

**VILLAGE OF PECATONICA
LEAD SERVICE LINE REPLACEMENT PROGRAM
LOAN AGREEMENT**

THIS AGREEMENT is made and entered into this _____ day of _____, 2021, by and between the Village of Pecatonica, Illinois, a municipal corporation, (hereinafter referred to as the “Village”) and _____ (hereinafter referred to as the “Owner”).

WITNESSETH

WHEREAS, the Village has established a program known as the Lead Service Line Loan Program (hereinafter referred to as the “Program”), under which the Village will agree to provide loans to residential property owners for the replacement of the private portion of lead water service pipes at the properties in conjunction with a Village water main replacement project, the private portion of a lead water service pipe being that portion of the water service pipe connecting a metered property to the Village shutoff valve; and

WHEREAS, the Owner is the owner of certain residential property commonly known as _____, Pecatonica, Illinois (hereinafter referred to as the “Subject Property”); and

WHEREAS, the Owner is responsible for the portion of the water service pipe connecting the Village shutoff valve to the Subject Property (hereinafter referred to as the “Owner’s Service Pipe”); and

WHEREAS, the Village is undertaking a water main replacement project on the block in which the Subject Property is located; and

WHEREAS, it has been determined that the Owner’s Service Pipe consists of lead; and

WHEREAS, the Owner has made an application to the Village for funding assistance in the form of a loan under the Program to replace Owner’s Service Pipe at the Subject Property (the replacement of the Owner’s Service Pipe is hereinafter referred to as the “Work”); and

WHEREAS, the Village has agreed to provide a loan to the Owner for the Work, as described herein, on the Subject Property, pursuant to the terms and conditions of this Agreement; and

WHEREAS, the Village of Pecatonica is empowered by the Illinois Municipal and the Illinois Constitution with police powers to ensure the health and safety of its residents; and,

WHEREAS, it is a well established fact that lead in drinking water is extremely hazardous to human health and wellbeing; and

WHEREAS, providing funding assistance to facilitate the replacement of the Owner's Service Lead Pipe as described herein will promote the public welfare of the community and pertains to the government and affairs of the Village.

NOW, THEREFORE, for and in consideration of the mutual promises and undertakings contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby mutually acknowledged, the parties hereto agree as follows:

1. The foregoing recitals are incorporated into this Agreement in their entirety.
2. The Owner represents and warrants that he/she complies with the applicant eligibility guidelines for the Program, including the following:
 - a. The Owner owns the Subject Property and is at least eighteen (18) years of age, or has been designated and authorized by the owner of the Subject Property to commit the changes proposed on the Subject Property.
 - b. The Subject Property is located within the corporate limits of the Village of Pecatonica and within an area identified by the Village as being impacted by a Village water main replacement project.
 - c. The Owner is current in paying any charges owed to the Village.
 - d. The Subject Property has an operable automatic meter reading (AMR) water meter pursuant to Sections 50.04-50.06 the Village Code.
 - e. ~~[INSERT FOR LOW AND MODERATE INCOME: "The Owner has accurately and completely reported to the Village the total annual household gross income of the Owner for the purposes of receiving the loan described herein."]~~
3. The Owner shall complete the Work proposed under this Agreement in conformance with all applicable codes, ordinances, and laws, including but not limited to pertinent provisions of Title V, Chapter 50 of the Village Code. Notwithstanding anything to the contrary in this Agreement, it is expressly agreed and understood by the Owner that in the performance of this Agreement the Owner shall comply with all applicable federal, state, city and other requirements of law. The Owner shall also at his/her expense secure all permits and licenses, pay all charges and fees, and give all notices necessary and incident to the due and lawful prosecution of the Work as described in this Agreement.
4. The Owner warrants and represents that he/she has obtained at least two (2) written quotes from ~~the prequalified list of licensed plumbers~~ provided by the Village for the proposed Work, and has provided copies of the written quotes to the Village. The Owner further warrants and represents that he/she has selected the lowest quote for the replacement Work, subject to the approval of the Village. The lowest quote and scope of work for the Work to be performed under this Agreement and approved by the Village, prepared by _____, dated _____, 2021, is attached hereto as

Attachment A and made a part hereof by this reference. No change shall be made to the written quote and/or the scope of the Work unless approved in writing by the Village.

