, and Dennis Berry, Mayor of the City of McCook, and all prior amendments to the Loan Agreement are hereby acknowledged and incorporated by this reference as if fully set out herein.
2. References to the Department of Environmental Quality will be treated as directed by Nebraska Revised Statute §81-15,256 and are hereby acknowledged and incorporated by this reference as if fully set out herein.
3. Pursuant to Section 6.03 of the Loan Agreement, the parties hereby amend the following:

Section 2.05(b). Optional Prepayment of the Loan. The Borrower may not prepay the Loan, together with any accrued interest in whole or in part within 5 years of the Loan Date if the Borrower has received Loan Forgiveness as part of this Loan Agreement. After 5 years, 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 Loan Amount or \$50,000. NDEQ shall prepare a new Loan Repayment Schedule to revise Attachment A following receipt of any partial prepayment of the Loan.

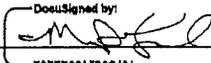
**To be replaced with:**

Section 2.05(b). Optional Prepayment of the Loan. The Borrower may not prepay the Loan, together with any accrued interest in whole or in part within ten (10) years of the effective date of Amendment No. 02 if the Borrower has received Loan Forgiveness as part of this Loan Agreement. After ten (10) years, 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 Loan Amount or \$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.

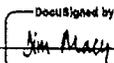
4. Except as specifically modified herein, all terms and conditions of the original Loan Agreement remain in full force and effect.
5. Electronic Signature. The NDEE and the Borrower hereby approve the usage of electronic signatures pursuant to Neb. Rev. Stat. §86-611 and Nebraska Administrative Code, Title 437, Digital Signatures Act.
6. The amendment or modification made herein shall become effective on the latter of the two dates signed.

IN WITNESS THEREOF, the parties hereto have caused this Amendment No. 02 to the Loan Agreement to be executed and delivered as of the date set forth below.

CITY OF MCCOOK

By   
Title Mayor  
Date 2/2/2022

NEBRASKA DEPARTMENT OF ENVIRONMENT AND ENERGY

By   
Title Director  
Date 1/5/2022

**CITY MANAGER'S REPORT  
APRIL 4, 2022 MCCOOK CITY COUNCIL MEETING**

**5.G.**

**ITEM NO. \_\_\_** Approve Ordinance No. 2022-3040 of the City of McCook, Nebraska, on first reading and under suspension of the rules, authorizing and providing for the issuance of a \$2,490,000 aggregate principal amount Combined Utilities Revenue Bond, Series 2022, in the form of a promissory note of the City of McCook, to pay the costs of acquiring, constructing, improving, extending, equipping, and furnishing improvements to the City's water works plant and water system, as well as, approving the execution and delivery of a loan agreement with the Nebraska Department of Environment and Energy.

---

**BACKGROUND:**

The City of McCook has been working with NDEE to finalize a loan agreement whereby NDEE would loan the City of McCook an amount not to exceed \$2,490,000. In return, the City of McCook would agree to repay the loan through the issuance of bonds tied to revenue generated from the City's utility systems (ie. water and sewer systems). The loan from NDEE to the City of McCook would be made from the State Revolving Loan Fund (ie. SRF).

Financially, this is an opportune time to take out an SRF loan to construct necessary water improvements. For water projects only, NDEE is currently offering interest and administrative fee free loans. Additionally, the attached agreement contains a loan forgiveness provision in the amount of \$453,101. With both of these items taken into consideration, the proposed SRF loan agreement is an extremely attractive financing option. The City of McCook would use the loan to complete the following projects: 1) the recently completed West 5<sup>th</sup> water main project; 2) the recently completed East 14<sup>th</sup> water main project; 3) the future South Street to A Street water project; and 4) the future South Street to the east side of Highway 83 water project. Currently, the City of McCook has two other utility revenue bonds that are outstanding: 1) the Combined Utility Revenue Refunding Bonds, Series 2021, in the stated original principal amount of \$6,555,000, and 2) the Revenue Bond, Series 2014, in the original principal amount of up to \$2,086,810, which has been amended twice to account for the 2021 Combined Utility Revenue Refunding Bonds and the most recent amendment ratified by the city council on February 7, 2022 (which provided loan forgiveness in the amount of \$79,601) and legitimized by Ordinance No. 2022-3039.

Under this loan agreement, the City of McCook will make semiannual principal payments of \$33,948.32 over the course of 30 years. The City of McCook will include this obligation in its calculation when determining future utility rates in order to assure compliance with the terms and obligations of this agreement. No general fund revenues will be used to finance the bond issuance. The payment mechanisms and requirements are spelled out in the body of the ordinance. Any potential future revenue bonds and obligations will be subject to the terms of this agreement. Ggilmore & Bell, P.C., has served as bond counsel and has provided a favorable opinion.

**APPROVALS:**



Nathan A. Schneider, City Manager

March 31, 2022



Lea Ann Doak, City Clerk

March 31, 2022



Jesse Dutcher, Utilities Director

March 31, 2022



Pat Fawver, Utilities Director

March 31, 2022

---

**CITY OF MCCOOK, NEBRASKA**

**ORDINANCE NO. 2022-3040**

**PASSED \_\_\_\_\_, 2022**

Authorizing

Not to Exceed

\$2,490,000

City of McCook, Nebraska  
Combined Utilities Revenue Bond  
Series 2022

---

AN ORDINANCE OF THE CITY OF MCCOOK, NEBRASKA AUTHORIZING AND PROVIDING FOR THE ISSUANCE OF A \$2,490,000 AGGREGATE PRINCIPAL AMOUNT COMBINED UTILITIES REVENUE BOND, SERIES 2022, IN THE FORM OF A PROMISSORY NOTE OF THE CITY, TO PAY THE COSTS OF ACQUIRING, CONSTRUCTING, IMPROVING, EXTENDING, EQUIPPING AND FURNISHING IMPROVEMENTS TO THE CITY'S WATER WORKS PLANT AND WATER SYSTEM; APPROVING THE EXECUTION AND DELIVERY OF A LOAN AGREEMENT WITH THE NEBRASKA DEPARTMENT OF ENVIRONMENT AND ENERGY (NDEE PROJECT NO. D311681); PRESCRIBING THE FORM AND DETAILS OF THE BOND AND THE COVENANTS AND AGREEMENTS TO PROVIDE FOR THE PAYMENT AND SECURITY THEREOF; PROVIDING FOR THE PUBLICATION OF THIS ORDINANCE; AND AUTHORIZING CERTAIN ACTIONS AND DOCUMENTS AND PRESCRIBING OTHER MATTERS RELATING THERETO.

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

#### FINDINGS AND DETERMINATIONS

The Mayor and Council (the "**Council**") of the City of McCook, Nebraska (the "**Issuer**"), hereby find and determine as follows:

1. The Issuer is a city of the first class and political subdivision duly organized and existing under the laws of the State of Nebraska, and, pursuant to Chapter 16, Reissue Revised Statutes of Nebraska, as amended, and the Issuer owns and operates a revenue-producing water system, a revenue-producing sewer system, and a revenue-producing solid waste disposal system (collectively, the "**Systems**," as hereinafter more fully described), each of which serves the Issuer and the inhabitants within the Issuer's service area; which Systems are revenue producing facilities as described in Sections 18-1803 to 18-1805, inclusive, Reissue Revised Statutes of Nebraska, as amended (the "**Act**"), serving the Issuer and its inhabitants and others within its service area.

2. It is necessary, desirable, advisable and in the best interest of the Issuer and its inhabitants that the Issuer acquire, construct, improve, extend, equip, and furnish certain improvements to the water system, including, but not limited to, improvements to and replacement of various water mains, and other improvements to the Issuer's existing water wells and storage facilities (collectively, the "**Project**").

3. The Issuer is authorized under the provisions of the Act to issue and sell revenue bonds to pay the costs of the Project, provided that the principal of and interest on such revenue bonds shall be payable solely from the revenues derived from the operation of the Systems (the "**Revenues**").

4. The Issuer currently has outstanding the following revenue bonds for which the revenues of the Systems have been pledged:

Combined Utility Revenue Refunding Bonds, Series 2021, date of original issue – August 24, 2021, in the stated original principal amount of \$6,555,000 (the “**2021 Bonds**”); and

Revenue Bond, Series 2014, in the original principal amount of up to \$2,086,810 (the “**Outstanding NDEE Bond**” and together with the 2021 Bonds, the “**Outstanding Bonds**”) governed by a Loan Agreement dated as of April 9, 2014 between the Nebraska Department of Environment and Energy (formerly known as the Nebraska Department of Environmental Quality, “**NDEE**”) and the City for NDEE Project No. D311560, as amended.

Other than the Outstanding Bonds, there are no other bonds, notes or other indebtedness for which the revenues of the Systems have been pledged or made security.

5. The ordinances authorizing the Outstanding Bonds permit the issuance of “Additional Bonds” secured by a pledge of the revenues of the System Revenues on an equal basis with the Outstanding Bonds provided that the Issuer shall obtain a certificate of a Consultant showing that the annual Net Revenues Available for Debt Service derived by the Issuer from the operation of the Systems, for the two fiscal year(s) immediately preceding the issuance of Parity Bonds shall have been equal to at least 110% of the Maximum Annual Debt Service required to be paid out of said revenues in any succeeding fiscal year on account of both principal (at maturity or upon mandatory redemption) and interest becoming due with respect to all System Revenue Bonds of the Issuer, including the Parity Bonds proposed to be issued, as more fully described in the ordinances authorizing the Outstanding Bonds (the “**Consultant’s Report**”)

6. The NDEE has agreed to loan the Issuer not to exceed \$2,490,000 under and pursuant to a Loan Agreement dated the date of its execution and delivery thereof (the “**Loan Agreement**”) between the Issuer and NDEE to provide funds to pay the costs of the Project under the terms and conditions set forth therein.

7. It is necessary, desirable, advisable and in the best interest of the Issuer and its inhabitants to authorize the issuance and delivery of a revenue bond pursuant to the Act as herein provided in the form of a promissory note (the “**2022 Note**” or the “**Bonds**”) in accordance with the Loan Agreement to provide funds for such purposes.

8. All conditions, acts and things required by law to exist or to be done precedent to the issuance of the 2022 Note herein authorized do exist and have been done and performed in regular and due course and time as provided by law.

**NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF MCCOOK, NEBRASKA, AS FOLLOWS:**

## **ARTICLE I**

### **DEFINITIONS**

In addition to words and terms defined elsewhere herein, the following capitalized words and terms as used in this Ordinance shall have the following meanings:

“**Act**” means Sections 18–1803 through 18–1805 and Section 10-142 of the Reissue Revised Statutes of Nebraska, as amended.

“**Authorized Officer**” means the Mayor, the City Manager, the City Clerk, the City Treasurer or any individual authorized to act on behalf of any such officer.

“**Bond Counsel**” means Gilmore & Bell, P.C., Omaha, Nebraska, or other attorney or firm of attorneys with a nationally recognized standing in the field of municipal bond financing selected by the Issuer.

“**Bondowner**” or “**Registered Owner**” when used with respect to any Bond means the NDEE or its successors or assigns.

“**Bond Payment Date**” means any date on which principal of or interest on any Bond is payable at the Maturity thereof or on any Interest Payment Date.

“**Bonds**” means the Issuer’s Combined Utilities Revenue Bond, Series 2022, in the original aggregate principal amount not to exceed \$2,490,000, in the form of a promissory note issued to NDEE, authorized and to be issued pursuant to the Loan Agreement and this Ordinance. The Bonds are sometimes referred to in this Ordinance, according to the context, as the “**2022 Note**”.

“**Business Day**” means a day other than a Saturday, Sunday or holiday on which the Issuer is scheduled in the normal course of its operations to be open to the public for conduct of its operations.

“**City Clerk**” or “**Clerk**” means the Clerk of the Issuer, including any person authorized to act on his or her behalf.

“**City Manager**” means the City Manager of the Issuer, including any person authorized to act on his or her behalf.

“**Code**” means the Internal Revenue Code of 1986, as amended, and the applicable regulations of the Treasury Department proposed or promulgated thereunder.

“**Consultant**” means an independent financial advisor or engineer or engineering firm, having a favorable reputation for skill and experience in the construction, financing and operation of public utilities and the preparation of management studies and financial feasibility studies in connection therewith, selected by the Issuer for the purpose of carrying out the duties imposed on the Consultant by this Ordinance.

“**Council**” means the City Council of the Issuer, which governs the actions of the Issuer.

“**Debt Service Fund**” means the fund by that name created by Section 4.01 hereof.

“**Debt Service Requirements**” means the aggregate principal payments (whether at maturity or pursuant to scheduled mandatory sinking fund redemption requirements) and interest payments on all System Revenue Bonds for the period of time for which calculated; provided, however, that for purposes of calculating such amount, principal and interest shall be excluded

from the determination of Debt Service Requirements to the extent that such principal or interest is payable from amounts deposited in trust, escrowed or otherwise set aside for the payment thereof with a paying agent or other commercial bank or trust company located in the State of Nebraska and having full trust powers.

***“Debt Service Reserve Fund”*** means the fund by that name created by Section 4.01 hereof.

***“Debt Service Reserve Requirement”*** means the amount on the date of original issuance and delivery of the Bonds equal to or less than the least of (i) 10% of the stated principal amount of the Bonds, (ii) the maximum Debt Service Requirements for the Bonds during any fiscal year, or (iii) 125% of the average annual Debt Service Requirements for the Bonds over the term of the Bonds, subject to adjustment as described herein. The initial Debt Service Reserve Requirement for the Bonds shall be \$0.

***“Defeasance Obligations”*** means any of the following obligations:

(a) United States Government Obligations that are not subject to redemption in advance of their maturity dates; or

(b) obligations of any state or political subdivision of any state the interest on which is excluded from gross income for federal income tax purposes and which meet the following conditions:

(i) the obligations are (A) not subject to redemption prior to maturity or (B) the trustee for such obligations has been given irrevocable instructions concerning their calling and redemption and the issuer of such obligations has covenanted not to redeem such obligations other than as set forth in such instructions;

(ii) the obligations are secured by cash or United States Government Obligations that may be applied only to principal of, premium, if any, and interest payments on such obligations;

(iii) such cash and the principal of and interest on such United States Government Obligations serving as security for the obligations, plus any cash in the escrow fund, are sufficient to meet the liabilities of the obligations;

(iv) such cash and United States Government Obligations serving as security for the obligations are held in an escrow fund by an escrow agent or a trustee irrevocably in trust;

(v) such cash and United States Government Obligations serving as security for the obligations are not available to satisfy any other claims, including those against the trustee or escrow agent; and

(vi) the obligations are rated in at least the second highest rating category by Moody’s Investors Service, Inc. (presently “Aa”) or Standard & Poor’s Ratings Group (presently “AA”).

***“Expenses”*** means all reasonable and necessary expenses of operation, maintenance and repair of the Systems and keeping the Systems in good repair and working order (other than interest paid on System Revenue Bonds and depreciation and amortization charges during the period of determination), determined in accordance with generally accepted accounting principles, including, without limiting the generality of the foregoing, current maintenance charges, expenses of reasonable upkeep and repairs, salaries, wages, costs of materials and supplies, paying agent fees and expenses, annual audits, periodic Consultant’s reports, properly allocated share of charges for insurance, the cost of purchased water, gas and power, if any, obligations (other than for borrowed money or for rents payable under capital leases) incurred in the ordinary course of business, liabilities incurred by endorsement for collection or deposit of checks or drafts received in the ordinary course of business, short-term obligations incurred and payable within a particular fiscal year, other obligations or indebtedness incurred for the purpose of leasing (pursuant to a true or operating lease) equipment, fixtures, inventory or other personal property, and all other expenses incident to the operation of the Systems, but shall exclude all general administrative expenses of the Issuer not related to the operation of the Systems.

***“Insurance Consultant”*** means an individual or firm selected by the Issuer qualified to survey risks and to recommend insurance coverage for entities engaged in operations similar to those of the Systems and having a favorable reputation for skill and experience in making such surveys and recommendations.

***“Interest Payment Date”*** means the dates established in the Loan Agreement for the payment of interest on the Bonds.

***“Loan Agreement”*** means the agreement between the Issuer and NDEE previously described herein and entitled Loan Agreement Between Nebraska Department of Environment and Energy and the City of McCook, Nebraska, NDEE Project No. D311681.

***“Maturity Date”*** when used with respect to any Bond means the date on which the principal of such Bond becomes due and payable as provided herein and in the Loan Agreement, whether at the Stated Maturity thereof or call for optional or mandatory redemption or otherwise.

***“Maximum Annual Debt Service”*** means the maximum amount of Debt Service Requirements as computed for the then current or any future fiscal year.

***“Mayor”*** means the Mayor of the Issuer, including any person authorized to act on his or her behalf.

***“NDEE”*** means the Nebraska Department of Environment and Energy, formerly known as the Nebraska Department of Environmental Quality (“NDEQ”).

***“Net Revenues Available for Debt Service”*** means, for the period of determination, all Revenues less all Expenses as determined in accordance with generally accepted accounting principles.

