

CITY COUNCIL PROCEEDINGS

January 8, 2020

The City Council of the City of David City, Nebraska, met in open public session in the meeting room of the City Office, 557 North 4th Street, David City, Nebraska. The Public had been advised of the meeting by publication of notice in The Banner Press on January 2nd, and an affidavit of the publisher is on file in the office of the City Clerk. The Mayor and members of the City Council acknowledged advance notice of the meeting by signing the Agendas which are a part of these minutes. The advance notice to the Public, Mayor, and Council members conveyed the availability of the agendas, which were kept continuously current in the office of the City Clerk and were available for public inspection during regular office hours. No new items were added to the agendas during the twenty-four hours immediately prior to the opening of the Council meeting.

Present for the meeting were: Mayor Alan Zavodny, Council members Kevin Hotovy, Tom Kobus, Pat Meysenburg, John Vandenberg, Bruce Meysenburg, and Dana Trowbridge, City Administrator Clayton Keller, Attorney Joanna Uden of Egr, Birkel, & Wollmer Law Offices, and City Clerk Joan Kovar.

Also present for the meeting were: Cody Wickham of D.A. Davidson, Kory Kuhlman, Mark Sloup, Todd Emeigh, Marianne Long & Frank, Planning Commission Member Janis Cameron, Sheriff Tom Dion, Building Inspector Ray Sueper, and Interim Water Supervisor Aaron Gustin.

The meeting opened with the Pledge of Allegiance.

Mayor Alan Zavodny informed the public of the "Open Meetings Act" posted on the east wall of the meeting room and asked those present to please silence their cell phones.

The minutes of the December 11, 2019 meeting of the Mayor and City Council were approved upon a motion by Council member Hotovy and seconded by Council member Trowbridge. Voting AYE: Council members Bruce Meysenburg, Trowbridge, Pat Meysenburg, Vandenberg, Kobus, and Hotovy. Voting NAY: None. The motion carried.

Council member Hotovy made a motion to approve Change Order #3 to Eriksen Construction Co., in the amount of \$54,165.69 for the Wastewater Treatment Plant Project. Council member Vandenberg seconded the motion. Voting AYE: Council members Kobus, Trowbridge, Bruce Meysenburg, Pat Meysenburg, Vandenberg, and Hotovy. Voting NAY: None. The motion carried.

Council member Vandenberg made a motion to approve Pay Estimate #15 to Eriksen Construction Co., in the amount of \$103,572.76 for the Wastewater Treatment Plant Project. Council member Kobus seconded the motion. Voting AYE: Council members Bruce Meysenburg, Pat Meysenburg, Trowbridge, Kobus, Hotovy, and Vandenberg. Voting NAY: None. The motion carried.

Mayor Zavodny stated that he would like more information concerning the request by Olsson's to extend their construction phase service via the additional services contract clause on a time and material basis up to \$30,000. Therefore, Council member Trowbridge made a motion to table consideration of extending Olsson's Construction Phase Service, and Council member Bruce Meysenburg seconded the motion. Voting AYE: Council members Hotovy,

Kobus, Pat Meysenburg, Vandenberg, Trowbridge, and Bruce Meysenburg. Voting NAY: None. The motion carried.

Mayor Zavodny asked for consideration of claims. Council member Vandenberg made a motion to authorize the payment of claims and Council member Hotovy seconded the motion. Voting AYE: Council members Trowbridge, P. Meysenburg, B. Meysenburg, Vandenberg, Hotovy, and Kobus. Voting NAY: None. The motion carried.

Mayor Zavodny asked for any comments or questions concerning the Committee and Officer Reports. Mayor Zavodny stated: "I probably should have done this earlier, but I would like to welcome City Administrator Clayton Keller and Attorney Joanna Uden to their first official meeting. Welcome to both of you, we are happy to have you here." Mayor Zavodny also stated: "Our crews did a great job; we've had some water main breaks, we've had the Christmas lights working; people are involved in a lot of different things around town and we appreciate the efforts they have made during this time period, so thank you for that."

Council member Hotovy made a motion to accept the Committee and Officers Reports as presented. Council member Vandenberg seconded the motion. Voting AYE: Council members Kobus, Pat Meysenburg, Bruce Meysenburg, Trowbridge, Vandenberg, and Hotovy. Voting NAY: None. The motion carried.

At 7:06 p.m. Mayor Zavodny opened the Public Hearing to consider amending the Land Use Plan Map by changing the zoning classification from MDR – Medium Density Residential to I - Industrial for the real estate legally described as Lots 2 & 3, Block 8, Will Thorpe & Perkins 2nd Addition to David City. Mayor Zavodny asked if anyone had received concerns regarding this; City Clerk Kovar, Building Inspector Ray Sueper, and Planning Commission member Janis Cameron all stated "no". Mayor Zavodny asked if anyone wished to comment during the Public hearing.