5. The Owner shall obtain all necessary permits prior to beginning the Work. The Owner shall coordinate the Work to coincide with the Village's installation of the Village portion of the water service pipe as part of the Village water main replacement project, unless otherwise approved by the Village in writing. The Owner agrees to begin the Work and complete all of the Work within the period of time specified to the Owner by the Village, in its sole discretion. The Work shall be performed in compliance with all applicable Village codes and ordinances, including but not limited to compliance with the requirements of Title V, Chapter 50 of the Village Code with respect to size, materials, and installation. The Owner shall arrange to have the Work inspected at such times as may be required by the Village and after the completion of the Work. No funds shall be disbursed prior to an inspection and final approval of the Work by the Village, such inspection and approval constituting a condition precedent to the disbursement of any funds under this Agreement. Any other provision of this Agreement notwithstanding, the Village shall not be responsible for the means or methods of the Work performed by the Owner and/or the selected plumber.
6. Following completion, inspection, and approval of the Work by the Village, the Owner shall present the Village with an invoice from the approved plumber for the total amount of the completed Work for payment.
7. Upon the presentment and approval by the Village of the invoice to the Owner from the plumber as described in Paragraph 6, above, the Village shall disburse funds to the plumber in the amount of the invoice for the Work, but in no event shall such amount exceed the lesser amount of either the total cost of the Work provided for in Attachment A or four thousand eight hundred dollars (\$4,800.00). The total amount of funds to be disbursed by the Village on behalf of the Owner for the Work to be performed pursuant to this Agreement shall not exceed _____ (\$____) [INSERT LESSER AMOUNT OF THE TOTAL COST OF THE WORK UNDER ATTACHMENT A OR "FOUR THOUSAND EIGHT HUNDRED DOLLARS (\$4,800.00)"] (the total amount of funds to be disbursed by the Village on behalf of the Owner for the Work to be performed pursuant to this Agreement is hereinafter referred to as the "Program Funds"). In no event shall any payment be made by the Village prior to the final completion, inspection and approval of the Work by the Village. Any payments under this Agreement shall be conditioned upon the Work at the Subject Property being brought into compliance with all applicable codes and ordinances, and all other conditions and requirements of this Agreement having been satisfied.
8. The Program Funds disbursed on behalf of the Owner shall be as follows:
 - a. The total amount of the Program Funds shall constitute a loan to the Owner. (hereinafter referred to as the "Loan"). The following terms and provisions shall apply to said Loan:

- i. In return for the Village providing the monies for the Loan to the Owner, the Owner promises to repay to the Village the Loan amount in full in accordance with the terms and conditions of this Agreement. The Owner will make all payments under this Agreement in the form of United States Dollars. The Owner will repay to the Village in full the Loan amount on or before the Maturity Date set forth in paragraph 8.a.ii, below. Payments will be made and delivered to the Village in the manner set forth in paragraph 8.a.iv, below.
- ii. The term of such Loan shall be _____ () months [~~CALCULATE NUMBER OF MONTHS BY DIVIDING THE LOAN AMOUNT FROM THE MONTHLY PAYMENT AMOUNT: \$40.00 PER MONTH FOR LOW AND MODERATE INCOME; \$80.00 PER MONTH OTHERWISE~~] from the date on which the Village first disburses any Program Funds under this Agreement (hereinafter referred to as the "Maturity Date").
- iii. There shall be no interest charged to the Owner for the Loan if it is repaid in accordance with the terms of this Agreement. Notwithstanding the foregoing, in the event the Owner has not repaid the Loan to the Village in full by the Maturity Date, then thereafter interest will be charged on the unpaid balance of the Loan at the annual rate of nine percent (9%) until the full amount of the principal and interest of the Loan has been repaid to the Village.
- iv. The Loan shall be repaid to the Village in monthly installments in the amount of _____ [~~INSERT \$40.00 PER MONTH FOR LOW AND MODERATE INCOME; \$80.00 PER MONTH OTHERWISE~~] until the Loan amount has been repaid in full (hereinafter referred to as the "Loan Installments"). The Loan Installment shall appear as a monthly charge on the Owner's water utility bill. The Owner agrees that the Owner's Loan Installments shall be considered a part of the Owner's sewer and water service charges for all purposes, including the remedies set forth in paragraph 8.a.x of this Agreement. The Owner further agrees that any payments from the Owner received by the Village shall first be applied to any outstanding Loan Installments then due and owing, and shall then be applied to other charges incurred for sewer and water service, in the Village's sole discretion. In addition to the other remedies set forth herein, the failure of the Owner to pay a Loan Installment by the date on which it is due shall subject the Owner to the provisions of the Village Code relating to late payments, including but not limited to the imposition of late payment charges.
- v. The Owner agrees that the Loan from the Village shall constitute a lien on the Subject Property, and the Owner further agrees to sign the Lien Agreement attached hereto as Attachment B. Upon the Owner's receipt of the Loan, the Village shall record said lien against the Subject Property at the Owner's sole cost and expense as security in the event the Owner fails to repay the Loan, breaches this Agreement in any manner, or attempts to convey the Subject Property prior to full repayment of the Loan. Upon full repayment of the

Loan, including any applicable interest charges that may have been incurred, the Village shall perform all necessary actions to release the lien that has been recorded against the Subject Property. The Owner shall cooperate with the Village and shall execute any and all documents as may be necessary to perform the intended effect of this Agreement, including, but not limited to, executing all documents necessary to correct any errors or omissions.

- vi. The Owner agrees that, in the event the Owner wishes to sell, convey, or otherwise transfer the Subject Property during the term of this Agreement, then the entire amount of any unpaid balance on the Loan, including any applicable interest and/or late payment charges that may have been incurred, must be repaid in full prior to or concurrent with any such sale, conveyance or transfer. The promise to repay in full of the entire amount of any unpaid balance on the Loan and any applicable interest and/or late payment charges prior to or concurrent with any sale, conveyance, or transfer shall be a condition to the Loan. The Owner admits that the Village has relied on said promise in the issuance of the Loan, and that but for said promise, the Loan would not have been issued by the Village.
- vii. The Owner has the right to make payments of principal of the Loan at any time before they are due. The Owner may make a full prepayment or partial prepayments without paying a prepayment charge. Notwithstanding anything to the contrary in this Agreement, no partial repayments by the applicant of the Loan shall constitute or be construed as a waiver by the Village of the right to receive the full repayment of the Loan plus any applicable interest charges that may have been incurred.
- viii. In addition to any other remedies available to the Village, if the Owner does not pay the full amount of the Loan by the Maturity Date, or if the Owner does not make a Loan Installment by the date on which it is due, the Owner will be in default. If the Owner is in default, the Village may send a written notice telling the Owner that if they do not pay the overdue amount by a certain date, the Village may require the Owner to immediately pay the full amount of the principal of the Loan which has not been paid and any interest that it owes on that amount. That date must be at least thirty (30) days after the date on which the notice is mailed to the Owner or delivered by other means. If the Village has required the Owner to pay immediately in full the Loan as described in this subparagraph, the Village will have the right to be paid back by the Owner for all its costs and expenses in enforcing this Agreement to the extent not prohibited by applicable law. Those expenses shall include, but not be limited to, reasonable attorney's fees.
- ix. In addition to any other remedies available to the Village, the Owner agrees that in the event that the Loan is not repaid in accordance with the provisions set forth in this Agreement, the Village may commence legal action against the Owner to collect the Loan and/or to enforce its lien on the Subject Property

in accordance with the terms of this Agreement. The Owner agrees that the Village shall also be entitled to collect from the Owner its attorney's fees and costs for commencing any such legal action.