***“Operation and Maintenance Fund”*** means the fund by that name created by Section 4.01 hereof.

**“Ordinance”** means this Ordinance as from time to time amended in accordance with the terms hereof.

**“Outstanding”** means, when used with reference to Bonds, as of any particular date, all Bonds theretofore issued and delivered hereunder, except the following Bonds:

(a) Bonds theretofore cancelled by the Purchaser or delivered to the Purchaser for cancellation;

(b) Bonds deemed to be paid in accordance with the provisions of Article XI hereof; and

(c) Bonds in exchange for or in lieu of which other Bonds have been registered and delivered hereunder.

**“Parity Bonds”** means the Outstanding Bonds and any parity bonds or other long-term obligations payable out of the net income and revenues of the Systems hereafter issued or incurred in accordance with the provisions of this Ordinance and standing on a parity and equality with the Bonds with respect to the payment of principal and interest out of the net income and Revenues of the Systems, so long as any such bonds remain outstanding and unpaid or until provision is made for the payment and defeasance of such bonds.

**“Parity Ordinance”** means the ordinances under which any Parity Bonds are hereafter issued.

**“Permitted Investments”** means any securities and obligations permitted under the laws, statutes and Constitution of the State of Nebraska for investment of the Issuer’s moneys held in the funds referred to in Section 4.01 hereof.

**“Person”** means any natural person, corporation, partnership, firm, joint venture, association, joint-stock company, trust, unincorporated organization, or government or any agency or political subdivision thereof or other public body.

**“Purchaser”** means NDEE and its successors and assigns.

**“Revenue Fund”** means the fund by that name created by Section 4.01 hereof.

**“Revenues”** means all income and revenues derived from the operation of the Systems, including investment and rental income, net proceeds from business interruption insurance (if any), the principal of gifts, bequests, contributions, grants and donations available to pay debt service of System Revenue Bonds and actually received during such period, and any amounts deposited in escrow in connection with the acquisition, construction, remodeling, renovation and equipping of facilities to be applied during the period of determination to pay interest on System Revenue Bonds, but excluding any profits or losses on the early extinguishment of debt or on the sale or other disposition, not in the ordinary course of business, of investments or fixed or capital assets, and also excluding the principal of gifts, bequests, contributions, grants and donations which are specifically restricted by the donor, testator or grantor to a particular purpose which is inconsistent with their use for the payment of debt service on System Revenue Bonds.

“*State*” means State of Nebraska.

“*Stated Maturity*,” when used with respect to any Bond or any installment of interest thereon, means the date specified in such Bond and this Ordinance as the fixed date on which the principal of such Bond or such installment of interest is due and payable.

“*Surplus Fund*” means the fund by that name created by Section 4.01 hereof.

“*System* or *Systems*” means collectively, the sanitary sewer system of the Issuer presently serving the sewer users (the “Sewer System”), the water distribution system of the Issuer presently serving the water users (the “Water System”), and the solid waste collection system of the Issuer presently serving the solid waste disposers (the “Solid Waste System”), including, respectively, the plants and all appurtenances thereto, together with all extensions, improvements and repairs thereto hereafter made or acquired by the Issuer.

“*System Revenue Bonds*” means, collectively, the Bonds, the Parity Bonds and all other revenue bonds which are payable out of, or secured by an interest in, the income and Revenues derived from the operation of the Systems.

“*United States Government Obligations*” means bonds, notes, certificates of indebtedness, treasury bills or other securities constituting direct obligations of, or obligations the principal of and interest on which are fully and unconditionally guaranteed as to full and timely payment by, the United States of America, including evidences of a direct ownership interest in future interest or principal payments on obligations issued or guaranteed by the United States of America (including the interest component of obligations of the Resolution Funding Corporation), or securities which represent an undivided interest in such obligations, which obligations are rated in the highest rating category by a nationally recognized rating service, and such obligations are held in a custodial or trust account for the benefit of the Issuer.

## ARTICLE II

### AUTHORIZATION OF BONDS

**Section 2.01. Authorization and Description of Bonds.** To provide for the payment of the costs of the Project, there shall be and there is hereby ordered issued the Combined Utilities Revenue Bond, Series 2022, in the form of and evidenced by a single promissory note (sometimes referred to in this Ordinance, according to the context, as the “**2022 Note**” and sometimes as the “**Bonds**”) in the principal amount of not to exceed Two Million Four Hundred Ninety Thousand Dollars (\$2,490,000), with such 2022 Note to be substantially in such form and to have such payment terms as are set forth as included in the Loan 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 Note, the Issuer 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 McCook, Nebraska, NDEE Project No. D311681 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 Note and Loan Agreement are hereby approved and the Authorized Officers are hereby authorized to execute and

deliver the 2022 Note, the Bond and the Loan Agreement for and on behalf of the Issuer 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 Issuer. Prior to the execution and delivery of the 2022 Note and the Loan Agreement, an Authorized Officer shall have obtained a Consultant's Report in form and substance satisfactory to such Authorized Officer.

### ARTICLE III

#### SECURITY FOR BONDS

The Bonds are special, limited obligations of the Issuer payable solely from, and secured as to the payment of principal, premium and interest by a pledge of the Revenues, which include all income and revenues derived from the operation of the Systems, including investment and rental income, net proceeds from business interruption insurance (if any), the principal of gifts, bequests, contributions, grants and donations available to pay debt service of System Revenue Bonds and actually received during such period, and any amounts deposited in escrow in connection with the acquisition, construction, remodeling, renovation and equipping of facilities to be applied during the period of determination to pay interest on System Revenue Bonds, but excluding any profits or losses on the early extinguishment of debt or on the sale or other disposition, not in the ordinary course of business, of investments or fixed or capital assets, and also excluding the principal of gifts, bequests, contributions, grants and donations which are specifically restricted by the donor, testator or grantor to a particular purpose which is inconsistent with their use for the payment of debt service on System Revenue Bonds. The Issuer hereby pledges said Revenues to the payment of the principal of, the premium and the interest on the Bonds.

The Bonds are not secured by a funded Debt Service Reserve Fund.

The Bonds shall not be or constitute a general obligation of the Issuer, nor shall they constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory provision, limitation or restriction. The taxing power of the Issuer is not pledged to the payment of debt service on the Bonds.

The covenants and agreements of the Issuer contained in this Ordinance and in the Bonds shall be for the equal benefit, protection and security of the legal owners of any or all of the Bonds, all of which Bonds shall be of equal rank and without preference or priority of one Bond over any other Bond in the application of the funds herein pledged to the payment of the principal of, the premium and the interest on the Bonds, or otherwise, except as to rate of interest, date of maturity and right of prior redemption as provided in this Ordinance. The Bonds shall stand on a parity and be equally and ratably secured with respect to the payment of principal, premium and interest from the net income and revenues derived from the operation of the Systems and in all other respects with any Parity Bonds. The Bonds shall not have any priority with respect to the payment of principal, premium or interest from said net income and revenues or otherwise over the Parity Bonds, and the Parity Bonds shall not have any priority with respect to the payment of principal, premium or interest from said net income and revenues or otherwise over the Bonds.

## ARTICLE IV

### FUNDS; DEPOSIT AND APPLICATION OF BOND PROCEEDS

**Section 4.01. Establishment of Funds.** There are hereby created and ordered to be established and maintained by the Treasurer of the Issuer the following separate funds to be known respectively as follows:

- (a) Combined Utilities Cost of Issuance Fund (the “**Cost of Issuance Fund**”);
- (b) Combined Utilities Revenue Fund (the “**Revenue Fund**”);
- (c) Combined Utilities Operation and Maintenance Fund (the “**Operation and Maintenance Fund**”);
- (d) Debt Service Fund for Combined Utilities Revenue Refunding Bonds, Series 2022 (the “**Debt Service Fund**”);
- (e) Debt Service Reserve Fund for Combined Utilities Revenue Refunding Bonds, Series 2022 (the “**Debt Service Reserve Fund**”); and
- (f) Combined Utilities Surplus Fund (the “**Surplus Fund**”).

The funds referred to in paragraphs (a) through (f) of this Section shall be maintained and administered by the Issuer solely for the purposes and in the manner as provided in this Ordinance so long as any of the Bonds remain Outstanding within the meaning of this Ordinance.

**Section 4.02. Deposit of Bond Proceeds.** The net proceeds received from the sale of the Bonds shall be deposited and applied as set forth in the Loan Agreement.

## ARTICLE V

### APPLICATION OF REVENUES

**Section 5.01. Revenue Fund.** The Issuer covenants and agrees that from and after the delivery of the Bonds, and continuing as long as any of the Bonds remain Outstanding hereunder, all of the Revenues derived and collected from the operation of the Systems shall as and when received be paid and deposited into the Revenue Fund. Said Revenues shall be segregated and kept separate and apart from all other moneys, revenues, funds and accounts of the Issuer and shall not be commingled with any other moneys, revenues, funds and accounts of the Issuer. The Revenue Fund shall be administered and applied solely for the purposes and in the manner provided in this Ordinance.

**Section 5.02. Application of Moneys in Funds.** The Issuer covenants and agrees that from and after the delivery of the Bonds and continuing, so long as any of the Bonds shall remain Outstanding, it will on the first day of each month administer and allocate all of the moneys then held in the Revenue Fund as follows:

(a) **Operation and Maintenance.** There shall first be paid and credited to the Operation and Maintenance Fund (i) the Expenses of the Systems as the same become due and payable.

(b) **Debt Service Fund.** There shall next be paid and credited to the Debt Service Fund, to the extent necessary to meet on each Bond Payment Date the payment of all interest on and principal of the Bonds, the following sums:

Beginning with the month following the month in which the Bonds are issued and delivered, and continuing each month thereafter so long as any of the Bonds remain Outstanding and unpaid, an amount not less than one-sixth (or such equal pro rata percentage for any shorter or longer period) of the amount of principal and interest that will become due on the Bonds on the next succeeding Bond Payment Date as shown in the Loan Agreement.

Any amounts deposited in the Debt Service Fund as accrued interest in accordance with Section 5.02(a) hereof shall be credited against the Issuer's payment obligations as set forth in Section 5.02(b)(i) above.

All amounts paid and credited to the Debt Service Fund shall be expended and used by the Issuer for the sole purpose of paying the interest on and the principal of the Bonds as and when the same become due at Maturity and on each Interest Payment Date, as applicable.

The amounts required to be paid and credited to the Debt Service Fund pursuant to this Section shall be made at the same time and on a parity with the amounts at the time required to be paid and credited to the debt service funds established for the payment of principal and interest on any Parity Bonds pursuant to the provisions of the respective Parity Ordinances. If at any time the moneys in the Revenue Fund are insufficient to make in full the payments and credits at the time required to be made to the Debt Service Fund and to the debt service funds established to pay the principal of and interest on any Parity Bonds, the available moneys in the Revenue Fund shall be divided among such debt service funds in proportion to the respective principal amounts of said series of bonds at the time outstanding which are payable from the moneys in said debt service funds.

(c) **Debt Service Reserve Fund.** The Debt Service Reserve Fund for the Bonds shall not be funded; the Debt Service Requirement for the Bonds shall be set at \$0. Except as hereinafter provided in this Section, all amounts paid and credited to the Debt.

The amounts required to be paid and credited to the Debt Service Reserve Funds for the Parity Bonds pursuant to the Parity Ordinances shall be made as and when provided for under the provisions of the Parity Ordinances, if any.

If at any time the moneys in the Revenue Fund are insufficient to make in full the payments and credits at the time required to be made to the Debt Service Reserve Fund and to the debt service reserve funds established to protect the payment of any Parity Bonds, the available moneys in the Revenue Fund shall be divided among such debt service reserve

funds in proportion to the respective principal amounts of said series of bonds at the time outstanding which are payable from the moneys in such debt service reserve funds.

(d) **Surplus Fund.** After all payments and credits required at the time to be made under the provisions of paragraphs (a), (b), and (c) of this Section have been made, all moneys remaining in the Revenue Fund shall be paid and credited to the Surplus Fund. Moneys in the Surplus Fund may be expended and used for the following purposes as determined by the Authorized Officers, or each individually:

(i) Paying the cost of the operation, maintenance and repair of the Systems to the extent necessary after the application of the moneys held in the Operation and Maintenance Fund under the provisions of paragraph (a) of this Section;

(ii) Paying the cost of extending, enlarging, improving and/or repairing the Systems;

(iii) Preventing default in, anticipating payments into or increasing the amounts in the Debt Service Fund or the Debt Service Reserve Fund referred to in paragraphs (b) or (c) of this Section, or any one of them, or establishing or increasing the amount of any debt service fund or debt service reserve fund created by the Issuer for the payment of any Parity Bonds;

(iv) Calling, redeeming and paying prior to Stated Maturity, or, at the option of the Issuer, purchasing in the open market at the best price obtainable not exceeding the redemption price (if any bonds are callable), the Bonds or any Parity Bonds, including principal, interest and redemption premium, if any; or

(v) Any other lawful purpose in connection with the operation of the Systems and benefiting the Systems.

So long as any of the Bonds remain Outstanding, no moneys derived from the operation of the Systems shall be diverted to the general governmental or municipal functions of the Issuer.

(e) **Deficiency of Payments Into Funds.** If at any time the revenues derived from the operation of the Systems are insufficient to make any payment on the date or dates hereinbefore specified, the Issuer will make good the amount of such deficiency by making additional payments or credits out of the first available revenues thereafter received from the operation of the Systems, such payments and credits being made and applied in the order hereinbefore specified in this Section.

**Section 5.03. Transfer of Funds.** The Treasurer or other Authorized Officer is hereby authorized and directed to withdraw from the Debt Service Fund, and, to the extent necessary to prevent a default in the payment of either principal of or interest on the Bonds, from the Debt Service Reserve Fund and the Surplus Fund as provided in Section 5.02 hereof, sums sufficient to pay the principal of, premium, if any, and interest on the Bonds as and when the same become due on any Bond Payment Date, and to forward such sums to the NDEE in a manner which

ensures NDEE will have available funds in such amounts on or before each Bond Payment Date. All moneys deposited with the NDEE shall be deemed to be deposited in accordance with and subject to all of the provisions contained in this Ordinance.

**Section 5.04. Payments Due on Saturdays, Sundays and Holidays.** In any case where a Bond Payment Date is not a Business Day, then payment of principal, redemption price or interest need not be made on such Bond Payment Date but may be made on the next succeeding Business Day with the same force and effect as if made on such Bond Payment Date, and no interest shall accrue for the period after such Bond Payment Date.

## ARTICLE VI

### DEPOSIT AND INVESTMENT OF MONEYS

Money in each of the funds and accounts created by and referred to in this Ordinance shall be deposited in a bank or banks that are members of the Federal Deposit Insurance Corporation. All such deposits shall be continuously and adequately secured by the banks holding such deposits as provided by the laws of the United States of America or their state of incorporation.

Money held in any fund or account referred to in this Ordinance may be invested in Permitted Investments; provided, however, that no such investment shall be made for a period extending longer than the date when the money invested may be needed for the purpose for which such fund or account was created. All earnings on any investments held in any fund or account shall accrue to and become a part of such fund or account. All earnings on investments held in the Debt Service Reserve Fund shall accrue to and become a part of such Fund until the amount on deposit in the Debt Service Reserve Fund shall aggregate the Debt Service Reserve Requirement; thereafter, all such earnings shall be credited to the Debt Service Fund. In determining the amount held in any fund or account under any of the provisions of this Ordinance, obligations shall be valued at the lower of the cost or the market value thereof; provided, however, that investments held in the Debt Service Reserve Fund shall be valued at market value only. If and when the amount held in any fund or account shall be in excess of the amount required by the provisions of this Ordinance, the Issuer shall direct that such excess be paid and credited to the Debt Service Fund.

So long as any Parity Bonds remain outstanding and unpaid, any investments made pursuant to this Article shall be subject to any restrictions in the Parity Ordinance with respect to the funds and accounts created by and referred to in the Parity Ordinance.

## ARTICLE VII

### GENERAL COVENANTS AND PROVISIONS

The Issuer covenants and agrees with each of the Registered Owners of any of the Bonds that so long as any of the Bonds remain Outstanding and unpaid, it will, acting by and through the Council, comply with each of the following covenants:

**Section 7.01. Efficient and Economical Operation.** The Issuer will continuously own and will operate the Systems as revenue-producing facilities in an efficient and economical

manner and will keep and maintain the same in good repair and working order. The Issuer will establish and maintain such rules and regulations for the use of the Systems as may be necessary to assure maximum utilization and most efficient operation of the Systems.