Mark Sloup stated: "I can speak on that behalf. This is the empty lot on 3rd & "M" Street, just south of Butler Public Power District, or just east of the Cyril Svoboda property. The Cy Svoboda property comes to mind because of the rezoning that took place on that property as well. I've had this lot for sale for a period of time, very little interest in regards to residential, and sitting next to me is the potential buyer of the lot, Todd Emeigh, who would like to buy it and put up a wood frame 40 x 60, cement sided structure, all finished interior, to house some of his personal property, some of his equipment and recreational stuff, as they reside in Saline County but they own some property in northern Butler County by a lake, and in between their travels they would like to stop, grab a few things, drop a few things off, for their recreational uses. Like I said, this building will be a wood frame completely finished, it is not going to be a metal building, it's not going to be a pole shed or anything to that effect, it's just basically going to be a nice oversized garage. The reason I've come to rezone it is, like I've said, I've had trouble trying to sell it as a residential property, furthermore, the property to the west just got re-zoned. To my knowledge that property is going to be put into storage units, which is my understanding is going to be metal buildings, multiple doors, and I think I'm really going to struggle to sell my property, to someone who wants to build a residential house there, when they have to look to the west to storage units, or look to the north to the Butler Public Power District; not that they are going to be eyesores, I'm not implying that by any means, it's just the simple fact of the matter is, the front of your house faces storage units or an Industrial Building, I don't know that I'm going to have much luck trying to sell it as a residential piece of property. That was the intent to rezone it, to allow Todd to build this nice garage on there for his own use."

Mayor Zavodny stated: "That's why I was interested in if there were any comments from the neighbors who live there, because they are going to have to look at whatever happens on both those properties, and I do appreciate the fact that at least you are trying to do things the right way by going through the public hearing, because you can't put it up without a residence on it, unless it gets rezoned, so I appreciate that you are trying to follow the rules on that. How do you guys feel about doing that?"

Council member Trowbridge stated: "It makes a lot of sense. I think it speaks highly for zoning in particular, because a lot of folks have zoning as "you can't do anything". They make a good case for a better use of the property than it's seen in a long time, and comparing it to the surrounding properties, and I'm glad to see that there is some flexibility in zoning; that it isn't the evil that a lot of folk believe it to be."

Council member Hotovy stated: "Especially when it's done correctly, in the correct manner and stages."

Mayor Zavodny stated: "I would also add, that I believe the taxpayer is better served by putting those properties back on the tax rolls with an increased value and that certainly helps the Community as a whole. There are a lot of positives to this, the only thing that would make us probably pause is if the neighbors had some concern whatever it might be, and seeing lack of that, I don't see any reason why we wouldn't..."

Mark Sloup stated: "And this has a natural tree line on the south side of the property line that kind of shields it from Dick & Bev Lambrecht; they've been nothing but great neighbors, that neighborhoods been in the family for years, and the neighbor to the east is my brother so that's not an issue."

Todd Emeigh stated: "I do have pictures if anyone would like to see what I plan to put up, I have them on my phone here."

Building Inspector Ray Sueper stated: "I've known this gentleman for a number of years. His wife isn't going to let him build anything that's short of a spectacular, residential styled garage, and I think it will be a great compliment to the neighborhood."

Mayor Zavodny asked if anyone else wished to make any further comment on the Public Hearing at this time. Hearing none, Mayor Zavodny closed the Public Hearing at 7:12 p.m.

Council member Hotovy introduced Ordinance No. 1330 amending the Land Use Plan Map by changing the zoning classification from MDR – Medium Density Residential to I – Industrial for the real estate legally described as Lots 2 & 3, Block 8, Will Thorpe & Perkins 2nd Addition to David City. Mayor Zavodny read Ordinance No. 1330 by title. Council member Hotovy made a motion to suspend the statutory rule that requires an Ordinance be read on three separate days. Council member Bruce Meysenburg seconded the motion. Voting AYE: Council members Vandenberg, Pat Meysenburg, Kobus, Trowbridge, Hotovy, and Bruce Meysenburg. Voting NAY: None. The motion carried.