- x. In addition to any other remedies available to the Village, the Owner agrees that the Owner's failure to pay the full amount of the Loan by the Maturity Date, or the Owner's failure to make a Loan Installment by the date on which it is due, shall constitute an adequate and sufficient basis to shut-off and/or disconnect the Owner's water and sewer service, in accordance with the applicable provisions of Sections 50.44(B) and 50.44(D) of the Village Code.
 - xi. The Loan provided for herein shall have a one-time service fee payable by the Owner to the Village in the amount of fifty dollars (\$50.00) (the "Service Fee"). The Service Fee shall be added to the first billing statement of the loan repayment period, in addition to the amount of the first Loan Installment.
 - xii. Any interest, late payment charges, or any other amounts that are incurred by the Owner relating to this Agreement shall be considered a part of the Loan for all purposes under this Agreement.
 - xiii. The provisions of these paragraphs 8.a.i through 8.a.xiii, inclusive, shall survive any termination of this Agreement, and shall not be construed as a limitation on any other of the Village's rights under law or equity.
9. In the event the Owner breaches or otherwise fails to perform any of the terms or provisions of this Agreement, the available remedies to the Village shall include, but not be limited to, the immediate termination of this Agreement and the forfeiture by the Owner of any Program Funds. In the event of such termination and forfeiture, the Owner shall repay to Village any Program Funds paid by the Village to the Owner, or to a plumber on the Owner's behalf, upon thirty (30) days written demand. It is expressly agreed that the nonpayment or failure to make timely payment of a Loan Installment shall constitute a breach of this Agreement. In addition, the forfeiture and/or repayment of such funds by the Owner shall not be construed so as to constitute a waiver or relinquishment of any other rights which may be available to Village at law or equity. This provision shall survive any termination of this Agreement, and shall not be construed as a limitation on any other of the Village's rights under law or equity.
10. Notwithstanding any other provision of this Agreement it is expressly agreed and understood that in connection with the performance of this Agreement that the Owner shall comply with all applicable Federal, State, local and other requirements of law, including, but not limited to, any applicable requirements regarding prevailing wages, minimum wage, workplace safety and legal status of employees. Without limiting the foregoing, Owner hereby certifies, represents and warrants to the Village that all Owner's contractors and/or agents who will be providing products and/or services with respect to this Agreement shall be legal residents of the United States. Owner shall also at its expense secure all permits and licenses, pay all charges and fees and give all notices necessary and

incident to the due and lawful prosecution of the work, and/or the products and/or services to be provided for in this Agreement. The Village shall have the right to audit any records in the possession or control of the Owner to determine Owner's compliance with the provisions of this section. In the event the Village proceeds with such an audit the Owner shall make available to the Village the Owner's relevant records at no cost to the Village.