**Section 7.02. Rate Covenant.** The Issuer in accordance with and subject to applicable legal requirements will fix, establish, maintain and collect such rates and charges for the use and services furnished by or through the Systems as will produce revenues sufficient to (a) pay the costs of the operation and maintenance of the Systems; (b) pay the principal of and interest on the System Revenue Bonds then outstanding as and when the same become due at the Maturity thereof or on any Interest Payment Date; (c) enable the Issuer to have in each fiscal year Net Revenues Available for Debt Service not less than 110% of Maximum Annual Debt Service on all System Revenue Bonds at the time outstanding; and (d) provide reasonable and adequate reserves for the payment of all System Revenue Bonds then outstanding and the interest thereon and for the protection and benefit of the Systems as provided in this Ordinance. The Issuer will require the prompt payment of accounts for service rendered by or through the Systems and will promptly take whatever action is legally permissible to enforce and collect delinquent charges. The Issuer will, from time to time as often as necessary, in accordance with and subject to applicable legal requirements, revise the rates and charges aforesaid in such manner as may be necessary or proper so that the Net Revenues Available for Debt Service will be sufficient to cover the obligations under this Section and otherwise under the provisions of this Ordinance. If in any fiscal year the Net Revenues Available for Debt Service are less than 110% of Maximum Annual Debt Service on all System Revenue Bonds then outstanding, the Issuer will immediately employ a Consultant to make recommendations with respect to such rates and charges. A copy of the Consultant's report and recommendations shall be filed with the City Clerk and the Purchaser of the Bonds and shall be furnished to any Registered Owner of the Bonds requesting a copy of the same, at the cost of such Registered Owner. The Issuer shall, to the extent feasible, follow the recommendations of the Consultant.

**Section 7.03. Reasonable Charges for All Services.** None of the facilities or services provided by the Systems will be furnished to any user (excepting the Issuer itself) without a reasonable charge being made therefor. If the revenues derived from the Systems are at any time insufficient to pay the reasonable Expenses of the Systems and also to pay all interest on and principal of the Bonds as and when the same become due, then the Issuer will thereafter pay into the Revenue Fund a fair and reasonable payment in accordance with effective applicable rates and charges for all services provided by the Systems, and such payments will continue so long as the same may be necessary in order to prevent or reduce the amount of any default in the payment of the interest on or principal of the Bonds.

**Section 7.04. Restrictions on Mortgage or Sale of Systems.** The Issuer will not mortgage, pledge or otherwise encumber the Systems or any part thereof, nor will it sell, lease or otherwise dispose of the Systems or any material part thereof; provided, however, the Issuer may:

- (a) sell at fair market value any portion of the Systems which has been replaced by other similar property of at least equal value, or which ceases to be necessary for the efficient operation of the Systems, and in the event of sale, the Issuer will apply the proceeds to either (i) redemption of Outstanding Bonds in accordance with the

provisions governing repayment of Bonds in advance of Stated Maturity, or (ii) replacement of the property so disposed of by other property the revenues of which shall be incorporated into the Systems as hereinbefore provided;

(b) cease to operate, abandon or otherwise dispose of any property which has become obsolete, nonproductive or otherwise unusable to the advantage of the Issuer;

(c) lease, (i) as lessor, any real or personal property which is unused or unimproved, or which has become obsolete, nonproductive or otherwise unusable to the advantage of the Issuer, or which is being acquired as a part of a lease/purchase financing for the acquisition and/or improvement of such property; and/or (ii) as lessee, with an option of the Issuer to purchase, any real or personal property for the extension and improvement of the Systems; property being leased as lessor and/or lessee pursuant to this paragraph (c) shall not be treated as part of the Systems for purposes of this Section 8.05 and may be mortgaged, pledged or otherwise encumbered; or

(d) grant a security interest in equipment to be purchased with the proceeds of any loan, lease or other obligation undertaken in accordance with Article IX hereof; or

(e) sell, lease or convey all or substantially all of the Systems to another entity or enter into a management contract with another entity if:

(i) The transferee entity is a political subdivision organized and existing under the laws of the State, or instrumentality thereof, or an organization described in Section 501(c)(3) of the Code, and expressly assumes in writing the due and punctual payment of the principal of and premium, if any, and interest on all outstanding System Revenue Bonds according to their tenor, and the due and punctual performance and observance of all of the covenants and conditions of this Ordinance;

(ii) If there remains unpaid any System Revenue Bond which bears interest that is not includable in gross income under the Code, the Issuer receives an opinion of Bond Counsel, in form and substance satisfactory to the Issuer, to the effect that under then existing law the consummation of such sale, lease or conveyance, whether or not contemplated on any date of the delivery of such System Revenue Bond, would not cause the interest payable on such System Revenue Bond to become includable in gross income under the Code;

(iii) The Issuer receives a certificate of the Consultant which demonstrates and certifies that immediately upon such sale or conveyance the transferee entity will not, as a result thereof, be in default in the performance or observance of any covenant or agreement to be performed or observed by it under this Ordinance;

(iv) Such transferee entity possesses such licenses to operate the Systems as may be required if it is to operate the Systems; and

(v) The Issuer receives an opinion of Bond Counsel, in form and substance satisfactory to the Issuer, as conclusive evidence that any such sale, lease or conveyance, and any such assumption, is permitted by law and complies with the provisions of this Section.

**Section 7.05. Insurance.** The Issuer will carry and maintain insurance with respect to the Systems and its operations against such casualties, contingencies and risks (including, but not limited to, property and casualty, fire and extended coverage insurance upon all of the properties being parts of the Systems insofar as the same are of an insurable nature, public liability, worker's compensation and employee dishonesty insurance), such insurance to be of the character and coverage and in such amounts as would normally be carried by other enterprises engaged in similar activities of comparable size and similarly situated. In the event of loss or damage, the Issuer, with reasonable dispatch, will use the proceeds of such insurance in reconstructing and replacing the property damaged or destroyed, or in paying the claims on account of which such proceeds were received, or if such reconstruction or replacement is unnecessary or impracticable, then the Issuer will pay and deposit the proceeds of such insurance into the Revenue Fund. The Issuer will annually review the insurance it maintains with respect to the Systems to determine that it is customary and adequate to protect its property and operations. The Issuer may elect to be self-insured for all or any part of the foregoing requirements if (a) the Issuer annually obtains a written evaluation with respect to such self-insurance program from an Insurance Consultant, (b) the evaluation is to the effect that the self-insurance program is actuarially sound, (c) unless the evaluation states that such reserves are not necessary, the Issuer deposits and maintains adequate reserves for the self-insurance program with a corporate trustee, and (d) in the case of workers' compensation, adequate reserves created by the Issuer for such self-insurance program are deposited and maintained in such amount and manner as are acceptable to the State. The Issuer shall pay any fees and expenses of such Insurance Consultant in connection therewith. The cost of all insurance obtained pursuant to the requirements of this Section shall be paid as an Expense out of the Revenues of the Systems.

**Section 7.06. Books, Records and Accounts.** The Issuer will install and maintain proper books, records and accounts (entirely separate from all other records and accounts of the Issuer) in which complete and correct entries will be made of all dealings and transactions of or in relation to the Systems. Such accounts shall show the amount of Revenues received from the Systems, the application of such Revenues, and all financial transactions in connection therewith. Said books shall be kept by the Issuer according to standard accounting practices as applicable to the operation of facilities comparable to the Systems.

**Section 7.07. Annual Budget.** Prior to the commencement of each fiscal year, the Issuer will cause to be prepared and filed with the City Clerk a budget setting forth the estimated receipts and expenditures of the Systems, or a separate schedule for the Systems within the Issuer's overall budget, for the next succeeding fiscal year. The City Clerk, promptly upon the filing of said budget in the City Clerk's office, will mail a copy of said budget to the Purchaser of the Bonds. Said annual budget shall be prepared in accordance with the laws and regulations of the State.

**Section 7.08. Annual Audit.** After the end of each fiscal year, the Issuer will cause an audit to be made of the Systems, or a separate schedule within the Issuer's audited financial statements, for the preceding fiscal year by a certified public accountant or firm of certified public accountants to be employed for that purpose and paid from the revenues of the Issuer. Said annual audit shall cover in reasonable detail the operations of the Systems during such fiscal year.

Within 30 days after the completion of each such audit, a copy thereof shall be filed in the office of the City Clerk, and a duplicate copy of the audit shall be mailed to the Purchaser of the Bonds. Such audits shall at all times during the usual business hours be open to the examination and inspection by any taxpayer, any user of the services of the Systems, any Registered Owner of any of the Bonds, or by anyone acting for or on behalf of such taxpayer, user or Registered Owner.

As soon as possible after the completion of the annual audit, the Council of the Issuer shall review such audit, and if the audit discloses that proper provision has not been made for all of the requirements of this Ordinance, the Issuer will promptly cure such deficiency and will promptly proceed to increase the rates and charges to be charged for the use and services furnished by the Systems as may be necessary to adequately provide for such requirements.

**Section 7.09. Right of Inspection.** The Purchaser of the Bonds and any Registered Owner or Owners of 10% of the principal amount of the Bonds then Outstanding shall have the right at all reasonable times to inspect the Systems and all records, accounts and data relating thereto, and shall be furnished all such information concerning the Systems and the operation thereof which the Purchaser or such Registered Owner or Owners may reasonably request.

**Section 7.10. Administrative Personnel.** The Issuer shall use its best efforts to employ at all times administrative personnel experienced and well qualified to operate the Systems. The Issuer further agrees that such administrative personnel shall be employed in sufficient numbers to ensure that the Systems will be operated in a prudent and efficient manner, following procedures generally accepted within the public utilities industry in the United States of America.

**Section 7.11. Rules and Regulations.** The Issuer will establish and maintain such rules and regulations for the use of the Systems as may be necessary to assure maximum occupancy and use thereof.

**Section 7.12. Performance of Duties and Covenants.** The Issuer will faithfully and punctually perform all duties, covenants and obligations with respect to the operation of the Systems now or hereafter imposed upon the Issuer by the Constitution and laws of the State and by the provisions of this Ordinance.

**Section 7.13. Tax Covenants.** The Mayor and Council hereby expressly declare the intent and understanding that interest on the Bonds shall not be excludable from gross income under the terms

of Section 103 of the Code, and the Issuer as issuer shall not file any information report with respect to the issuance of the Bonds pursuant to Section 149(e) of the Code.

## ARTICLE VIII

### ADDITIONAL BONDS AND OBLIGATIONS

**Section 8.01. Senior Lien Bonds.** So long as any of the Bonds remain Outstanding, the Issuer will not issue any additional bonds or incur or assume any other debt obligations appearing as liabilities on the balance sheet of the Issuer for the payment of moneys determined in accordance with generally accepted accounting principles, including capital leases as defined by generally accepted accounting principles, payable out of the net income and revenues of the Systems or any part thereof which are superior to the Bonds.

**Section 8.02. Parity Lien Bonds.** The Issuer covenants and agrees that so long as any of the Bonds remain Outstanding, it will not issue any additional Parity Bonds payable out of the net income and revenues of the Systems or any part thereof which stand on a parity or equality with the Bonds unless the following conditions are met:

(a) The Issuer shall not be in default in the payment of principal of or interest on any Bonds or any Parity Bonds at the time outstanding or in making any payment at the time required to be made into the respective funds and accounts created by and referred to in this Ordinance or any Parity Ordinance (unless such additional revenue bonds or obligations are being issued to provide funds to cure such default); and

(b) Either of the following conditions is satisfied (or the conditions reflected in the ordinance authorizing the 2021 Bonds if any such bonds remain outstanding):

(i) The audited financial statements of the City for the most recently completed fiscal years or, if such financial statements are not yet available a certificate of the City Treasurer, reflects annual Net Revenues Available for Debt Service derived by the Issuer from the operation of the Systems, for the fiscal year immediately preceding the issuance of Parity bonds shall have been equal to at least 110% of the Maximum Annual Debt Service required to be paid out of said revenues in any succeeding fiscal year on account of both principal (at maturity or upon mandatory redemption) and interest becoming due with respect to all System Revenue Bonds of the Issuer, including the Parity Bonds proposed to be issued; or

(ii) The Issuer shall obtain a certificate of a Consultant showing the annual Net Revenues Available for Debt Service projected to be derived by the Issuer from the operation of the Systems for the two fiscal year(s) immediately following the fiscal year in which the improvements to the Systems, the cost of which is being financed by such additional bonds, are to be in commercial operation, shall be equal to at least 110% of the Maximum Annual Debt Service required to be paid out of said revenues in any succeeding fiscal year following commencement of operation of such System improvements, on account of both principal (at maturity or upon mandatory redemption) and interest becoming due with respect to all System Revenue Bonds of the Issuer, including the Parity Bonds

proposed to be issued. In determining the projected Net Revenues Available for Debt Service for the purpose of this clause, the Consultant may adjust said net revenues by adding thereto any estimated increase in Net Revenues Available for Debt Service resulting from any increase in rates for the use and services of the Systems which, in the opinion of the Consultant, are economically feasible and reasonably considered necessary based on projected operations of the Systems.

Additional revenue bonds of the Issuer issued under the conditions set forth in this Section shall stand on a parity with the Bonds and shall enjoy complete equality or lien on and claim against the net revenues of the Systems with the Bonds, and the Issuer may make equal provision for paying said bonds and the interest thereon out of the Revenue Fund and may likewise provide for the creation of reasonable debt service funds and debt service reserve funds for the payment of such additional bonds and the interest thereon out of moneys in the Revenue Fund.

**Section 8.03. Junior Lien Bonds and Other Obligations.** Nothing in this Section contained shall prohibit or restrict the right of the Issuer to issue additional revenue bonds or other revenue obligations for any lawful purpose in connection with the operation of the facility and benefiting the Systems and to provide that the principal of and interest on said revenue bonds or obligations shall be payable out of the revenues of the Systems, provided, at the time of the issuance of such additional revenue bonds or obligations, the Issuer is not in default in the performance of any covenant or agreement contained in this Ordinance (unless such additional revenue bonds or obligations are being issued to provide funds to cure such default), and provided, further, that such additional revenue bonds or obligations shall be junior and subordinate to the Bonds so that if at any time the Issuer shall be in default in paying either interest on or principal of the Bonds, or if the Issuer is in default in making any payments required to be made by it under the provisions of Sections 5.02(a), (b) and (c) of this Ordinance, the Issuer shall make no payments of either principal of or interest on said junior and subordinate revenue bonds or obligations until said default or defaults be cured. In the event of the issuance of any such junior and subordinate revenue bonds or obligations, the Issuer, subject to the provisions aforesaid, may make provision for paying the principal of and interest on said revenue bonds or obligations out of moneys in the Revenue Fund.

**Section 8.04. Refunding Bonds.** The Issuer shall have the right, without complying with the provisions of Section 9.02 hereof, to refund any of the Bonds under the provisions of any law then available, and the refunding bonds so issued, shall enjoy complete equality of pledge with any of the Bonds which are not refunded, if any, upon the revenues of the Systems; provided, however, that if only a portion of the Bonds are refunded and if said Bonds are refunded in such manner that the refunding bonds bear a higher average rate of interest or become due on a date earlier than that of the Bonds which are refunded, then said Bonds may be refunded without complying with the provisions of Section 9.02 hereof only by and with the written consent of the Registered Owners of a majority in principal amount of the Bonds not refunded.

## ARTICLE IX

### DEFAULT AND REMEDIES

**Section 9.01. Events of Default.** The following constitute “Events of Default” under this Resolution:

- (a) failure by the Issuer to pay any payment of principal of, premium, if any, and interest on the Bonds when due;
- (b) failure by the Issuer to make any other payment required to be made hereunder, and such default shall continue for a period of 15 days;
- (c) failure by the Issuer to observe and perform any other covenant, condition or agreement contained herein on its part to be observed or performed for a period of 30 days after written notice is given to the Issuer specifying such failure and requesting that it be remedied, provided that if the failure stated in such notice cannot be corrected within such 30-day period, no Event of Default shall exist if corrective action is instituted by the Issuer within the applicable period and diligently pursued until the default is corrected, but in no event for longer than 90 days; or
- (d) determination that any representation or warranty made by the Issuer herein was untrue in any material respect when made.

**Section 9.02. Remedies.** The provisions of this Ordinance, including the covenants and agreements herein contained, shall constitute a contract between the Issuer and the Registered Owners of the Bonds, and the Registered Owner or Owners of not less than 10% in principal amount of the Bonds at the time Outstanding shall have the right for the equal benefit and protection of all Registered Owners of Bonds similarly situated:

- (a) by mandamus or other suit, action or proceedings at law or in equity to enforce the rights of such Registered Owner or Owners against the Issuer and its officers, agents and employees, and to require and compel duties and obligations required by the provisions of this Ordinance or by the Constitution and laws of the State;
- (b) by suit, action or other proceedings in equity or at law to require the Issuer, its officers, agents and employees to account as if they were the trustees of an express trust; and
- (c) by suit, action or other proceedings in equity or at law to enjoin any acts or things which may be unlawful or in violation of the rights of the Registered Owners of the Bonds.

**Section 9.03. Limitation on Rights of Bondowners.** No one or more Bondowners secured hereby shall have any right in any manner whatever by his or their action to affect, disturb or prejudice the security granted and provided for herein, or to enforce any right hereunder, except in the manner herein provided, and all proceedings at law or in equity shall be

instituted, had and maintained for the equal benefit of all Registered Owners of such Outstanding Bonds.