Council member Hotovy made a motion to pass Ordinance No. 1330 on the 3rd and final reading. Council member Pat Meysenburg seconded the motion. Voting AYE: Council members Vandenberg, Bruce Meysenburg, Trowbridge, Kobus, Pat Meysenburg, and Hotovy. Voting NAY: None. The motion carried and Ordinance No. 1330 was passed on 3rd and final reading as follows:

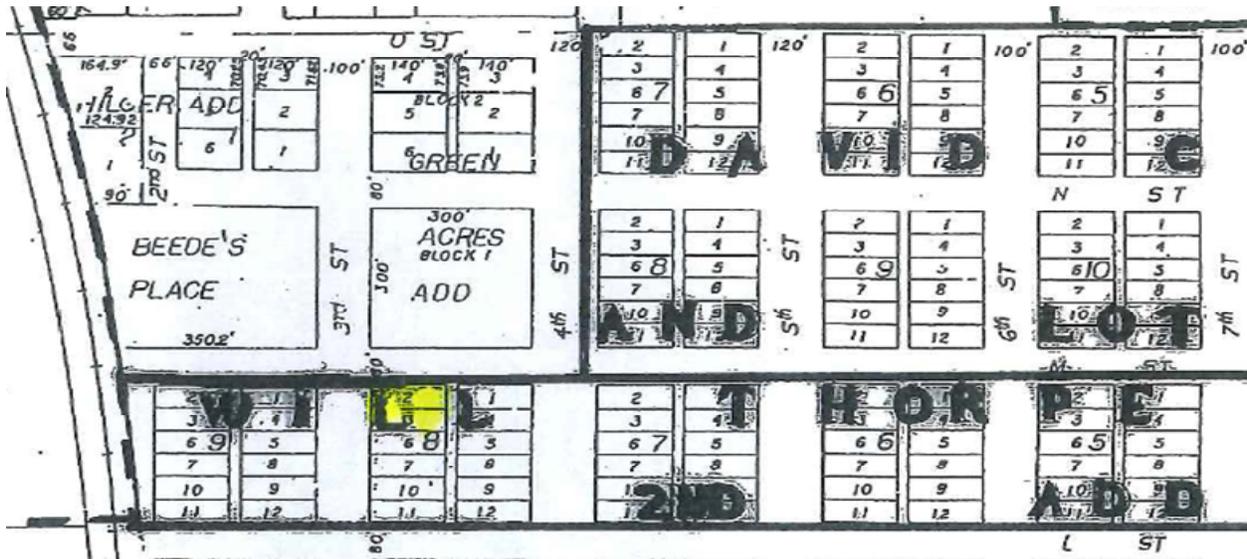
ORDINANCE NO. 1330

AN ORDINANCE TO AMEND THE FUTURE LAND USE MAP BY CHANGING THE ZONING CLASSIFICATION FROM MDR – MEDIUM DENSITY RESIDENTIAL TO I – INDUSTRIAL, FOR THE FOLLOWING REAL ESTATE: LOTS 2 & 3, BLOCK 8, WILL THORPE AND PERKINS 2ND ADDITION TO DAVID CITY; REPEALING ANY ORDINANCES IN CONFLICT HEREWITH; DESCRIBING THE TIME WHEN THIS ORDINANCE SHALL BE IN FULL FORCE AND EFFECT, AND PROVIDING FOR PUBLICATION OF THE ORDINANCE IN PAMPHLET FORM.

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

Section 1. That the Future Land Use Map be amended as follows:

- a. To amend the following property from MDR – Medium Density Residential to I – Industrial for Lots 2 & 3, Block 8, Will Thorpe and Perkins 2nd Addition to David City.



Section 2. That any ordinance or section of any ordinance passed and approved prior to the passage, approval, and publication or posting of this ordinance and in conflict with its provisions, is hereby appealed.

Section 3. This ordinance shall be published in pamphlet form and shall be in full force and effect from and after its passage, approval, and publication as provided by law.

Passed and adopted this 8th day of January, 2020.

Mayor Alan Zavodny

City Clerk Joan E. Kovar

At 7:14 p.m. Mayor Zavodny opened the Public Hearing to consider amending the Official Zoning Map by changing the zoning classification from R-2 Two-Family Residential to I-1 Light Industrial for the real estate legally described as Lots 2 & 3, Block 8, Will Thorpe & Perkins 2nd Addition to David City. Mayor Zavodny asked if anyone had any comments concerning this rezoning. Hearing none, Mayor Zavodny closed the Public Hearing at 7:15 p.m.

Council member Hotovy introduced Ordinance No. 1331 amending the Official Zoning Map by changing the zoning classification from R-2 Two-Family Residential to I-1 Light Industrial for the real estate legally described as Lots 2 & 3, Block 8, Will Thorpe & Perkins 2nd Addition to David City. Mayor Zavodny read Ordinance No. 1331 by title. Council member Hotovy made a motion to suspend the statutory rule that requires an Ordinance be read on three separate days. Council member Trowbridge seconded the motion. Voting AYE: Council members Bruce Meysenburg, Pat Meysenburg, Vandenberg, Kobus, Hotovy, and Trowbridge. Voting NAY: None. The motion carried.