11. Unless applicable law requires a different method, any notice that must be given to the Owner under this Agreement will be given by delivering it or by mailing it by first class mail to the Owner at the Subject Property, or at a different address if the Owner gives the Village a notice of a different address for the Owner. Any notice that must be given to the Village under this Agreement will be given by delivering it or by mailing it by first class mail to the Village of Pecatonica, 405 Main Street, Pecatonica, Illinois, 61063, Attention: Village President, with a copy to Village Attorney: Barrick, Switzer, Long, Balsley & Van Evera, LLP, 6833 Stalter Drive, Rockford, Illinois, 61108, or at a different address if the Owner is given a notice of that different address of the Village.
12. The Owner and any other entity which has obligations under this Agreement waive the rights of Presentment and Notice of Dishonor ("Presentment" means the right to require the Village to demand payment of amounts due. "Notice of Dishonor" means the right to require the Village to give notice to other persons that amounts due have not been paid).
13. The failure by the Village to enforce any provisions of this Agreement against the Owner shall not be deemed a waiver of the right to do so thereafter.
14. In the event the Owner fails to commence the Work or fails to complete the Work within the times specified by the Village pursuant to Paragraph 5 of this Agreement, the Village shall have the right, in the Village's sole option and discretion, to immediately terminate this Agreement without liability to the Village. In the event the Village terminates the Agreement for the reasons set forth herein, the Owner shall refund to the Village any Program Funds paid by the Village to the Owner, or paid to any contractor on behalf of the Owner, upon thirty (30) days written demand. The repayment of such funds by the Owner shall not be construed so as to constitute a waiver or relinquishment of any other rights which may be available to Village at law or equity. This provision shall survive any termination of this Agreement, and shall not be construed as a limitation on any other of the Village's rights under law or equity.
15. The Owner acknowledges that the Owner's obligation to pay the Loan amount, including any applicable interest and late charges that may have been incurred, and any other monies which become due to the Village pursuant to this Agreement is and shall at all times constitute to be absolute and unconditional in all respects, and shall at all times be valid and enforceable irrespective of any other agreements or circumstances of any nature whatsoever which might otherwise constitute a defense to this Agreement or the obligation of the Owner hereunder to pay the monies due pursuant to this Agreement. The Owner to the fullest extent permitted by law absolutely, unconditionally, and irrevocably waives any and all rights to assert any defense, set-off, counterclaim or cross-claim of any nature whatsoever with respect to the obligation of the Owner to pay the Loan amount, including

any applicable interest and late charges that may have been incurred, and any other monies which become due to the Village in accordance with the provisions of this Agreement. The Owner further agrees that upon default, the balance due and owing shall constitute "municipal fines" exempt from bankruptcy under Section 523 of the US Bankruptcy Code.

16. This Agreement is and shall be deemed and construed to be a joint and collective work product of the Village and the Owner, and, as such, this Agreement shall not be construed against the other party, as the otherwise purported drafter of same, by any court of competent jurisdiction in order to resolve any inconsistency, ambiguity, vagueness or conflict, if any, in the terms and provisions contained herein.
17. This Agreement shall be binding on the parties hereto and their respective successors and permitted assigns. This Agreement and the obligations herein may not be assigned without the express written consent of each of the parties hereto, which consent may be withheld at the sole discretion of either of the parties hereto.
18. This Agreement shall not be deemed or construed to create an employment, partnership, joint venture, or other agency relationship between the parties hereto.
19. Anything to the contrary in this Agreement notwithstanding, the Owner shall to the fullest extent permitted by the law indemnify, defend, and hold harmless the Village, its officials, employees, agents and all other related organizations and persons from all loss, cost, claims damages, expenses of whatever kind (including, without limitation, reasonable attorney's fees and disbursements of the Village's attorney, whether in-house staff, retained firms, or otherwise), arising out of any liability, or claim of liability, for any injury or damage to persons or property claimed to have been sustained by anyone whomsoever by reason of the proposed improvements to be made to the Subject Property or otherwise arising out of or in connection with this Agreement, as well as for any and all lawful actions that may be taken by the Village in connection with the enforcement of the provisions of this Agreement, or in connection with the Owner becoming a party to a voluntary or involuntary bankruptcy, insolvency, or similar proceeding, at the Owner's sole cost and expense. In the event of any action against the Village, its officers, employees, agents, boards or commissions covered by the foregoing duty to indemnify, defend and hold harmless, such action shall be defended by legal counsel of the Village's choosing. The provisions of this paragraph shall survive any termination and/or expiration of this Agreement.
20. In no event shall the Village be liable for monetary damages to the Owner for any reason, including, but not limited to, compensatory, consequential or incidental damages or attorneys' fees, with the sole exception of the payment of Program Funds for Work that has already been approved and performed at the Subject Property pursuant to this Agreement.
21. The Owner shall supervise and monitor the performance of the Work in order to ensure compliance with all grant program requirements and all applicable Village codes and ordinances.