**Section 9.04. Remedies Cumulative.** No remedy conferred herein upon the Bondowners is intended to be exclusive of any other remedy, but each such remedy shall be cumulative and in addition to every other remedy and may be exercised without exhausting and without regard to any other remedy conferred herein. No waiver of any default or breach of duty or contract by the Registered Owner of any Bond shall extend to or affect any subsequent default or breach of duty or contract or shall impair any rights or remedies consequent thereon. No delay or omission of any Bondowner to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default or acquiescence therein. Every substantive right and every remedy conferred upon the Registered Owners of the Bonds by this Ordinance may be enforced and exercised from time to time and as often as may be deemed expedient. If any suit, action or proceeding taken by any Bondowner on account of any default or to enforce any right or exercise any remedy has been discontinued or abandoned for any reason, or has been determined adversely to such Bondowner, then, and in every such case, the Issuer and the Registered Owners of the Bonds shall be restored to their former positions and rights hereunder, respectively, and all rights, remedies, powers and duties of the Bondowners shall continue as if no such suit, action or other proceeding had been brought or taken.

**Section 9.05. No Obligation To Levy Taxes.** Nothing contained in this Ordinance shall be construed as imposing on the Issuer any duty or obligation to levy any taxes either to meet any obligation incurred herein or to pay the principal of or interest on the Bonds.

## ARTICLE X

### DEFEASANCE

When any or all of the Bonds or the interest payments thereon have been paid and discharged pursuant to the Loan Agreement, then the requirements contained in this Ordinance and the pledge of revenues made hereunder and all other rights granted hereby shall terminate with respect to the Bonds so paid and discharged. All moneys and Defeasance Obligations deposited pursuant to the Loan Agreement with the NDEE or a bank or trust company shall be deemed to be deposited in accordance with and subject to all of the provisions contained in this Ordinance.

## ARTICLE XI

### MISCELLANEOUS PROVISIONS

**Section 11.01. Amendments.** The rights and duties of the Issuer and the Bondowners, and the terms and provisions of the Bonds or of this Ordinance, may be amended or modified at any time in any respect by Ordinance of the Issuer with the written consent of the Registered Owners of not less than a majority in principal amount of the Bonds then Outstanding, such consent to be evidenced by an instrument or instruments executed by such Registered Owners and duly acknowledged or proved in the manner of a deed to be recorded, and such instrument or instruments shall be filed with the City Clerk.

Without the written consent of the Registered Owners of all of the Bonds at the time Outstanding, no modification or alteration of this Ordinance shall:

- (a) extend the maturity of any payment of principal or interest due upon any Bond;
- (b) effect a reduction in the amount which the Issuer is required to pay by way of principal of or interest on any Bond;
- (c) permit the creation of a lien on the revenues of the Systems prior or equal to the lien of the Bonds or Parity Bonds;
- (d) permit preference or priority of any Bonds over any other Bonds; or
- (e) reduce the percentage in principal amount of Bonds required for the written consent to any modification or alteration of the provisions of this Ordinance.

Without notice to or the consent of any Bondowners, the Issuer may amend or supplement this Ordinance for the purpose of curing any formal defect, omission, inconsistency or ambiguity therein or in connection with any other change therein which is not materially adverse to the interests of the Bondowners.

Every amendment or modification of the provisions of the Bonds or of this Ordinance shall be expressed in an ordinance adopted by the Council of the Issuer amending or supplementing the provisions of this Ordinance and shall be deemed to be a part of this Ordinance. A certified copy of every such amendatory or supplemental Ordinance, if any, and a certified copy of this Ordinance shall always be kept on file in the office of the City Clerk, and shall be made available for inspection by the Registered Owner of any Bond or a prospective purchaser or owner of any Bond authorized by this Ordinance, and upon payment of the reasonable cost of preparing the same, a certified copy of any such amendatory or supplemental Ordinance or of this Ordinance will be sent by the City Clerk to any such Bondowner or prospective Bondowner.

Any and all modifications made in the manner hereinabove provided shall not become effective until there has been filed with the City Clerk a copy of the Ordinance of the Issuer hereinabove provided for, duly certified, as well as proof of any required consent to such modification by the Registered Owners of the Bonds then Outstanding. It shall not be necessary to note on any of the Outstanding Bonds any reference to such amendment or modification.

The Issuer shall furnish to the NDEE a copy of any amendment to the Bonds or this Ordinance made hereunder which affects the duties or obligations of the NDEE under this Ordinance.

**Section 11.02. Notices, Consents and Other Instruments by Bondowners.** Any notice, consent, request, direction, approval, objection or other instrument required by this Ordinance to be signed and executed by the Bondowners may be in any number of concurrent writings of similar tenor and may be signed or executed by such Bondowners in person or by agent appointed in writing. Proof of the execution of any such instrument or of the writing appointing any such agent and of the ownership of Bonds, if made in the following manner, shall

be sufficient for any of the purposes of this Ordinance, and shall be conclusive in favor of the Issuer with regard to any action taken, suffered or omitted under any such instrument, namely:

(a) The fact and date of the execution by any Person of any such instrument may be proved by a certificate of any officer in any jurisdiction who by law has power to take acknowledgments within such jurisdiction that the Person signing such instrument acknowledged before such officer the execution thereof, or by affidavit of any witness to such execution.

(b) The Loan Agreement shall prove the fact of ownership of Bonds, the amount or amounts, numbers and other identification of Bonds, and the date of holding the same.

In determining whether the Registered Owners of the requisite principal amount of Bonds Outstanding have given any request, demand, authorization, direction, notice, consent or waiver under this Ordinance, Bonds owned by the Issuer shall be disregarded and deemed not to be Outstanding under this Ordinance, except that, in determining whether the Bondowners shall be protected in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Bonds which the Bondowners know to be so owned shall be so disregarded. Notwithstanding the foregoing, Bonds so owned which have been pledged in good faith shall not be disregarded as aforesaid if the pledgee establishes to the satisfaction of the Bondowners the pledgee's right so to act with respect to such Bonds and that the pledgee is not the Issuer.

**Section 11.03. Further Authority.** The officers of the Issuer, including the Mayor and City Clerk, shall be, and they hereby are, authorized and directed to execute all documents and take such actions as they may deem necessary or advisable in order to carry out and perform the purposes of the Loan Agreement, this Ordinance and to make ministerial alterations, changes or additions in the foregoing agreements, statements, instruments and other documents herein approved, authorized and confirmed which they may approve and the execution or taking of such action shall be conclusive evidence of such necessity or advisability.

**Section 11.04. Severability.** If any Section or other part of this Ordinance, whether large or small, is for any reason held invalid, the invalidity thereof shall not affect the validity of the other provisions of this Ordinance.

**Section 11.05. Governing Law.** This Ordinance shall be governed by and constructed in accordance with the applicable laws of the State of Nebraska.

**Section 11.06. Effective Date; Publication in Pamphlet Form.** This Ordinance shall take effect and be in full force from and after its passage by the Council and approval by the Mayor and upon its publication in pamphlet form as provided by law.

**PASSED AND APPROVED** \_\_\_\_\_, 2022.

ATTEST:

\_\_\_\_\_  
Michael D. Gonzales, Mayor

\_\_\_\_\_  
Lea Ann Doak, City Clerk

**EXHIBIT A TO ORDINANCE**

**NOTE AND LOAN AGREEMENT**

NOTICE OF PUBLICATION  
OF ORDINANCE NO. 2022-\_\_\_\_\_  
IN PAMPHLET FORM

Public Notice is hereby given that at a meeting of the Mayor and City Council of the City of McCook, Nebraska, held at \_\_\_\_\_ p.m. on \_\_\_\_\_, 2022 in the City Council Chambers in the McCook Municipal Center, located at 505 West C Street, McCook, Nebraska there was passed and adopted Ordinance No. 2022-\_\_\_\_\_ entitled:

**AN ORDINANCE OF THE CITY OF MCCOOK, NEBRASKA AUTHORIZING AND PROVIDING FOR THE ISSUANCE OF A \$2,490,000 AGGREGATE PRINCIPAL AMOUNT COMBINED UTILITIES REVENUE BOND, SERIES 2022, IN THE FORM OF A PROMISSORY NOTE OF THE CITY, TO PAY THE COSTS OF ACQUIRING, CONSTRUCTING, IMPROVING, EXTENDING, EQUIPPING AND FURNISHING IMPROVEMENTS TO THE CITY'S WATER WORKS PLANT AND WATER SYSTEM; APPROVING THE EXECUTION AND DELIVERY OF A LOAN AGREEMENT WITH THE NEBRASKA DEPARTMENT OF ENVIRONMENT AND ENERGY (NDEE PROJECT NO. D311681); PRESCRIBING THE FORM AND DETAILS OF THE BOND AND THE COVENANTS AND AGREEMENTS TO PROVIDE FOR THE PAYMENT AND SECURITY THEREOF; PROVIDING FOR THE PUBLICATION OF THIS ORDINANCE; AND AUTHORIZING CERTAIN ACTIONS AND DOCUMENTS AND PRESCRIBING OTHER MATTERS RELATING THERETO.**

Said Ordinance has been published in pamphlet form, and copies of said Ordinance as published in pamphlet form are available for inspection and distribution at the Office of the City Clerk at the City Office.

---

Lea Ann Doak, City Clerk

---

**LOAN AGREEMENT**  
(Governmental Borrower)

Between

**NEBRASKA DEPARTMENT OF ENVIRONMENT AND ENERGY**

and

**CITY OF MCCOOK, NEBRASKA**

**NDEE PROJECT NO. D311681**

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

---

**DRAFT COPY FOR REVIEW.**

**WILL NEED ATTACHMENT E AND ATTACHMENT F  
COMPLETED BEFORE BEING ABLE TO INCORPORATE INTO  
LOAN AGREEMENT BEFORE BEING ABLE TO SEND OUT FOR  
SIGNATURES. PLEASE SEE EMAIL FOR MORE INFORMATION.**

LOAN AGREEMENT  
BETWEEN THE  
NEBRASKA DEPARTMENT OF ENVIRONMENT AND ENERGY  
AND  
THE CITY OF MCCOOK, NEBRASKA  
PROJECT NO. D311681

This LOAN AGREEMENT with SRF No. D311681 (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 MCCOOK, NEBRASKA (hereinafter "Borrower").

W I T N E S S E T H :

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

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

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

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

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

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

WHEREAS, the NDEE may from time to time enter into a pledge agreement with 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 NIFA for the payment of the principal of, redemption premium, if any, and interest on Drinking Water State Revolving Fund Revenue Bonds which may be issued by NIFA from time to time; and

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

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

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

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

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

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

## Article I

### DEFINITIONS

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

- (a) "Act" means the Drinking Water State Revolving Fund Act, Neb. Rev. Stat. §§71-5314 to 71-5327, as amended.
- (b) "Additional Revenue Obligation" means any obligation for the payment of money undertaken by the Borrower which is payable from or secured by a pledge of, or lien upon, the System Revenues incurred after the date of execution and delivery of this Loan Agreement, including any capital lease entered into by the Borrower the rentals of which are payable from, or secured by a pledge of or lien upon, System Revenues.
- (c) "Authorized Representative" means the person or persons authorized pursuant to a resolution or ordinance of the governing body of the Borrower to perform any act or execute any document relating to this Loan Agreement.
- (d) "Borrower" means the City of McCook, Nebraska that is a party to and is described in the first paragraph of this Loan Agreement, and its successors and assignees.
- (e) "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.
- (f) "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.
- (g) "Drinking Water State Revolving Fund" or "DWSRF" means the Nebraska Drinking Water State Revolving Fund Act established pursuant to the Act and Regulations.
- (h) "Due Date" means the dates specified for payment of principal and interest on the Loan as specified in Section 2.06.
- (i) "Event of Default" means any occurrence or event specified in Article V of this Loan Agreement.
- (j) "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:
  - a. the Borrower's Combined Utilities Revenue Refunding Bonds, Series 2021, date of original issue – August 24, 2021, in the original stated principal amount of \$6,555,000; and

- b. the Bond in the original stated principal amount of not to exceed \$2,086,810, in the form of a Promissory Note governed by a Loan Agreement dated as of April 9, 2014, as supplemented and amended, by and between NDEE and the City for NDEE Project No. D311560.
- (k) "Federal Act" means the Safe Drinking Water Act, et seq. as amended.
- (l) "Fund" means the Drinking Water Facilities Loan Fund established pursuant to the Act.
- (m) "GAAP" means generally accepted accounting principles as applicable to the Public Water System.
- (n) "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.
- (o) "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.
- (p) "Intended Use Plan" means a document prepared annually by the NDEE which identifies the intended use of all State Revolving Fund program funds.
- (q) "Late Payment" means any payment that is not received within fifteen days of the due date as established by this Loan Agreement.
- (r) "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.
- (s) "Loan Agreement" means this Loan Agreement, including the Attachments hereto, as it may be properly supplemented, modified or amended.
- (t) "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.
- (u) "Loan Repayments" means the payments of the Loan required to be made by the Borrower pursuant to Section 2.06 of this Loan Agreement.
- (v) "Loan Terms" means the terms as established by this Loan Agreement.
- (w) "NDEE" means the Nebraska Department of Environment and Energy established pursuant to Neb. Rev. Stat. §81-1501 et seq., as amended.
- (x) "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.
- (y) "Note" means a promissory note of the Borrower with respect to the Loan in the form of Attachment F to this Loan Agreement.
- (z) "Project" means an eligible item for funding under the Act and is as described in Exhibit 1 of this Loan Agreement.
- (aa) "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.
- (bb) "Public Water System" means a Public Water System, as defined in Neb. Rev. Stat. §71-5301(10a).

- (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(s)" means, without duplication, (a) the Loan; (b) any Existing Revenue Obligation; and (c) any Additional Revenue Obligation.
- (ff) "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.
- (gg) "State" means the State of Nebraska acting, unless otherwise specifically indicated, by and through the NDEE and its successors and assignees.
- (hh) "System Revenues" means all revenues derived by the Borrower from the User Charge System.
- (ii) "Trustee" means the trustee under any trust indenture with respect to revenue bonds the proceeds of which are deposited in the Fund.
- (jj) "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.

**Section 1.02. Definitions pertaining to the Borrower's Utility System and User Charge System.** The following terms as used in this Loan Agreement will, unless the context clearly requires otherwise, have the following meanings.

- (a) "System or Systems" means collectively, the sanitary sewer system of the Borrower presently serving the sewer users (the "Sewer System"), the water distribution system of the Borrower presently serving the water users (the "Water System"), and the solid waste collection system of the Borrower presently serving the solid waste disposers (the "Solid Waste System"), including, respectively, the plants and all appurtenances thereto, together with all extensions, improvements and repairs thereto hereafter made or acquired by the Borrower.
- (b) "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 revenues derived by the Borrower from the fees and charges for the use and services furnished by or through the Systems. Revenues shall include, without limitation, (a) receipts from all charges imposed upon users for service provided and (b) receipts from hookup fees, tap fees, capital facilities charges connected with the use or right to use the Systems or any part thereof (specifically including the Project) whether any such receipts (as described in (a) or (b) of this sentence) are directly received by the Borrower from customers or indirectly through interlocal or other agreements with other political subdivisions.

## 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 an amount not to exceed two million, four hundred, ninety thousand dollars (\$2,490,000) to the Borrower to pay a portion of the Project Costs in Attachment B hereto.

(a) Loan Forgiveness.

- (1) The total award of all Loan Forgiveness cannot exceed one-half of the total amount of eligible Project Costs.
- (2) Loan Forgiveness. This Loan Agreement includes DWSRF Loan Forgiveness of up to 15% of the eligible Project Costs and up to an additional seventy-nine thousand, six hundred one dollars (\$79,601) with a maximum total Loan Forgiveness ceiling of four hundred fifty-three thousand one hundred one dollars (\$453,101).
- (3) All Subsidies shall be effective only upon the completion of the Project in accordance with this Loan Agreement, including Loan Forgiveness conditions as stated in Attachment I.01 LOAN FORGIVENESS AGREEMENT FORM and compliance with the requirements of the DWSRF, as determined by the NDEE and Initiation of Operation. The amount of such Subsidies shall be stated on the final Attachment A repayment schedule prepared by the NDEE following disbursement of the full Loan Amount and Initiation of Operation.

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

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

**Section 2.02. Term of the Loan.** The Borrower agrees to fully repay the Loan with interest on the date of Initiation of Operation or to begin repayment of principal and interest on the Loan within one (1) year from the date of Initiation of Operation, but no later than three (3) years from the date of the Loan, whichever occurs first, and to repay such Loan in full no later than thirty (30) 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 during construction is 0.0% and after the date of Initiation of Operation is 0.0% per annum (calculated on the basis of a year equaling 360 days made up of 12 months of 30 days each) to be paid as set out in Attachment A. For the purposes of this paragraph, "construction" shall mean the period between the effective date of this Loan Agreement and the date of Initiation of Operation.

**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 starting one year after the effective date of this Loan Agreement. The Borrower shall pay to the NDEE, or at the direction of the NDEE, to NIFA or the Trustee, an annual administrative fee of 0.0% per annum to be paid in semiannual installments on June 15 and December 15.