Council member Hotovy made a motion to pass Ordinance No. 1331 on the 3rd and final reading. Council member Trowbridge seconded the motion. Voting AYE: Council members Vandenberg, Bruce Meysenburg, Pat Meysenburg, Kobus, Trowbridge, and Hotovy. Voting NAY: None. The motion carried and Ordinance No. 1331 was passed on 3rd and final reading as follows:

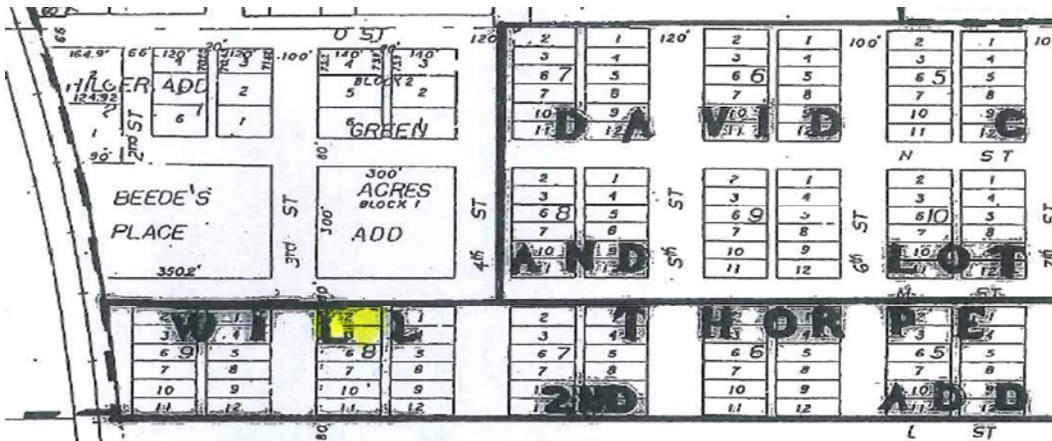
ORDINANCE NO. 1331

AN ORDINANCE TO AMEND THE OFFICIAL ZONING MAP BY CHANGING THE ZONING CLASSIFICATION OF REAL ESTATE DESCRIBED BELOW FROM R-2 TWO-FAMILY RESIDENTIAL TO I-1 LIGHT INDUSTRIAL, FOR THE FOLLOWING REAL ESTATE DESCRIBED AS LOTS 2 & 3, BLOCK 8, WILL THORPE AND PERKINS 2ND ADDITION TO DAVID CITY; REPEALING ANY ORDINANCES IN CONFLICT HEREWITH; DESCRIBING THE TIME WHEN THIS ORDINANCE SHALL BE IN FULL FORCE AND EFFECT, AND PROVIDING FOR PUBLICATION OF THE ORDINANCE IN PAMPHLET FORM.

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

Section 1. That the Official Zoning Map be amended as follows:

- a. To amend the zoning classification of real estate from R-2 Two-Family Residential to I-1 Light Industrial, for the following real estate: Lots 2 & 3, Block 8, Will Thorpe and Perkins 2nd Addition to David City.



Section 2. That any ordinance or section of any ordinance passed and approved prior to the passage, approval, and publication or posting of this ordinance and in conflict with its provisions, is hereby appealed.

Section 3. This ordinance shall be published in pamphlet form and shall be in full force and effect from and after its passage, approval, and publication as provided by law.

Passed and adopted this 8th day of January, 2020.

Mayor Alan Zavodny

City Clerk Joan E. Kovar

Mayor Zavodny stated the next agenda item was consideration of Resolution No. 1 - 2020.

City Clerk Kovar stated: "This is what we've been working on the last two months and we had a few issues so Cody decided it would be better if we just started all over."

Cody Wickham of D.A. Davidson stated: "The goal is not to try and give you more practice at this, there was just a little level of discomfort at the last meeting, without exaggerating last minute changes that came in from the contractors, and so we thought, especially with coming into the new year and having new resolution numbers, let's just kind of begin at the beginning. We'll run through these steps one more time; it really is only pushing things back two weeks. Joan will post for the hearing that you will hold on the 22nd, and then we'll have another ordinance to authorize the notes at that time, once the Resolutions of Necessity are actually adopted, so it pushes us back two weeks as far as the market goes, it's not going to hurt you guys, rates have actually come down since December. International turmoil actually helps the bond market a little bit, we're seeing a "flight to safety" where a lot of investors are looking to buy municipal bonds because they are safe. So, everything looks good we are just going to redo these steps one more time because we like to make attorneys happy."