22. This Agreement represents the entire agreement between the parties hereto. There are no other agreements, either oral or implied, between the parties hereto regarding the subject matter of this Agreement. This Agreement may not be modified or amended without the written agreement of the parties hereto.
23. The terms of this Agreement shall be severable. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law. In the event any of the terms or provisions of this Agreement are deemed to be invalid or otherwise prohibited by or unenforceable under applicable law for any reason, such provision shall only be ineffective to the extent of such invalidity, prohibition, or unenforceability without invalidating the remaining provisions of this Agreement, which shall remain in full force and effect.
24. This Agreement shall be subject to and governed by the laws of the State of Illinois. The sole and exclusive venue for the resolution of any disputes or the enforcement of any rights arising out of or in connection with this Agreement shall be in the 17th Judicial Circuit Court of Winnebago County, Illinois.
25. Owner hereby irrevocably and unconditionally waives any and all rights to trial by jury in any action, suit or counter-claim arising in connection with, out of or otherwise relating to this Agreement.
26. Owner, on behalf of itself and its respective successors, assigns and grantees of the Subject Property, hereby acknowledges the propriety, necessity and legality of all of the terms and provisions of this Agreement, and does hereby further agree and does waive any and all rights to any and all legal or other challenges or defenses to any of the terms and provisions of this Agreement, and hereby agrees and covenants on behalf of itself and its successors, assigns and grantees of the Subject Property, not to sue the Village or maintain any legal action or other defenses against the Village with respect to any challenges of the terms and provisions of this Agreement.
27. Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement. Each party represents and warrants to the other that the execution and delivery of the Agreement and the performance of such party's obligations hereunder have been duly authorized and that this Agreement is a valid and legal agreement binding on such party and enforceable in accordance with its terms.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date following their respective signatures.

VILLAGE OF PECATONICA

OWNER

William Smull
Village President

Signature

Name (Please Print)

Date

Date

OWNER

Signature

Name (Please Print)

Date

ATTACHMENT A

COST ESTIMATE(S) AND SCOPE(S) OF WORK

ATTACHMENT B

NOTICE OF LIEN

NOTICE OF LIEN

This Lien Agreement is hereby made and entered into this ____ day of _____, 2021, by and between the VILLAGE OF PECATONICA, ILLINOIS, a municipal corporation, (hereinafter referred to as "Village") and _____, (hereinafter referred to as the "Property Owner") the title holder or sole beneficial owner of the real property commonly known as _____, Pecatonica, Winnebago County, Illinois, Permanent Index Number _____, (hereinafter referred to as "Subject Property"), and legally described as follows:

[INSERT LEGAL DESCRIPTION]

WHEREAS, the Property has made an application to the Village for the funds pursuant to the Village's Lead Service Line Loan Program under which the Village will agree to be used for the replacement of the private portion of lead water service pipes at the Subject Property; and

WHEREAS, the Village has provided such funds to the Property Owner as a loan in the amount of _____ Dollars (\$ _____).

NOW, THEREFORE, the parties hereto agree that the Village of Pecatonica shall have a lien against title to the Subject Property in the amount of _____ Dollars (\$ _____).

This lien shall be effective as to the Subject Property from the date of this lien.

VILLAGE OF PECATONICA,
ILLINOIS

PROPERTY OWNER(S)

By _____

Prepared by:
Barrick, Switzer, Long, Balsley & Van
& Van Evera, LLP
6833 Stalter Drive
Rockford, IL 61108

After Recording Return to:
Village Clerk
Village of Pecatonica
405 Main Street
Pecatonica, IL 61063