**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.

The Borrower shall submit a draft of the operation and maintenance manual for the Project to the designated Engineering Section at NDEE before disbursements exceed 75% of the Project Costs. The Borrower shall submit a final operation and maintenance manual to the designated Engineering Section at NDEE and receive approval before disbursements exceed 95% of the Project Costs or final disbursement, whichever comes first.

**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 and interest shall be paid semiannually on December 15 and June 15 of each year in accordance with the Loan Repayment Schedule in Attachment A; provided that, following the receipt of the Initiation of Operation date and the final disbursement of Loan proceeds to the Borrower, a revised Attachment A shall be prepared by the NDEE to establish the final debt service schedule based upon the parameters described in the projected Attachment A. Such revised final Attachment A thereafter shall be deemed to be incorporated herein by reference and made a part hereof and shall supersede and replace the projected Attachment A.

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

(b) Optional Prepayment of the Loan.

(1) If the Borrower is receiving Loan Forgiveness, the Borrower may not prepay the Loan in whole or in part within ten (10) years of the date of this Loan Agreement. After the ten years, the Borrower may prepay the Loan together with any accrued interest in whole or in part without penalty upon giving no less than 60 days written notice to the NDEE of its intent to prepay.

(2) If the Borrower is not receiving Loan Forgiveness, the Borrower may prepay the Loan together with any accrued interest in whole or in part at any time without penalty upon giving no less than 60 days written notice to the NDEE of its intent to prepay.

(3) Once the Borrower is able to prepay the loan, the Borrower may make a partial prepayment of the Loan Amount only if the prepayment amount is greater than the lesser of 10% of the outstanding amount of the Loan, or fifty thousand dollars (\$50,000). The NDEE shall prepare a new Loan

Repayment Schedule to revise Attachment A following receipt of any partial prepayment of the Loan and such revised Attachment A thereafter shall be deemed to be incorporated herein by reference and made a part hereof and shall supersede and replace Attachment A.

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

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

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

**Table for Section 2.07**

	<b>Project 1</b>	<b>Project 2</b>	<b>Project 3</b>
Construction Start:	June 2021	June 2022	June 2023
Initiation of Operation:	October 2021	December 2022	December 2023
Completion of Construction:	December 2021	December 2022	December 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 Drinking Water Use Ordinances and User Charge Systems.**

- (a) The Borrower agrees to obtain approval from the NDEE of its User Charge System, and to adopt and implement any necessary changes before the Project is placed in operation.
- (b) The Borrower agrees that it shall not modify, amend, make additions to, or deletions from its Public Water System Ordinance or User Charge System without the consent of the 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 Public Water System Ordinance, or any ordinance and other agreement pursuant to which any Revenue Obligations have been issued, and for which the revenues of the User Charge Systems have been pledged; or
  - (2) Any increase deemed necessary by the governing body of the Borrower in order to permit the issuance of or provide for the payment of Additional Revenue Obligations.

**Section 2.10. Other Conditions and Terms.**

- (a) Engineering Services. The Borrower shall provide and maintain competent and adequate engineering supervision and resident inspection during construction.
- (b) Construction Agreement Award. The Borrower shall obtain the NDEE concurrence and authorization prior to award of the construction agreement.
- (c) Initiation of Operation. The Engineering Section at the NDEE shall provide written notification to the NDEE of the date of Initiation of Operation of the Project. On failure of the Engineering Section to set an acceptable Initiation of Operation date the NDEE will look at the construction record or placement into service date and set the Initiation of Operation date.
- (d) Construction Completion. The Borrower shall provide written notification to the NDEE of the construction completion date of the Project.
- (e) Capacity Development. The Borrower agrees to maintain a system of records for annual review and reporting of technical, managerial, and financial capacity of the Public Water System to demonstrate continued compliance with the requirements of the Nebraska Safe Drinking Water Act as provided under Nebraska Administrative Code, Title 179 – Public Water Systems, Chapter 2, Regulations Governing Public Water Supply Systems; and the requirements of an operating permit, as issued by the NDEE.
- (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 pursuant to Nebraska Administrative Code, Title 179 – Public Water Systems, Chapter 2, Regulations Governing Public Water Supply Systems .
- (h) Site Title and Easements. The Borrower must certify that site title, including all easements and rights-of-way necessary to allow construction of the Project, has been obtained prior to award of the construction contract (i.e., all real property has been acquired, bonafide options have been taken or formal condemnation proceedings have been initiated for necessary real property).

(i) Contractor's Payments. The Borrower agrees to make prompt payment to its contractor(s) of sums due for construction and to retain only such amounts as may be justified by specific circumstances and provisions of the construction agreement.

(j) Bid Solicitation. The Borrower agrees to notify the 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 wages 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 Borrower's representative utilizing the Department of Labor Form WH-347. A web-form which can be completed on-line is found at [www.dol.gov/whd/forms/wh347.pdf](http://www.dol.gov/whd/forms/wh347.pdf). 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 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 (SF) 1445 or equivalent documentation to memorialize the interviews. Copies of the SF 1445 form are available at <http://www.gsa.gov>. 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 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 Municipality, its employees, sub-recipients under this award, and sub-recipients' employees may not engage in severe forms of trafficking in persons during the period of time that the award is in effect; procure a commercial sex act during the period of time that the award is in effect; or use forced labor in the performance of the award or sub-awards under the award."

(q) American Iron and Steel (AIS) Products. Use of Loan funds for partial or full payment of the construction, alteration, maintenance, and repair of "Public Water Systems", as defined by the Federal Act, must be constructed pursuant to Public Law 113-76, et seq., as amended, which includes American Iron and Steel Act (AIS) requirements. The Borrower agrees to be responsible for and to comply with all American Iron and Steel conditions and requirements pursuant to the American Iron and Steel Act and agrees to provide written certification of such compliance to the NDEE after construction completion.

## Article III

### REPRESENTATIONS AND COVENANTS OF BORROWER

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

(a) Organization and Authority.

(1) The Borrower is a village, town, city, district, association, or other public body created by or pursuant to the constitution and statutes of the State of Nebraska.

(2) The Borrower has full legal right and authority and has all necessary licenses and permits required as of the date hereof (or is in the process of obtaining all necessary licenses and permits that will be required, but are not required to be in place as of the date hereof) to own, operate and maintain its Public Water System, to carry on its activities relating thereto, to execute and deliver this Loan Agreement, to undertake and complete the Project, and to carry out and consummate all transactions contemplated by this Loan Agreement.

(3) The proceedings of the Borrower's governing body conducted to approve this Loan Agreement and authorizing its execution, issuance, and delivery on behalf of the Borrower, and authorizing the Borrower to undertake and complete the Project, have been duly and lawfully convened and conducted and the resolution of the Borrower's governing body approving such matters has been duly and lawfully adopted.

(4) This Loan Agreement has been duly authorized, executed, and delivered on behalf of the Borrower, and constitutes the legal, valid, and binding obligation of the Borrower enforceable in accordance with its terms.

(b) Full Disclosure. To the best knowledge of the Borrower, there is no fact that the Borrower has not disclosed to the 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 Public Water System, or the ability of the Borrower to make all Loan Repayments and otherwise observe and perform its duties, covenants, obligations and agreement under this Loan Agreement.

(c) Non-Litigation. There is no controversy, suit or other proceeding of any kind pending, or to the best knowledge of the Borrower, threatened questioning, disputing or affecting in any way the: (i) legal organization of the Borrower or its boundaries; (ii) the right or title of any of its officers to their respective offices; (iii) the legality of any official act taken in connection with obtaining the Loan; (iv) the constitutionality or validity of the indebtedness represented by the Loan Agreement; (v) any of the proceedings had in relation to the authorization or execution or the pledging of the revenues stated in Section 2.09 and Section 3.02 of this Loan Agreement; or (vi) the ability of the Borrower to make all Loan Repayments or otherwise observe and perform its duties, covenants, obligations and agreements under this Loan Agreement.

(d) Compliance with Existing Laws and Agreements. The authorization, execution and delivery of this Loan Agreement by the Borrower, and the performance by the Borrower of its duties, covenants, obligations, and agreements thereunder will not result in any breach of any existing law or agreement to which the Borrower is a party.

(e) No Defaults. No event has occurred and no condition exists that would constitute an Event of Default. The Borrower is not in violation of any agreement which would materially adversely affect the ability of the Borrower to make all Loan Repayments or otherwise observe and perform its duties, covenants, obligations, and agreements under this Loan Agreement.

(f) Governmental Consent. The Borrower has obtained all permits and approvals required to date under this Loan Agreement (or is in the process of obtaining all permits and approvals that will be required, but are not required to be in place as of the date hereof) for the undertaking or completion of the Project and

the financing or refinancing thereof. The Borrower has complied with, or expects to comply with, all applicable provisions of law requiring any notification, with any governmental body or officer in connection with this Loan Agreement or with the undertaking or completion of the Project and the financing or refinancing thereof.

(g) Compliance with the Law. The Borrower:

(1) Is in compliance with all laws, ordinances, governmental rules and regulations to which it is subject, including, without limitation, any public hearing or public notice requirements or environmental review requirements contained in the Regulations, with which the failure to comply would materially adversely affect the ability of the Borrower to conduct its activities, enter into this Loan Agreement or undertake or complete the Project; and

(2) Has obtained, or expects to obtain, all licenses, permits, franchises or other governmental authorizations presently necessary for the ownership of its property which, if not obtained, would materially adversely affect the ability of the Borrower to complete the Project.

(h) Use of Loan Proceeds. The Borrower will apply the proceeds of the Loan as described in Article II of this Loan Agreement:

(1) To finance or refinance a portion of the Project Costs; and

(2) Where applicable, to reimburse the Borrower for a portion of the Project Costs, which portion was paid or incurred in anticipation of reimbursement by the 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 the User Charge System as the dedicated source of revenue for the repayment of the Loan. The pledge herein provided for is made in accordance with and under the terms of Ordinance No. 2022-\_\_\_\_\_ and is secured on a parity with the pledge made under the ordinances authorizing the Existing Revenue Obligations. 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 Systems including all improvements and additions hereafter constructed or acquired by the Borrower, as will provide revenues sufficient to (i) pay the cost of the operation and maintenance, and replacement of the Systems, (ii) pay at least 110% of the principal of and interest on the Loan as and when the same become due, and (iii) pay all other amounts due at any time under this Loan Agreement. The lien of the NDEE on the revenues of the Borrower's Systems, shall be on a parity with the lien on such revenues of the Borrower's Existing Revenue Obligations now outstanding and any additional System revenue bonds or other revenue bonds hereafter issued on parity with the Loan and the Existing Revenue Obligations. The Borrower hereby expressly reserves the right to issue Revenue Obligations on parity with the lien described in this Loan Agreement and the Existing Revenue Obligations, provided, the Borrower complies with the covenants contained in this Subsection 3.02(a) and the ordinances authorizing the Loan and the Existing Revenue Obligations. 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 Systems services, providing that each user or user class pay its proportionate share of operation and maintenance (including replacement) costs within the Borrower's service area, based on each users

demand or potential demand for service and to conduct at least a biennial review of adequacy of the user charge rates. The Borrower agrees the initial financial analysis performed by the 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 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 public water supply utility practice to complete the Project and to so accomplish such completion on or before the estimated Project completion date set forth in Article II hereto; and
- (2) To provide from its own financial resources all moneys, in excess of the total amount of proceeds it receives pursuant to this Loan Agreement, required to complete the Project.

(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 Public Water System. The Borrower agrees that it shall operate in accordance with Nebraska Administrative Code, Title 179 – Public Water Systems, Chapter 22, and ensure the following:

- (1) At all times operate the properties of its Public Water System in an efficient manner; and
- (2) Maintain its Public Water System, making all necessary and proper repairs, renewals, replacements, additions, betterments, and improvements necessary to maintain its system in good repair, working order and operating condition.

(f) Disposition of Public Water System. The Borrower covenants that it intends to own and operate the Project at all times during the term of the Loan. The Borrower does not know of any reason why the Project will not be so used in the absence of:

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

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

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

(g) Records and Accounts. The Borrower shall maintain accurate records and accounts in accordance with generally accepted accounting principles, including principles relating to the reporting of infrastructure assets for its Public Water System's Records (the "System Records"), which shall be separate and distinct from its other records and accounts (the "General Account"). The System Records and General Accounts shall be made available for inspection upon request by the 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) Non-payment-related defaults in agreements authorizing any Indebtedness;
- (3) Rating changes on any Indebtedness;
- (4) Adverse tax opinions or events affecting the tax-exempt status of any Indebtedness; or
- (5) Unscheduled draws on debt service reserves or credit enhancements on any Indebtedness reflecting financial difficulties.

(j) Insurance. The Borrower will carry and maintain such reasonable amount of all risk insurance on all properties and all operations of the Public Water System as would be carried by similar sized municipal operators of Public Water System, insofar as the properties are of an insurable nature. The Borrower also will carry general liability insurance in amounts not less than the maximum liability of a governmental entity for claims arising out of a single occurrence, as provided by the Nebraska Political Subdivisions Tort Claims Act (Neb. Rev. Stat. §§13-901 to 13-928), or other similar future law.

(k) Continuing Representations. The representations of the Borrower contained herein shall be true at the time of the execution of this Loan Agreement and at all times during the term of this Loan Agreement.

(l) Notice of Material Adverse Change. The Borrower shall promptly notify the NDEE of any material adverse change in the activities, prospects, or condition (financial or otherwise) of the Borrower's Public Water System, in accordance with the provisions of Sections 3.02(g) and 3.02(i) of this Loan Agreement, or in the ability of the Borrower to make all Loan Repayments and otherwise observe and perform its duties, covenants, obligations and agreements under this Loan Agreement.

(m) Additional Covenants and Requirements. If necessary in connection with the making of the Loan Agreement, additional covenants and requirements, if any, are hereby incorporated with their inclusion to Attachment I, Other Documents.

## **Article IV**

### **ASSIGNMENT**

**Section 4.01. Assignment and Transfer by the 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 NIFA.

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

- (a) The NDEE shall have approved said assignment in writing;
- (b) The assignee is a village, town, city, district, association, county, or other public body created by or pursuant to State law of the State of Nebraska or any combination thereof, that has legal authority to own or operate the Public Water System;
- (c) The assignee shall have expressly assumed in writing the full and faithful observance and performance of the Borrower's duties, covenants, and obligations under this Loan Agreement; provided, however, such

assignment shall not relieve the Borrower of its duties, covenants, and obligations under this Loan Agreement;

(d) The assignment will not adversely impact the NDEE's ability to meet its duties, covenants and obligations under any Pledge Agreement as determined in writing by the NDEE;

(e) The assignment will not adversely affect the exclusion from gross income for federal tax purposes of the interest on any bonds issued by NIFA to fund deposits into the Loan Fund; and

(f) The Borrower shall provide the NDEE, and NIFA if 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 subparagraphs Section 4.02(b) and (c) above has been met, and;

(2) An opinion of nationally recognized bond counsel satisfactory to the NDEE that the condition set forth in subparagraph Section 4.02(e) above has been met.

## Article V

### EVENTS OF DEFAULT AND REMEDIES

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

**Section 5.02. Notice of Default.**

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

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

**Section 5.03. Remedies on Default.**

(a) Whenever an Event of Default shall have occurred and be continuing, the NDEE or the Borrower shall have the right to take whatever action at law or in equity may appear necessary or desirable to collect the amounts then due and to become due or to enforce the performance and observance of any obligation or agreement of the Borrower (including, without limitation, withholding remaining Loan disbursements, cancellation of this Loan Agreement and acceleration of the remaining scheduled principal payments set forth on Attachment A, or such other remedies provided to the NDEE in the Act and the Regulations).

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

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

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

- (a) First, to pay administrative fees on the Loan as the same becomes due and payable;
- (b) Second, to pay interest on the Loan as the same becomes due and payable;
- (c) Third, to pay principal due and payable on the Loan;
- (d) Fourth, to pay expenses owed by the Borrower pursuant to Section 5.04 hereof; and
- (e) Fifth, to pay any other amounts due and payable hereunder as such amounts become due and payable. To the extent that the 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 the operation of the Project.

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

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

(a) **BORROWER**

City of McCook  
PO Box 1059  
505 West "C" Street  
McCook, NE 69001-1059  
Phone: (308) 345-2022

(b) **NDEE**

Department of Environment and 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 assigns.

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

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

**Section 6.09. Consents and Approvals.** Whenever the written consent or approval of the State shall be required under the provisions of this Loan Agreement, such consent or approval may only be given by the 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 NIFA which may occur from time to time and thereafter, the NDEE shall deliver a notice of this Loan in the form prescribed by NIFA, and other pertinent information relating thereto, to the Trustee for any bonds of NIFA issued to fund deposits into the Fund.

**Section 6.12. Finalizing, Closing, and Termination of the Loan Agreement.** The 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 MCCOOK of this Loan Agreement may not be electronically signed and must be signed physically by the authorized signatories. The Borrower agrees to send Attachment F of this Loan Agreement to the NDEE once signed.