Council member Trowbridge introduced Resolution No. 1-2020 and moved for its passage and adoption. Council member Pat Meysenburg seconded the motion. Voting AYE: Council members P. Meysenburg, B. Meysenburg, Vandenberg, Hotovy, Kobus, and Trowbridge. Voting NAY: None. The motion carried and Resolution No. 1-2020 was passed and approved as follows:

RESOLUTION NO. 1-2020

RESOLUTION RATIFYING AND CONFIRMING THE HIRING OF CONSULTING ENGINEERS; APPROVAL OF THE PLANS, SPECIFICATIONS AND ESTIMATE OF COST PREPARED BY THE CONSULTING ENGINEERS FOR SANITARY SEWER DISTRICT NO. 2020-1; PROVIDING FOR REIMBURSEMENT ON SUCH

PLANS; APPROVING AND PROPOSING RESOLUTION NO. 2-2020 PROVIDING FOR THE CREATION OF SANITARY SEWER DISTRICT NO. 2020-1.

BE IT RESOLVED by the Mayor and City Council of the City of David City, Nebraska:

Section 1. By Action of the Mayor and City Council, contract agreements were approved for the hiring of Olsson Associates, Obrist & Company LLC and Horizontal Boring & Tunneling Co., for the design and preparation of plans, specifications and estimate of cost for certain Sanitary system improvements within Sanitary Sewer District No. 2020-1 (the "Sewer Project");

Section 2. That the plans, specifications and aggregate estimate of construction cost of not to exceed \$430,000 filed by the City's Engineers, Olsson Associates, Obrist & Company LLC and Horizontal Boring & Tunneling Co., in the office of the City Clerk for the construction of the Sewer Project in Sanitary Sewer District No. 2020-1, have by the Mayor and City Council been heretofore approved, and the said plans specifications and cost estimate be and the same are hereby additionally approved;

Section 3. All actions of the Mayor and City Council and City Clerk, as set out in Sections 1 and 2, herein, are in all respects hereby approved, ratified and confirmed;

Section 4. The Mayor and Council hereby find and determine that it is necessary and appropriate to declare an official intent to issue tax-exempt bond anticipation notes or bonds by the City and, in addition, the City's reasonable expectations to reimburse certain expenditures with the proceeds of such bond anticipation notes or bonds as proposed to be issued by the City in connection with the Project as described below. This resolution shall stand as a statement of the official intent of the City under Regulation Section 1.150-2 and for such purpose the following information is hereby given:

- a. A general functional description of the project for which expenditures may be made and reimbursement from bond anticipation notes or bond proceeds provided is construction of improvements consisting of sewer improvements and related appurtenant improvements within Sanitary Sewer District No. 2020-1.
- b. The principal amount of notes or bonds expected to be issued by the City for that portion of improvements pertaining to this reimbursement resolution is estimated to be no more than \$430,000.

Section 5. That a Resolution of Necessity, designated Resolution No. 2-2020 creating Sanitary Sewer District No. 2020-1 of the City of David City be and it is hereby proposed.

PASSED AND APPROVED this 8th day of January, 2020.

Mayor Alan Zavodny

City Clerk Joan E. Kovar

[SEAL]

Council member Hotovy introduced and proposed Resolution No. 2-2020, which motion was seconded by Council member Vandenberg. The vote on the motion to be held over for final vote after a public hearing.

City Clerk Kovar presented a proposed Resolution of Necessity for the creation of Sanitary Sewer District No. 2020-1. City Clerk Kovar advised the Mayor and City Council it would be necessary to give notice of the proposed Resolution of Necessity and Notice of Hearing on the proposed resolution by publication two consecutive weeks prior to the hearing. The following is the text of said proposed Resolution of Necessity:

RESOLUTION NO. 2-2020

A RESOLUTION DECLARING THE NECESSITY OF CONSTRUCTING ADDITIONS AND IMPROVEMENTS TO THE CITY'S SANITARY SEWER SYSTEM; CREATING SANITARY SEWER DISTRICT NO. 2020-1 OF THE CITY; MAKING REFERENCE TO AND APPROVING PLANS AND SPECIFICATIONS; APPROVING THE ENGINEERS' ESTIMATE OF COSTS NOT TO EXCEED \$430,000; PROVIDING FOR THE ISSUANCE OF BONDS, WARRANTS AND NOTES, DETERMINING IMPROVEMENTS TO BE GENERAL PUBLIC IMPROVEMENTS NOT OF SPECIAL BENEFIT TO PROPERTY WITHIN SAID DISTRICT AND PROVIDING FOR THE EFFECTIVENESS OF THIS RESOLUTION

BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF DAVID CITY, NEBRASKA, as follows:

Section 1. The Mayor and City Council hereby find and determine that it is necessary and advisable to construct additions and improvements to the City's Sanitary sewer system consisting of the following:

Construct an 8" sanitary sewer line to enable the development of the project site as defined in the legal description contained in this Resolution.