**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 MCCOOK, NEBRASKA  
By \_\_\_\_\_

NEBRASKA DEPARTMENT OF  
ENVIRONMENT AND ENERGY

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

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

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

Date \_\_\_\_\_

Date \_\_\_\_\_

## INDEX OF ATTACHMENTS

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

## EXHIBIT 1

### PROJECT DESCRIPTION

The project to be funded by this DWSRF financing includes the following:

**Project No. 1 – West 5<sup>th</sup> & East 14<sup>th</sup> Water Main:**

The West 5<sup>th</sup> water system improvements involve horizontal directional drilling of approximately 2,500 lineal feet (LF) of 16-inch dedicated water main under West 5<sup>th</sup> Street. The East 14<sup>th</sup> water main improvements consist of the replacement of approximately 200 LF of 10-inch, 350 LF of 8-inch and the addition of 1,000 LF of 6-inch water main. The East 14<sup>th</sup> Project will loop dead end mains and replace mains that have had repeated failures.

**Project No. 2 – East 1<sup>st</sup> Water Main:**

This includes the replacement of the 12-inch water main on East 1<sup>st</sup> Street from South Street to 'A' Street.

**Project No. 3 – South Street Water Main:**

This includes the replacement of the existing 6-inch water main with 8-inch water main from the City Shop to the east side of Highway 83.

This includes all related work, land, testing, and engineering fees associated with the projects.

## ATTACHMENT A

### LOAN REPAYMENT SCHEDULE

Interest and Administrative fee accruing before the first principal repayment, which is estimated to be June 15, 2024, that is not reflected on the following amortization schedule, shall be billed and paid in accordance with the NDEE's procedures. Interest and the Administrative fee shall accrue at the applicable rate (set forth in Section 2.03 and 2.06 of the Loan Agreement) as to the amount drawn from the date of each disbursement. Payments are due on June 15 and December 15 of each year, with an estimated commencement of June 15, 2022. 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. 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 Loan Forgiveness, if any;
- (3) Interest rate as set forth in Section 2.03;
- (4) Administrative fee rate as set forth in Section 2.04;
- (5) Installments of principal, interest, and fees on each June 15 and December 15 payment date shall:
  - (a) begin no later than one year after the Initiation of Operation, or three years from the effective date of this Loan Agreement, whichever occurs first; and
  - (b) end on the last repayment which must be paid no later than thirty (30) 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
- (7) Amortization of principal to achieve level payments of principal and interest (not taking into account the administrative fee payment pursuant to Section 2.04).

**Projected Amortization Schedule**

<b>Total Principal:</b>	\$2,036,899	<b>Interest Rate (%):</b>	0%
<b>Loan Forgiveness:</b>	\$453,101	<b>Admin Fee (%):</b>	0%
<b>Total SRF Assistance:</b>	\$2,490,000	<b>Term (Years):</b>	30

Payment Date	Outstanding Principal	Principal Payment	Interest	Admin Fee	Total Payment	Remaining Principal
6/15/2024	\$2,036,899	\$33,948.32	\$0.00	\$0.00	\$33,948.32	\$2,002,950.68
12/15/2024	\$2,002,950.68	\$33,948.32	\$0.00	\$0.00	\$33,948.32	\$1,969,002.37
6/15/2025	\$1,969,002.37	\$33,948.32	\$0.00	\$0.00	\$33,948.32	\$1,935,054.05
12/15/2025	\$1,935,054.05	\$33,948.32	\$0.00	\$0.00	\$33,948.32	\$1,901,105.73
6/15/2026	\$1,901,105.73	\$33,948.32	\$0.00	\$0.00	\$33,948.32	\$1,867,157.42
12/15/2026	\$1,867,157.42	\$33,948.32	\$0.00	\$0.00	\$33,948.32	\$1,833,209.10
6/15/2027	\$1,833,209.10	\$33,948.32	\$0.00	\$0.00	\$33,948.32	\$1,799,260.78
12/15/2027	\$1,799,260.78	\$33,948.32	\$0.00	\$0.00	\$33,948.32	\$1,765,312.47
6/15/2028	\$1,765,312.47	\$33,948.32	\$0.00	\$0.00	\$33,948.32	\$1,731,364.15
12/15/2028	\$1,731,364.15	\$33,948.32	\$0.00	\$0.00	\$33,948.32	\$1,697,415.83
6/15/2029	\$1,697,415.83	\$33,948.32	\$0.00	\$0.00	\$33,948.32	\$1,663,467.52
12/15/2029	\$1,663,467.52	\$33,948.32	\$0.00	\$0.00	\$33,948.32	\$1,629,519.20
6/15/2030	\$1,629,519.20	\$33,948.32	\$0.00	\$0.00	\$33,948.32	\$1,595,570.88
12/15/2030	\$1,595,570.88	\$33,948.32	\$0.00	\$0.00	\$33,948.32	\$1,561,622.57
6/15/2031	\$1,561,622.57	\$33,948.32	\$0.00	\$0.00	\$33,948.32	\$1,527,674.25
12/15/2031	\$1,527,674.25	\$33,948.32	\$0.00	\$0.00	\$33,948.32	\$1,493,725.93
6/15/2032	\$1,493,725.93	\$33,948.32	\$0.00	\$0.00	\$33,948.32	\$1,459,777.62
12/15/2032	\$1,459,777.62	\$33,948.32	\$0.00	\$0.00	\$33,948.32	\$1,425,829.30
6/15/2033	\$1,425,829.30	\$33,948.32	\$0.00	\$0.00	\$33,948.32	\$1,391,880.98
12/15/2033	\$1,391,880.98	\$33,948.32	\$0.00	\$0.00	\$33,948.32	\$1,357,932.67
6/15/2034	\$1,357,932.67	\$33,948.32	\$0.00	\$0.00	\$33,948.32	\$1,323,984.35
12/15/2034	\$1,323,984.35	\$33,948.32	\$0.00	\$0.00	\$33,948.32	\$1,290,036.03
6/15/2035	\$1,290,036.03	\$33,948.32	\$0.00	\$0.00	\$33,948.32	\$1,256,087.72
12/15/2035	\$1,256,087.72	\$33,948.32	\$0.00	\$0.00	\$33,948.32	\$1,222,139.40
6/15/2036	\$1,222,139.40	\$33,948.32	\$0.00	\$0.00	\$33,948.32	\$1,188,191.08
12/15/2036	\$1,188,191.08	\$33,948.32	\$0.00	\$0.00	\$33,948.32	\$1,154,242.77
6/15/2037	\$1,154,242.77	\$33,948.32	\$0.00	\$0.00	\$33,948.32	\$1,120,294.45
12/15/2037	\$1,120,294.45	\$33,948.32	\$0.00	\$0.00	\$33,948.32	\$1,086,346.13
6/15/2038	\$1,086,346.13	\$33,948.32	\$0.00	\$0.00	\$33,948.32	\$1,052,397.82
12/15/2038	\$1,052,397.82	\$33,948.32	\$0.00	\$0.00	\$33,948.32	\$1,018,449.50
6/15/2039	\$1,018,449.50	\$33,948.32	\$0.00	\$0.00	\$33,948.32	\$984,501.18
12/15/2039	\$984,501.18	\$33,948.32	\$0.00	\$0.00	\$33,948.32	\$950,552.87
6/15/2040	\$950,552.87	\$33,948.32	\$0.00	\$0.00	\$33,948.32	\$916,604.55
12/15/2040	\$916,604.55	\$33,948.32	\$0.00	\$0.00	\$33,948.32	\$882,656.23
6/15/2041	\$882,656.23	\$33,948.32	\$0.00	\$0.00	\$33,948.32	\$848,707.92
12/15/2041	\$848,707.92	\$33,948.32	\$0.00	\$0.00	\$33,948.32	\$814,759.60
6/15/2042	\$814,759.60	\$33,948.32	\$0.00	\$0.00	\$33,948.32	\$780,811.28
12/15/2042	\$780,811.28	\$33,948.32	\$0.00	\$0.00	\$33,948.32	\$746,862.97
6/15/2043	\$746,862.97	\$33,948.32	\$0.00	\$0.00	\$33,948.32	\$712,914.65
12/15/2043	\$712,914.65	\$33,948.32	\$0.00	\$0.00	\$33,948.32	\$678,966.33
6/15/2044	\$678,966.33	\$33,948.32	\$0.00	\$0.00	\$33,948.32	\$645,018.02
12/15/2044	\$645,018.02	\$33,948.32	\$0.00	\$0.00	\$33,948.32	\$611,069.70
6/15/2045	\$611,069.70	\$33,948.32	\$0.00	\$0.00	\$33,948.32	\$577,121.38
12/15/2045	\$577,121.38	\$33,948.32	\$0.00	\$0.00	\$33,948.32	\$543,173.07
6/15/2046	\$543,173.07	\$33,948.32	\$0.00	\$0.00	\$33,948.32	\$509,224.75
12/15/2046	\$509,224.75	\$33,948.32	\$0.00	\$0.00	\$33,948.32	\$475,276.43
6/15/2047	\$475,276.43	\$33,948.32	\$0.00	\$0.00	\$33,948.32	\$441,328.12
12/15/2047	\$441,328.12	\$33,948.32	\$0.00	\$0.00	\$33,948.32	\$407,379.80
6/15/2048	\$407,379.80	\$33,948.32	\$0.00	\$0.00	\$33,948.32	\$373,431.48
12/15/2048	\$373,431.48	\$33,948.32	\$0.00	\$0.00	\$33,948.32	\$339,483.17
6/15/2049	\$339,483.17	\$33,948.32	\$0.00	\$0.00	\$33,948.32	\$305,534.85
12/15/2049	\$305,534.85	\$33,948.32	\$0.00	\$0.00	\$33,948.32	\$271,586.53
6/15/2050	\$271,586.53	\$33,948.32	\$0.00	\$0.00	\$33,948.32	\$237,638.22
12/15/2050	\$237,638.22	\$33,948.32	\$0.00	\$0.00	\$33,948.32	\$203,689.90
6/15/2051	\$203,689.90	\$33,948.32	\$0.00	\$0.00	\$33,948.32	\$169,741.58
12/15/2051	\$169,741.58	\$33,948.32	\$0.00	\$0.00	\$33,948.32	\$135,793.27
6/15/2052	\$135,793.27	\$33,948.32	\$0.00	\$0.00	\$33,948.32	\$101,844.95
12/15/2052	\$101,844.95	\$33,948.32	\$0.00	\$0.00	\$33,948.32	\$67,896.63
6/15/2053	\$67,896.63	\$33,948.32	\$0.00	\$0.00	\$33,948.32	\$33,948.32
12/15/2053	\$33,948.32	\$33,948.32	\$0.00	\$0.00	\$33,948.32	\$0.00
<b>TOTAL</b>	<b>\$2,036,899.00</b>	<b>\$2,036,899.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$2,036,899.00</b>	

**ATTACHMENT B**

**PROJECT COSTS**

Administrative and legal expenses	\$	40,000
Land, structures, right-of-ways, appraisals, etc.		0
Relocation expenses and payments		0
Architectural and engineering fees		160,950
Project inspection fees		127,100
Site work, demolition, and removal		0
Construction		1,953,237
Equipment		0
Miscellaneous		2,500
	<b>SUBTOTAL</b>	<b>2,283,787</b>
Contingencies		206,213
	<b>TOTAL PROJECT COSTS</b>	<b>2,490,000</b>

**PROJECT FUNDING SOURCES**

DWSRF Loan Amount	\$ 2,036,899
DWSRF Loan Forgiveness Amount	453,101
<b>Total DWSRF Funding</b>	<b>\$ 2,490,000</b>

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

**PROJECTED OUTLAY SCHEDULE**

	2022	2023
January	\$158,807	\$48,367
February	\$158,807	\$48,367
March	\$158,807	\$48,367
April	\$158,807	\$48,367
May	\$158,807	\$48,367
June	\$158,807	\$48,367
July	\$158,807	\$48,367
August	\$158,807	\$48,367
September	\$158,807	\$48,367
October	\$158,807	\$48,367
November	\$158,807	\$48,367
December	\$158,810	\$52,280
<b>Year Total</b>	<b>\$1,905,687</b>	<b>\$584,313</b>
<b>Project Total:</b>	<b>\$2,490,000</b>	

**ATTACHMENT C**  
**FINANCIAL CAPABILITY**  
**CITY OF MCCOOK, NEBRASKA**  
**DWSRF Project No. D311681**

The City of McCook has requested DWSRF funding assistance of \$2,490,000 to finance distribution improvements and replacements. This Financial Capability Analysis is intended to create an abbreviated general assessment of the City of McCook's financial status and to assess potential impacts of the SRF's loan on the community and the impact to user rates.

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

1. Audit reports of the City of McCook for Federal Fiscal Years 2018-2020;
2. Water/Wastewater Pre-application for Federal/State Assistance; and
3. Miscellaneous correspondence from the City of McCook and their representatives.

Analysis of the Water Utility:

Table 1 contains information pertaining to revenue, expenses, and net gains for each of the Federal Fiscal Years (FFY) for McCook from 2018 to 2020. This data was derived from the audit report for each FFY.

**Table 1**  
City of McCook Water Fund Summary

Year	Revenue (includes interest income)	Expenses (excludes depreciation)	Revenue Minus Expenses
2018	\$2,214,754	\$1,259,853	\$954,901
2019	\$2,202,991	\$1,227,944	\$975,047
2020	\$2,558,854	\$1,321,603	\$1,237,251

**Table 2**  
City of McCook's Summary of Changes in Long-Term Debt for Business-Type Activities as reported in their Financial Statements, year ending September 30, 2020

Type of Debt	Balance October 1, 2019	Additions	Deductions	Balance September 30, 2020	Amounts Due Within One Year
Bonds payable	\$ 7,605,000	\$ -	\$ (505,000)	\$ 7,100,000	\$ 505,000
Notes payable	1,031,707	-	(546,444)	485,263	31,647
Capital lease obligations	55,117	-	(27,191)	27,926	27,926
Deep well abandonment costs	33,257	13,488	-	46,745	-
Landfill closure costs	715,000	-	-	715,000	-
<b>Total Business-Type Activities:</b>	<b>\$ 9,440,081</b>	<b>\$ 13,488</b>	<b>\$ (1,078,635)</b>	<b>\$ 3,472,845</b>	<b>\$ 392,759</b>

The City of McCook has an outstanding DWSRF (D311560) loan with an original principal balance of \$1,699,448, which is assessed an interest rate of 2.00% and an administrative fee of 1.00% on the outstanding principal balance. This loan has a semi-annual payment of principal and interest of \$50,844 commencing June 15, 2015, through December 15, 2033. In June 2019, an additional \$500,000 was paid to principal. This has decreased the semi-annual payment. The next semi-annual payment is due December 15, 2021 in the amount of \$22,615.

The City of McCook issued \$8,825,000 of Series 2016 Combined Utility Revenue Refunding Bonds to refinance three DWSRF and CWSRF loans on November 15, 2016. The bonds are due in annual principal payments commencing June 15, 2017 through June 15, 2036. Interest ranging from 0.85% to 3.0% is due in semi-annual payments on December 15 and June 15. On September 30, 2020, the Water Fund owed \$5,700,000 and the Sewer Fund owed \$1,400,000 of the outstanding bonds.

**Table 3**

City of McCook's Annual Debt Service Requirements for Long-Term Debt for Business-Type Activities as reported in their Financial Statements, year ending September 30, 2020

Year	Direct Placement - Notes & Capital Lease			Other Debt Issue - Bonds	
	Principal	Interest	Fees	Principal	Interest
2021	59,573	10,302	4,774	505,000	158,455
2022	32,283	8,912	4,456	510,000	151,890
2023	32,932	8,263	4,131	510,000	144,750
2024	33,593	7,601	3,800	510,000	137,100
2025	34,269	6,925	3,463	515,000	128,685
2026-2030	181,957	24,015	12,008	1,960,000	500,103
2031-2035	138,582	5,598	2,799	1,700,000	286,350
2036-2040	-	-	-	890,000	26,700
<b>TOTAL</b>	<b>513,189</b>	<b>71,616</b>	<b>35,431</b>	<b>7,100,000</b>	<b>1,534,033</b>

Analysis of the Water Utility User Rate Impact:

The City of McCook manages their water utility which generates revenue by assessing water use fees on the residents and businesses in McCook. This revenue stream goes towards paying for the operation and maintenance expenses incurred to operate the water utility. The revenue stream is also used to pay the debt service due to outstanding as well as the proposed water utility loans. The water utility ran operating surpluses for the years 2018 through 2020 as shown in Table 1.

The City is eligible for a 20-year DWSRF loan at a per annum interest rate of 0.0 percent plus an annual 0.0 percent administrative fee on the outstanding principal amount. The DWSRF loan funding assistance of \$2,490,000 minus \$453,101 loan forgiveness for a principal amount of \$2,036,899 would have an annual debt service of \$101,845 plus the DWSRF contract required 10% coverage or \$10,185 for delinquency or loss of users, as shown in the following table, totaling \$112,030 for the first-year debt service, including coverage.

**Table 4**

Proposed DWSRF Loan #D311681 of \$2,490,000 less \$453,101 or \$2,036,899 Principal

DWSRF Base Program Loan Term (years)	Interest Rate	First Year Payment	First Year Payment + 10% Coverage
20	0.0% + 0.0% admin fee on outstanding principal balance	\$101,845	\$112,030

The revenues from McCook's water utility will be dedicated to repay the loan. The projected annual DWSRF Debt Service (including 10% coverage) for the project is \$112,030. The number of users is estimated at 3,602 total connections. The current water user charge is \$1.920 dollars per one hundred cubic feet for the first 5,000 cubic feet of water used, plus a ready-to-serve fee of \$18.82 per month. After the first 5,000 cubic feet, the charge for the water used over 5,000 cubic feet is \$1.423 per hundred cubic feet. The residential charge is \$31.65 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 \$2.59 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 water user rate to \$34.24 per month, or \$410.87 annually. A final assessment of revenues and costs will be analyzed to determine the actual user charge adjustment as necessary. Monthly water bills would vary accordingly for actual monthly water use for each service connection.

The projected monthly water rate utilizing the estimated household water use of 5,000 gallons equals \$34.24 per month, or \$410.87 annually. This projected household water rate total is 0.92% of City of McCook's median household income of \$44,473 and is below EPA's 2.5% upper level of water rate affordability.

## ATTACHMENT D

### LIST OF FEDERAL LAWS AND AUTHORITIES

#### ENVIRONMENTAL:

- Archeological and Historical Preservation Act of 1974, PL 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 No. 12148, as amended
- Executive Order 11990, Protection of Wetlands, as amended; Executive Order No. 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 93-523, as amended, 42 U.S.C. 300f et seq.
- U.S. Fish & 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, PL 94-135, 42 U.S.C. §6102
- Department of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, PL 102-389
- Executive Order 11246, Equal Employment Opportunity, as amended
- Executive Orders 11625, 12138, and 12432 Women's and Minority Business Enterprise, as amended
- Section 129 of the Small Business Administration Reauthorization and Amendment Act of 1988, PL 100-590
- Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §794
- Section 13 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. §1251
- Title VI of the Civil Rights Act of 1964, PL 88-352, 42 U.S.C. §200d

#### MISCELLANEOUS AUTHORITY:

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

\*The list of Federal Laws and Authorities is based upon the EPA's listing of "Additional information on Cross-Cutting Federal Authorities" ([http://water.epa.gov/grants\\_funding/dwsrf/xcuts.cfm](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 BORROWER'S COUNSEL OPINION

[USE BORROWER 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/We] have acted as [Bond] Counsel in connection with the execution and delivery by **City of McCook** (the "Borrower"), of a Loan Agreement No. D311681 (the "Loan Agreement") between the Borrower and the Nebraska Department of Environment and Energy ("the 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/we] 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/we] deemed relevant and necessary in rendering this opinion.

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

Based upon the foregoing [I am/we are] 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 Contract (the "Loan 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 Loan 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 Neb. Rev. Stat. §§18-1803 through 18-1805, and §§31-732, 31-739, and 31-740, 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 Loan Amount pursuant to the Loan Agreement and the Note.

It is to be understood that the rights of the holder of the Note and the Loan Agreement and the priorities and enforceability thereof may be subject to bankruptcy, insolvency, reorganization, moratorium, extension, compromise and other similar laws affecting creditors rights heretofore or hereafter enacted to the extent applicable and that their priorities and enforcement may also be subject to the exercise of judicial discretion in appropriate cases.

This opinion letter, and the opinions expressed in it, are intended only for the benefit of the addressees identified on the first page hereof. No other person may rely on any opinion expressed without our prior written authorization.

Very truly yours,

## ATTACHMENT F

### PROMISSORY NOTE OF CITY OF MCCOOK, 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 \$2,490,000 [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. D311681 ("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 NIFA, at the principal corporate trust office of a Trustee designated by 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 McCook, 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) on a parity with the Borrower's Existing Revenue Obligations as defined and described in the Loan Agreement, and any Additional Revenue Obligations hereafter issued on a parity with the Loan and the Outstanding Bonds, 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, the NDEE then, 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 \_\_\_\_\_, 202\_.

[SEAL]

CITY OF MCCOOK, NEBRASKA

Attest \_\_\_\_\_  
(Clerk)

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

NEBRASKA DEPARTMENT OF ENVIRONMENT  
AND ENERGY

By \_\_\_\_\_  
Title Director  
Date \_\_\_\_\_

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 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.

NEBRASKA INVESTMENT FINANCE AUTHORITY

By \_\_\_\_\_  
Title \_\_\_\_\_  
Date \_\_\_\_\_

Attest \_\_\_\_\_

**ATTACHMENT G**

**CERTIFICATE OF CITY OF MCCOOK, NEBRASKA**

The following certifications are made in connection with the Loan Agreement No. D311681, (the "Loan Agreement") between the Nebraska Department of Environment and Energy ("the NDEE") and CITY OF MCCOOK, 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 Loan Fund (as defined in the Loan Contract).

WHEREFORE, the undersigned hereby certifies on behalf of the Borrower to the NDEE, 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 the Loan Agreement, will commence within the stated Project Schedule established by Section 2.07 of the 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 contracts for the use of the facility other than contracts on a rate scale basis. Specifically, the Borrower represents that there will be no contracts 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.

Dated this \_\_\_\_ day of \_\_\_\_\_, 202\_.

CITY OF MCCOOK, NEBRASKA

By \_\_\_\_\_

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

**ATTACHMENT H**

**[INSERT ORDINANCE HERE]**

**ATTACHMENT I**

**ADDITIONAL COVENANTS AND REQUIREMENTS**

*Attachment I.01 – Loan Forgiveness Agreement Form*

## Attachment I.01

### LOAN FORGIVENESS AGREEMENT FORM

#### PART I: SRF LOAN FORGIVENESS AWARD

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

- (1) Loan Forgiveness of up to 15% of eligible SRF project costs of this Loan Agreement, not to exceed three hundred seventy-three thousand, five hundred dollars (\$373,500); and
- (2) Additional Loan Forgiveness of up to seventy-nine thousand, six hundred one dollars (\$79,601) that is contingent upon the execution of amending existing loan DWSRF D311560 for extending a prepayment clause for ten years

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

#### PART II: LOAN FORGIVENESS CERTIFICATION

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

- (1) The Borrower is not considered a privately owned entity;
- (2) The population at the time of the Loan Forgiveness award for the Borrower is equal to or less than ten thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census;
- (3) Based on information from the applicable Intended Use Plan, the Borrower's population is estimated to be: 7,698;
- (4) The Borrower has demonstrated serious financial hardship through the assessment and processes established in the related NDEE's State Fiscal Year's (SFY) Intended Use Plan;
- (5) The Borrower's Median Household Income (MHI) as listed in the NDEE's SFY's Intended Use Plan at the time of signing of this Loan Agreement is less than 120% of the State's MHI for that SFY; and
- (6) The total amount of Loan Forgiveness is capped at 15% of the eligible SRF project cost of this Loan Agreement plus an additional \$79,601 of Loan Forgiveness. The additional Loan Forgiveness is contingent upon Part III(1) of this Loan Forgiveness Agreement, with a total that cannot exceed the maximum Loan Forgiveness of four hundred fifty-three thousand, one hundred one dollars (\$453,101).

#### PART III: LOAN FORGIVENESS CONDITIONS

- (1) The additional portion of the Loan Forgiveness pursuant to Part I.(2) of this Loan Forgiveness Agreement of up to \$79,601 can only be awarded to the City of McCook if Section 2.05(b) "Optional Prepayment of the Loan" of the existing loan agreement between the NDEE and the City of McCook, DWSRF Number D311560, dated as of November 15, 2016, and all amendments thereto, has been amended and states that the Borrower may not prepay the Loan, together with any accrued interest in whole or in part within 10 years of the Loan Date.
- (2) The total award of all Subsidies cannot exceed one-half of the total amount of eligible Project Costs.

- (3) Application and distribution of all Loan Forgiveness will be done pursuant to the terms as established by the Loan Agreement.
- (4) The total subsidy amount may be changed by the NDEE if the eligible project amount changes due to the project costs.
- (5) Violation or noncompliance of this Loan Agreement will result in annulment of all Loan Forgiveness and a demand that any disbursed Loan Forgiveness funds be returned to the State of Nebraska immediately.
- (6) If a Borrower receives any funding from any other funding source for costs paid for by this Loan Agreement, it will result in annulment of Loan Agreement Funds to the extent these costs are covered by the other funding. The Borrower will promptly notify the NDEE and promptly repay loan and Loan Forgiveness funds issued by the NDEE to the extent these costs are covered by the other funding.
- (7) Notice of annulment of any Loan Forgiveness shall be by registered mail, return receipt requested.
- (8) Additional changes to the Subsidies not specified in the stipulations herein shall be made through the amendment procedure as established by this Loan Agreement.

**PART IV: ACCEPTANCE**

In accepting this award, the Borrower agrees that:

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

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

CITY OF MCCOOK, NEBRASKA  
By

NEBRASKA DEPARTMENT OF  
ENVIRONMENT AND ENERGY  
By

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

Date \_\_\_\_\_ Date \_\_\_\_\_

**CITY MANAGER'S REPORT**  
**APRIL 4, 2022 MCCOOK COMMUNITY DEVELOPMENT MEETING**

---

ITEM **5.1.3.** Adopt Resolution No. CDA 2022-01 making a minor modification and amendment to the MEDC Infill Housing Project Redevelopment Plan Amendment to correct the legal description identified therein.

---

**BACKGROUND:**

In October of 2021, the City of McCook adopted an amendment to the Quillan Court Redevelopment Plan for the MEDC Infill Housing Project. The lot identified as the Project Site in the October of 2021 Plan Amendment was subsequently replatted. The purpose of this resolution is to correct and clarify the legal description of the Project Site. The new legal description is Lot 7R, Clary Subdivision Replat #4, City of McCook, Red Willow County, Nebraska. Due to the fact that this is a minor modification and it does not expand the Project Area, no additional public hearings are necessary.

**APPROVALS:**



Nathan A. Schneider, City Manager

March 31, 2022



Lea Ann Doak, City Clerk

March 31, 2022

**COMMUNITY DEVELOPMENT AGENCY  
OF THE CITY OF MCCOOK, NEBRASKA**

**RESOLUTION NO. CDA 2022-01**

(Supplemental Amendment and Minor Modification to the  
MEDC Infill Housing Project Redevelopment Plan Amendment)

**A RESOLUTION OF THE COMMUNITY DEVELOPMENT AGENCY OF  
THE CITY OF MCCOOK, NEBRASKA, MAKING A MINOR MODIFICATION AND  
AMENDMENT TO THE MEDC INFILL HOUSING PROJECT REDEVELOPMENT  
PLAN AMENDMENT TO CORRECT THE LEGAL DESCRIPTION IDENTIFIED  
THEREIN.**

RECITALS

- A. On October 18, 2021, the City of McCook, Nebraska ("City") adopted an amendment to the Quillan Court Redevelopment Plan for the MEDC Infill Housing Project (the "Plan Amendment").
- B. The lot identified as the Project Site in the Plan Amendment was subsequently replatted.
- C. The purpose of the Supplemental Amendment and Minor Modification to the Plan Amendment attached hereto as Exhibit "A" ("Supplemental Amendment") is to correct and clarify the legal description of the Project Site.
- D. Pursuant to Neb. Rev. Stat. § 18-2115, the CDA has the authority to make minor modifications to the Redevelopment Plan, and additional public hearings are only required for a substantial modification of the Redevelopment Plan.
- E. The CDA has determined that the Supplemental Amendment is a minor modification to the Plan Amendment. The Supplemental Amendment does not: (a) materially alter or reduce existing areas or structures otherwise available for public use or access; (b) substantially alter the use of the community redevelopment area as contemplated in the redevelopment plan; or (c) increase the amount of ad valorem taxes pledged for the Project by more than 5.0%.
- F. The CDA desires to adopt the Supplemental Amendment to make the minor modification described therein.

NOW, THEREFORE, BE IT RESOLVED, by the Community Development Agency of the City of McCook, Nebraska, the Supplemental Amendment is

approved and adopted as part of the Redevelopment Plan for the City of McCook, Nebraska.

BE IT FURTHER RESOLVED, the CDA hereby rescinds any other resolutions or actions that are contradictory or incompatible with this Resolution.

IN WITNESS WHEREOF, the undersigned Community Development Agency of the City of McCook, Nebraska, hereby pass and adopt this Resolution as of this 4<sup>th</sup> day of April, 2022.

COMMUNITY DEVELOPMENT  
AGENCY OF THE CITY OF  
MCCOOK, NEBRASKA.

By: \_\_\_\_\_  
Chairman

ATTEST:

\_\_\_\_\_  
Secretary

**EXHIBIT "A"**

(Supplemental Amendment)

**SUPPLEMENTAL AMENDMENT AND MINOR MODIFICATION TO THE  
AMENDMENT TO THE QUILLAN COURT REDEVELOPMENT PLAN  
OF THE CITY OF MCCOOK, NEBRASKA**

**(MEDC INFILL HOUSING PROJECT)**

The Redevelopment Plan Amendment for the MEDC Infill Housing Project was approved and adopted by the City Council of the City of McCook, Nebraska on October 18, 2021. Pursuant to Neb. Rev. Stat. § 18-2115, the Community Development Agency of the City of McCook ("CDA") has the authority to make minor modifications to the Redevelopment Plan, and additional public hearings are only required for a substantial modification of the Redevelopment Plan.

The purpose of this Plan Amendment is to: (1) correct the legal description of the Project Site in the Redevelopment Plan Amendment. The Lot that was originally identified as the Project Site was subsequently replatted, and the Project Site was split into two lots. The Project will occur on one of the two lots. Thus, it is still within the area originally defined as the Project Site and identified in all the public notices, but the Project will be implemented on a small footprint.

This Supplemental Amendment does not: (a) materially alter or reduce existing areas or structures otherwise available for public use or access; (b) substantially alter the use of the community redevelopment area as contemplated in the redevelopment plan; or (c) increase the amount of ad valorem taxes pledged for the Project by more than 5.0%.

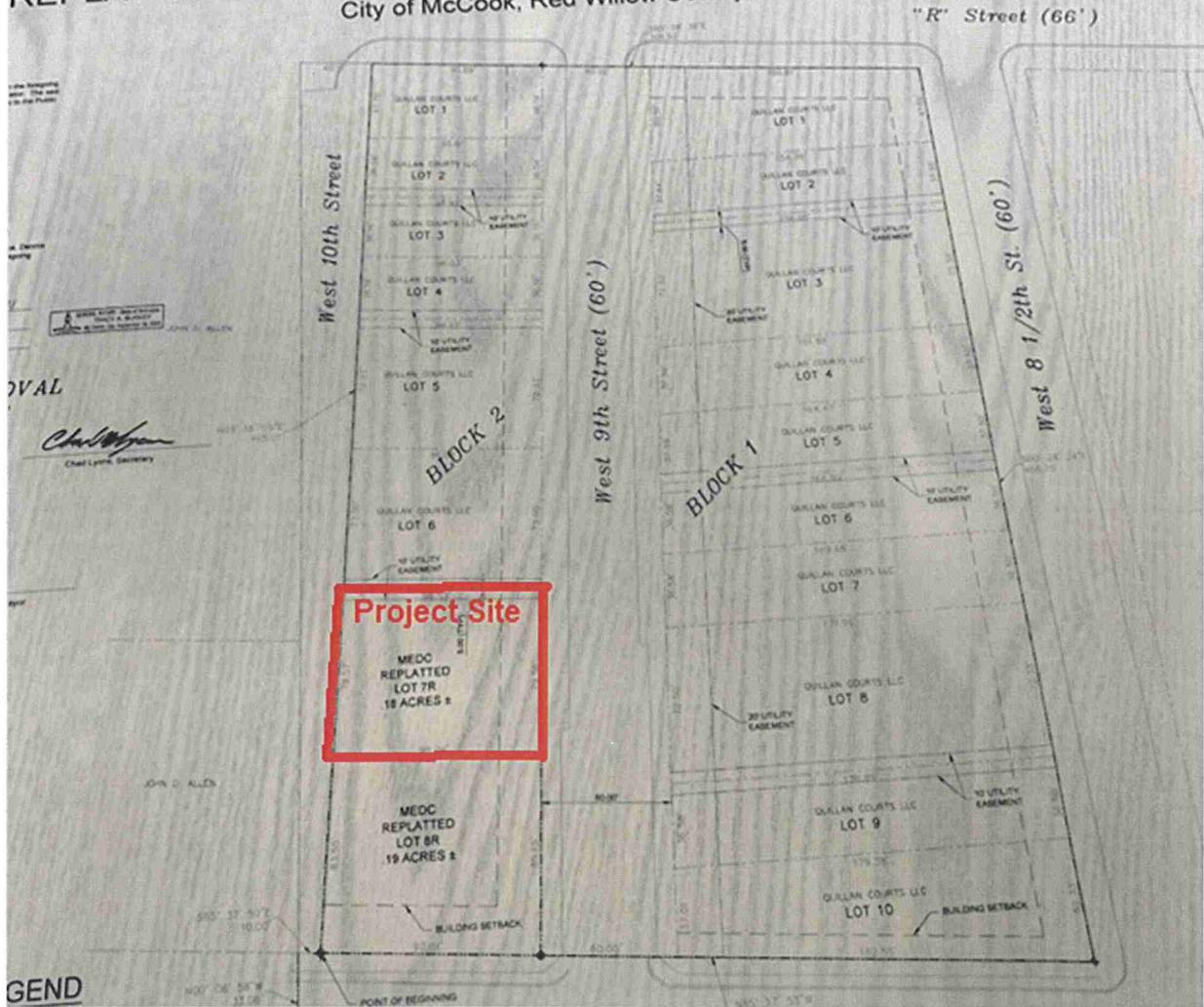
**Amendment to the Redevelopment Plan Amendment  
for the MEDC Infill Project**

1. The Project Site identified and described on Exhibit A is hereby amended, and the Project Site is legally defined as:

Lot 7R, Clary Subdivision Replat #4, City of McCook, Red Willow County, Nebraska

The location of the Project Site is set forth below:

CLARY SUBDIVISION REPLAT NO. 4  
REPLAT OF LOT 7 OF BLOCK 2, CLARY SUBDIVISION REPLAT NO. 3  
City of McCook, Red Willow County, Nebraska



**CITY MANAGER'S REPORT**  
**APRIL 4, 2022 MCCOOK COMMUNITY DEVELOPMENT MEETING**

---

ITEM **5.1.4** Adopt Resolution No. CDA 2022-02 authorizing and approving the first amendment to the redevelopment agreement for the MEDC Infill Housing Project to adjust the Effective Date contemplated in the original Redevelopment Agreement.