Section 2. For purposes of constructing said additions and improvements, there is hereby ordered created Sanitary Sewer District No. 2020-1, which shall include certain property within the City fully described as follows:

A tract of land located in part of the Southwest Quarter (SW1/4) of Section Eighteen (18), Township Fifteen (15) North, Range Three (3), East of the 6th P.M., City of David City, Butler County, Nebraska, and more particularly described as follows:

Commencing at the Northwest Intersection of the West Right of Way Line of Industrial Drive and the North Right of Way line of S Street and the point of beginning; thence on an assumed bearing of S02°11'22"E, along said West Right of Way Line of Industrial drive, a distance of 33.86 feet; thence S87°57'28"W a distance of 413.78 feet; thence N01°56'08"W a distance of 131.64 feet; thence S88°03'52"W a distance of 192.03 feet; thence N01°56'08"W a distance of 20.00 feet; thence N88°03'52"E a distance of 182.53 feet; thence N01°56'08"W a distance of 21.80 feet; thence S88°03'52"W a distance of 182.53 feet; thence N01°56'08"W a distance of 20.00 feet thence N88°03'52"E a

distance of 227.53 feet; thence S01°56'08"E a distance of 148.36 feet; thence N87°57'28"E a distance of 463 .20 feet; thence S01°59'20"E a distance of 11.14 feet to a point of the North right of way line of S Street; thence S87°57'28"W, along said North right of way line of S Street, a distance of 94.58 feet to the point of beginning. Said tract contains a calculated area of 33,838 square feet or 0.77 acres more or less.

Section 3. Reference is hereby made to the plans and specifications (the "Plans") for said additions and improvements which have been prepared by Olsson Associates, Obrist & Company LLC and Horizontal Boring & Tunneling Co., engineers for the City, and which, together with the estimate of total cost for said additions and improvements have been filed with the City Clerk prior to the proposing of this resolution.

Section 4. The size, kind and location and terminal points of sanitary sewer pipe and other related improvements proposed to be constructed as a part of said additions and improvements are described as follows:

The project consisted of installing approximately 910 l.f. of 8" pvc sanitary sewer pipe to serve the new Timpte Manufacturing office building, R&D building, and Branch Facility. The new 8" sanitary sewer pipe construction started at the existing manhole within the west right-of-way of Industrial Drive (east of the existing Timpte building). This new line continued north to a new manhole, then continued west to another new manhole, then proceeded north and terminated at a new manhole just southeast of the Timpte R&D building.

Section 5. The engineer's estimate of total cost for the proposed Sanitary sewer system additions and improvements for said District is not to exceed \$430,000, which amount includes interest cost, cost of issuance and other expenses of the City.

Section 6. It is hereby found and determined that such improvements are of general benefit to the City and that no special assessments shall be levied against the property in the District. Temporary financing may be provided through the issuance of bond anticipation notes as provided by Section 10-137, R.R.S. Neb. 2007. Said additions and improvements shall be financed on a permanent basis by the issuance of the City's general obligation storm sewer bonds issued pursuant to Section 17-925, R.R.S. Neb. 2012.

Section 7. This resolution of necessity shall be in force and effect from and after its adoption as provided by law.

PASSED AND APPROVED this _____ day of _____, 2020.

(following publication – to be considered 01/22/2020)
Mayor Alan Zavodny

(to be considered 01/22/2020)
City Clerk Joan Kovar

Council member Vandenberg introduced Resolution No. 3-2020 and moved for its passage and adoption. Council member Hotovy seconded the motion. Voting AYE: Council members Trowbridge, B. Meysenburg, P. Meysenburg, Kobus, Hotovy, and Vandenberg.

Voting NAY: None. The motion carried and Resolution No. 3-2020 was passed and approved as follows:

RESOLUTION NO. 3-2020

RESOLUTION SETTING A HEARING DATE FOR FINAL CONSIDERATION OF RESOLUTION NO. 2-2020 CREATING SANITARY SEWER DISTRICT NO. 2020-1 AND DIRECTING THE CITY CLERK TO PUBLISH NOTICE OF SAID HEARING.

BE IT RESOLVED by the Mayor and City Council of the City of David City, Nebraska:

Section 1. By Action of the Mayor and City Council Resolution No. 2-2020 has been proposed for the creation of Sanitary Sewer District No. 2020-1 and a hearing is required to be held prior to the passage of said Resolution of Creation.

Section 2. That 7:00 o'clock p.m. on the 22nd day of January, 2020, at the David City, City Hall, 557 4th Street, in David City, Nebraska, is hereby set as the time and place for the Mayor and City Council to conduct a hearing on the adoption of said resolution and to hear any objections to its passage, at which owners of real property located in said district may appear and make objections to such improvements, and the City Clerk is hereby instructed to provide notice of such hearing as required by law.

PASSED AND APPROVED this 8th day of January, 2020.

Mayor Alan Zavodny

City Clerk Joan Kovar

Council member Vandenberg introduced Resolution No. 4-2020 and moved for its passage and adoption. Council member P. Meysenburg seconded the motion. Voting AYE: Council members Hotovy, B. Meysenburg, Trowbridge, Kobus, P. Meysenburg, and Vandenberg. Voting NAY: None. The motion carried and Resolution No. 4-2020 was passed and approved as follows:

RESOLUTION NO. 4-2020

RESOLUTION RATIFYING AND CONFIRMING THE HIRING OF CONSULTING ENGINEERS; APPROVAL OF THE PLANS, SPECIFICATIONS AND ESTIMATE OF COST PREPARED BY THE CONSULTING ENGINEERS FOR STORM WATER SEWER DISTRICT NO. 2020-2; APPROVING AND PROPOSING RESOLUTION NO. 5-2020 PROVIDING FOR THE CREATION OF STORM WATER SEWER DISTRICT NO. 2020-2; AND, SETTING A HEARING DATE AND DATE FOR THE PASSAGE AND ADOPTION OF RESOLUTION OF NECESSITY NO. 5-2020.

BE IT RESOLVED by the Mayor and City Council of the City of David City, Nebraska:

Section 1. By Action of the Mayor and City Council, a contract agreement was approved for the hiring of Olsson Associates, for the design and preparation of plans, specifications and estimate of cost for certain storm water system improvements;

Section 2. That the plans, specifications and estimate of construction cost of not to exceed \$100,000 filed by the City's Engineers, Olsson Associates, in the office of the City Clerk for the construction of Storm Water Sewer improvements in Storm Water Sewer District No. 2020-2, have by the Mayor and City Council been heretofore approved, and the said plans specifications and cost estimate be and the same are hereby additionally approved;

Section 3. All actions of the Mayor and City Council and City Clerk, as set out in Sections 1 and 2, herein, are in all respects hereby approved, ratified and confirmed;

Section 4. That a Resolution of Necessity, designated Resolution No. 5-2020 creating Storm Water Sewer District No. 2020-2 of the City of David City be and it is hereby proposed.

PASSED AND APPROVED this 8th day of January, 2020.

Mayor Alan Zavodny

City Clerk Joan Kovar

[SEAL]

Council member Vandenberg introduced and proposed Resolution No. 5-2020, which motion was seconded by Council member Kobus. The vote on the motion to be held over for final vote after a public hearing.

City Clerk Kovar presented a proposed Resolution of Necessity for the creation of Storm Water Sewer District No. 2020-2. City Clerk Kovar advised the Mayor and City Council it would be necessary to give notice of the proposed Resolution of Necessity and Notice of Hearing on the proposed resolution by publication two consecutive weeks prior to the hearing. The following is the text of said proposed Resolution of Necessity:

RESOLUTION NO. 5-2020

A RESOLUTION DECLARING THE NECESSITY OF CONSTRUCTING ADDITIONS AND IMPROVEMENTS TO THE CITY'S STORM WATER SEWER SYSTEM; CREATING STORM WATER SEWER DISTRICT NO. 2020-2 OF THE CITY; MAKING REFERENCE TO AND APPROVING PLANS AND SPECIFICATIONS; APPROVING THE ENGINEERS' ESTIMATE OF COSTS NOT TO EXCEED \$100,000; PROVIDING FOR THE ISSUANCE OF BONDS, WARRANTS AND NOTES, DETERMINING IMPROVEMENTS TO BE GENERAL PUBLIC

IMPROVEMENTS NOT OF SPECIAL BENEFIT TO PROPERTY WITHIN SAID DISTRICT AND PROVIDING FOR THE EFFECTIVENESS OF THIS RESOLUTION

BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF DAVID CITY, NEBRASKA, as follows:

Section 1. The Mayor and City Council hereby find and determine that it is necessary and advisable to construct additions and improvements to the City's Storm Water sewer system consisting of the following:

Construct and re-route a 30" storm sewer system to enable the development of the project site as defined in the legal description contained in this Resolution.