---

**BACKGROUND:**

The Community Development Agency of the City of McCook, Nebraska and the McCook Economic Development Corporation entered into a Redevelopment Agreement in October of 2021 to implement the MEDC Infill Housing Project. Due to construction delays, the Effective Date of the Redevelopment Agreement must be modified. Per this amendment, the effective date means January 1, 2023, which requires the project to be complete on or before December 31, 2022. Additionally, this amendment incorporates the corrected legal description (ie. Lot 7R, Clary Subdivision Replat #4, City of McCook, Red Willow County, Nebraska).

**APPROVALS:**

  
\_\_\_\_\_  
Nathan A. Schneider, City Manager

March 31, 2022

  
\_\_\_\_\_  
Lea Ann Doak, City Clerk

March 31, 2022

**COMMUNITY DEVELOPMENT AGENCY  
OF THE CITY OF MCCOOK, NEBRASKA**

**RESOLUTION NO. CDA 2022-02**

(First Amendment to Redevelopment Agreement – MEDC Infill Housing Project)

**A RESOLUTION OF THE COMMUNITY DEVELOPMENT AGENCY OF THE CITY  
OF MCCOOK, NEBRASKA, AUTHORIZING AND APPROVING THE FIRST  
AMENDMENT TO REDEVELOPMENT AGREEMENT FOR THE MEDC INFILL  
HOUSING PROJECT.**

RECITALS

A. The Community Development Agency of the City of McCook, Nebraska (“CDA”) and McCook Economic Development Corporation, a Nebraska nonprofit corporation (“Redeveloper”), entered into that certain Redevelopment Agreement dated October 18, 2021 (the “Redevelopment Agreement”) to implement the MEDC Infill Housing Project (the “Project”).

B. Redeveloper has requested that the Redevelopment Agreement be amended to adjust the Effective Date based on delays of the construction of the Project.

C. The CDA has prepared a First Amendment to Redevelopment Agreement for the Project to amend the Effective Date and completion date of the Project, a copy of which is attached hereto as Exhibit “A” and incorporated by this reference (the “First Amendment”).

NOW THEREFORE, BE IT RESOLVED, by the CDA, that the First Amendment to Redevelopment Agreement is hereby approved.

BE IT FURTHER RESOLVED, the CDA authorizes the Chairman of the CDA to execute and enter into the First Amendment.

BE IT FURTHER RESOLVED, the CDA authorizes the Chairman of the CDA to take all such actions that are required to fulfill the terms of the First Amendment and to consummate the agreement set forth therein.

BE IT FURTHER RESOLVED, the CDA hereby rescinds any other resolutions or actions that are contradictory or incompatible with this Resolution.

Dated this 4<sup>th</sup> day of April, 2022.

COMMUNITY DEVELOPMENT  
AGENCY OF THE CITY OF  
MCCOOK, NEBRASKA

---

Chairman

ATTEST:

---

Secretary

**EXHIBIT "A"**  
**First Amendment to Redevelopment Agreement**

(See Attached)

# FIRST AMENDMENT TO REDEVELOPMENT AGREEMENT

## (MEDC Infill Housing Project)

This First Amendment to Redevelopment Agreement (“First Amendment”) dated this 4<sup>th</sup> day of April, 2022 is entered into by and between the Community Development Agency of the City of McCook, Nebraska (“CDA”) and McCook Economic Development Corporation, a Nebraska nonprofit corporation (“Redeveloper”).

### RECITALS

- A. The CDA and Redeveloper entered into that certain Redevelopment Agreement dated October 18, 2021 (the “Redevelopment Agreement”) to implement the MEDC Infill Housing Project (the “Project”).
- B. The construction of the Project has been delayed, and the Effective Date must be amended.
- C. The CDA and Redeveloper desire to amend the Redevelopment Agreement to amend the Effective Date of the Project.
- D. Additionally, the Project Site has been replatted, and the CDA and Redeveloper desire to amend the Redevelopment Agreement to reflect the correct legal description of the Project Site.

NOW THEREFORE, in consideration of mutual promises contained herein and in the Redevelopment Agreement, the parties agree to amend the Redevelopment Agreement as follows:

- 1. Terms Defined in this Redevelopment Agreement. The following definitions in Section 1.01 of the Redevelopment Agreement are hereby deleted and restated as follows:

“F. “Effective Date” means January 1, 2023.”

“K. “Project Completion Date” means on or before December 31, 2022.”

- 2. Exhibit “A”. The “Project Site” identified on Exhibit “A” of the Redevelopment Agreement is amended such that the Project Site is legally described as follows:

Lot 7R, Clary Subdivision Replat #4, City of McCook, Red Willow County, Nebraska

- 3. Exhibit “B”. Exhibit “B” to the Redevelopment Agreement is hereby replaced with the Exhibit “B” attached hereto and incorporated by this reference.

4. Exhibit "E". Exhibit "E" to the Redevelopment Agreement is hereby replaced with the Exhibit "E" attached hereto and incorporated by this reference.

5. Reconfirm other Terms. The CDA and Redeveloper hereby reconfirm all other terms and conditions of the Redevelopment Agreement, except as expressly modified by the terms of this First Amendment.

This First Amendment to Redevelopment Agreement is effective as of the date reflected in the first paragraph above.

**"CDA"**

COMMUNITY DEVELOPMENT  
AGENCY OF THE CITY OF  
MCCOOK, NEBRASKA

ATTEST:

By: \_\_\_\_\_  
Secretary

By: \_\_\_\_\_  
Chairman

**"REDEVELOPER"**

MCCOOK ECONOMIC  
DEVELOPMENT CORPORATION, a  
Nebraska nonprofit corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT "B"**  
**TIF INDEBTEDNESS**

1. Projected Base Value: \$11,421
2. Projected Minimum Final Value: \$236,172
3. Projected Incremental Valuation: \$224,751
4. Assumed Tax Levy: 1.922795
5. Anticipated Tax Increment: \$4,322 annually
6. Assumed Interest Rate: 5%
7. TIF Indebtedness:
  - a. **Principal Amount.** The principal amount of the TIF Indebtedness shall be equal to or less than \$45,225, which is the maximum amount, together with interest accruing thereon, which can be amortized by December 31, 2038, solely from the Tax Increment Revenues based upon the Anticipated Tax Increment.
  - b. **Payments.** Semi-annually commencing when real estate taxes are fully collected for the tax year 2023. The CDA shall utilize all Tax Increment received from the Project to pay debt service on the TIF Indebtedness until the TIF Indebtedness is fully repaid. Provided, however, the CDA does not warrant, represent, or guaranty that the Tax Increment will be sufficient to repay the entire amount of the TIF Indebtedness. The CDA has no obligation to make any payments other than the actual Tax Increment received from the Project.
  - c. **Maturity Date.** On or before December 31, 2038.
  - d. **TIF Period.** The period for the division of taxes for this Project shall be fifteen (15) years, commencing on the Effective Date of January 1, 2023 (2023 taxes paid in 2024) and terminating on December 31, 2037 (2037 taxes due on December 31, 2037 but paid in 2038). Payment of ad valorem taxes in arrears pursuant to customary payments in Nebraska shall not affect the fifteen (15) year TIF period.

*Note: All calculations are based on assumptions and estimates of future values that may be different than the values used herein or may vary from year to year.*

**EXHIBIT "E"**  
**FORM OF TIF PROMISSORY NOTE**

THIS NOTE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 ("THE 1933 ACT") AND MAY NOT BE TRANSFERRED, ASSIGNED, SOLD OR HYPOTHECATED UNLESS A REGISTRATION STATEMENT UNDER THE 1933 ACT SHALL BE IN EFFECT WITH RESPECT THERETO AND THERE SHALL HAVE BEEN COMPLIANCE WITH THE 1933 ACT AND ALL APPLICABLE RULES AND REGULATIONS THEREUNDER, OR THERE SHALL HAVE BEEN DELIVERED TO THE COMMUNITY DEVELOPMENT AGENCY OF THE CITY OF MCCOOK, NEBRASKA PRIOR TO TRANSFER, ASSIGNMENT, SALE OR HYPOTHECATION AN OPINION OF COUNSEL, SATISFACTORY TO THE COMMUNITY DEVELOPMENT AGENCY OF THE CITY OF MCCOOK, NEBRASKA TO THE EFFECT THAT REGISTRATION UNDER THE 1933 ACT IS NOT REQUIRED.

UNITED STATES OF AMERICA  
STATE OF NEBRASKA  
COMMUNITY DEVELOPMENT AGENCY  
OF THE CITY OF MCCOOK, NEBRASKA

REDEVELOPMENT REVENUE NOTE  
(MEDC INFILL HOUSING PROJECT)  
SERIES 2022A

Maturity Date	Interest Rate	Original Issuance Date
December 15, 2038	5%	

Registered Holder	Principal Amount
McCook Economic Development Corporation	\$45,225.00

THE COMMUNITY DEVELOPMENT AGENCY OF THE CITY OF MCCOOK, NEBRASKA (the "Issuer"), a body politic and corporate organized and existing under the laws of the State of Nebraska, for value received hereby promises to pay, solely from the source and as hereinafter provided, to the Registered Holder identified above, or registered assigns, the Principal Amount identified above at the office of the City Treasurer, as Paying Agent and Registrar, and in like manner to pay solely from said source interest on said principal sum at the Interest Rate identified above from the Original Issuance Date identified above or from the most recent date to which interest has not been paid. Principal and accrued interest shall be payable in thirty (30) semi-annual installments due June 15, 2024, December 15, 2024, and each June 15 and December 15 thereafter through December 15, 2038, when all principal and accrued interest shall be due and payable. Except with respect to interest not punctually paid, the principal and interest on this Note will be paid by check or draft mailed to the Registered Holder in whose name this Note is registered at the close of business on the fifteenth calendar day next preceding the applicable maturity date at his address as it appears on such note registration books. The principal and interest of this Note is payable in any coin or currency of the United States of America which on the respective dates of payment is legal tender for the payment of public and private debts.

This Note is designated the Community Development Agency of the City of McCook, Nebraska Redevelopment Revenue Note (NEDC Infill Housing Project), Series 2022A, aggregating Forty Five Thousand Two Hundred Twenty Five and No/100 Dollars

(\$45,225.00) ("Note") in principal amount which have been issued pursuant to the Section 12 of Article VIII of the Nebraska Constitution and Neb. Rev. Stat. §§ 18-2101 through 18-2154, as amended and supplemented (the "Act") and under and pursuant to the terms of that certain Redevelopment Agreement between the Issuer and McCook Economic Development Corporation (the "Redevelopment Agreement"), to aid in the financing of a redevelopment project pursuant to the Act. This Note does not represent a debt or pledge of the faith or credit of the Issuer or grant to the Registered Holder of this Note any right to have the Issuer levy any taxes or appropriate any funds for the payment of the principal hereof or the interest hereon nor is this Note a general obligation of the Issuer, or the individual officials, officers or agents thereof. This Note is payable solely and only out of the Tax Increment generated by the Project defined in the Redevelopment Agreement (the "Project"). All such revenue has been duly pledged for the purpose of paying this Note.

THIS NOTE AND THE INTEREST HEREON DOES NOT NOW AND SHALL NEVER CONSTITUTE AN INDEBTEDNESS OF THE COMMUNITY DEVELOPMENT AGENCY OF THE CITY OF MCCOOK, NEBRASKA, OR THE CITY OF MCCOOK, NEBRASKA, WITHIN THE MEANING OF ANY STATE CONSTITUTIONAL PROVISION OR STATUTORY LIMITATION, NOR SHALL THIS NOTE AND THE INTEREST HEREON EVER GIVE RISE TO ANY PECUNIARY LIABILITY OF THE COMMUNITY DEVELOPMENT AGENCY OF THE CITY OF MCCOOK, NEBRASKA, OR THE CITY OF MCCOOK, NEBRASKA, A CHARGE AGAINST ITS GENERAL CREDIT OR TAXING POWERS.

No recourse shall be had for the payment of the principal of or interest on this Note, or for any claim based hereon or upon any obligation, covenant or agreement contained in the Redevelopment Agreement against any past, present or future employee, member or elected official of the Issuer, or any incorporator, officer, director, member or trustee of any successor corporation, as such, either directly or through the Issuer or any successor corporation, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such incorporator, officer, director or member as such is hereby expressly waived and released as a condition of and in consideration of the issuance of this Note.

It is hereby certified and recited and the Issuer has found: that the Project is an eligible "redevelopment project" as defined in the Act; that the issuance of this Note and the construction of the Project will promote the public welfare and carry out the purposes of the Act by, among other things, contributing to the development of a blighted and substandard area of the City of McCook, Nebraska, pursuant to a Redevelopment Plan adopted by the City; that all acts, conditions and things required to be done precedent to and in the issuance of this Note have been properly done, have happened and have been performed in regular and due time, form and manner as required by law; and, that this Note does not constitute a debt of the Issuer within the meaning of any constitutional or statutory limitations.

This Note is transferable only upon the books of the Issuer kept for that purpose at the office of the Registrar by the Registered Holder hereof in person, or by the Registered Holder's duly authorized attorney, upon written documentation of transfer satisfactory to the Issuer and the Registrar duly executed by the Registered Holder and the assignee/transferee, together with a purchase letter in a form provided by Issuer and any other documentation required by the Issuer. Prior to the approval of any transfer of this Note, the Registered Holder shall pay all of the Issuer's costs, including attorney's fees,

relating to the transfer of the Note. The Issuer and the Paying Agent may deem and treat the person in whose name this Note is registered as the absolute owner hereof for the purpose of receiving payment of, or on account of, the principal hereof and premium, if any, and interest due hereon and for all other purposes.

The Note is prepayable at any time in whole or in part, to the extent there are any funds in the debt service fund in excess of amounts necessary to pay scheduled debt service. Prepayments shall reduce the number, but not the amount, of scheduled debt service payments on the Note, in inverse order of maturity.

It is hereby certified and recited that all conditions, acts and things required by law and the Redevelopment Agreement to exist, to have happened and to have been performed precedent to and in the issuance of this Note, exist, have happened and have been performed and that the issue of this Note, together with all other indebtedness of the Issuer, is within every debt and other limit prescribed by the laws of the State of Nebraska.

This Note shall not be entitled to any benefit or be valid or become obligatory for any purpose until this Note shall have been authenticated by the execution by the Registrar of the Certificate of Authentication hereon.

IN WITNESS WHEREOF, THE COMMUNITY DEVELOPMENT AGENCY OF THE CITY OF MCCOOK, NEBRASKA has caused this Note to be signed in its name and on its behalf by the signature of its Chairman and attested by the signature of its Secretary, as of the Original Issuance Date identified above.

COMMUNITY DEVELOPMENT AGENCY  
OF THE CITY OF MCCOOK, NEBRASKA

ATTEST:

By: \_\_\_\_\_  
Secretary

By: \_\_\_\_\_  
Chairman

**CERTIFICATE OF AUTHENTICATION**

City Treasurer, City of McCook  
as Paying Agent and Registrar

By: \_\_\_\_\_  
Authorized Signatory