Section 2. For purposes of constructing said additions and improvements, there is hereby ordered created Storm Water Sewer District No. 2020-2, which shall include certain property within the City fully described as follows:

A tract of land located in part of the Southwest Quarter (SW1/4) of Section Eighteen (18), Township Fifteen (15) North, Range Three (3), East of the 6th P.M., City of David City, Butler County, Nebraska, and more particularly described as follows:

Commencing at the Northwest Intersection of the West Right of Way Line of Industrial Drive and the North Right of Way line of S Street and the point of beginning; thence on an assumed bearing of S02°11'22"E, along said West Right of Way Line of Industrial drive, a distance of 33.86 feet; thence S87°57'28"W a distance of 413.78 feet; thence N01°56'08"W a distance of 131.64 feet; thence S88°03'52"W a distance of 192.03 feet; thence N01°56'08"W a distance of 20.00 feet; thence N88°03'52"E a distance of 182.53 feet; thence N01°56'08"W a distance of 21.80 feet; thence S88°03'52"W a distance of 182.53 feet; thence N01°56'08"W a distance of 20.00 feet thence N88°03'52"E a distance of 227.53 feet; thence S01°56'08"E a distance of 148.36 feet; thence N87°57'28"E a distance of 463.20 feet; thence S01°59'20"E a distance of 11.14 feet to a point of the North right of way line of S Street; thence S87°57'28"W, along said North right of way line of S Street, a distance of 94.58 feet to the point of beginning. Said tract contains a calculated area of 33,838 square feet or 0.77 acres more or less.

Section 3. Reference is hereby made to the plans and specifications (the "Plans") for said additions and improvements which have been prepared by Olsson Associates, engineers for the City, and which, together with the estimate of total cost for said additions and improvements have been filed with the City Clerk prior to the proposing of this resolution.

Section 4. The size, kind and location and terminal points of storm water sewer pipe, surface drainage structures and storm water surface drainage ways and other related improvements proposed to be constructed as a part of said additions and improvements are described as follows:

The project consisted of removing 220 l.f. of 30" reinforced concrete pipe (rcp) to allow for the construction of the new Timpte Manufacturing office building. Approximately 387 l.f. of new 30" rcp was installed and re-routed around the

new office building. This new pipe connected into the existing 30" at the upstream end of the removal limits and heads north to a curb inlet, and then proceeds west and discharges into the existing drainage ditch.

Section 5. The engineer's estimate of total cost for the proposed Storm Water sewer system additions and improvements for said District is \$100,000, which amount includes interest cost, cost of issuance and other expenses of the City.

Section 6. It is hereby found and determined that such improvements are of general benefit to the City and that no special assessments shall be levied against the property in the District. Temporary financing may be provided through the issuance of bond anticipation notes as provided by Section 10-137, R.R.S. Neb. 2007. Said additions and improvements shall be financed on a permanent basis by the issuance of the City's general obligation storm sewer bonds issued pursuant to Section 17-925, R.R.S. Neb. 2012.

Section 7. This resolution of necessity shall be in force and effect from and after its adoption as provided by law.

PASSED AND APPROVED this ____ day of _____, 2020.

(following publication – to be considered 01/22/2020)

Mayor Alan Zavodny

(to be considered 01/22/2020)

City Clerk Joan Kovar

Council member B. Meysenburg introduced Resolution No. 6-2020 and moved for its passage and adoption. Council member Kobus seconded the motion. Voting AYE: Council members P. Meysenburg, Vandenberg, Trowbridge, Hotovy, Kobus, and B. Meysenburg. Voting NAY: None. The motion carried and Resolution No. 6-2020 was passed and approved as follows:

RESOLUTION NO. 6-2020

RESOLUTION SETTING A HEARING DATE FOR FINAL CONSIDERATION OF RESOLUTION NO. 5-2020 CREATING STORM SEWER DISTRICT NO. 2020-2 AND DIRECTING THE CITY CLERK TO PUBLISH NOTICE OF SAID HEARING.

BE IT RESOLVED by the Mayor and City Council of the City of David City, Nebraska:

Section 1. By Action of the Mayor and City Council Resolution No. 5-2020 has been proposed for the creation of Storm Sewer District No. 2020-2 and a hearing is required to be held prior to the passage of said Resolution of Creation.

Section 2. That 7:00 o'clock p.m. on the 22nd day of January, 2020, at the David City, City Hall, 557 4th Street, in David City, Nebraska, is hereby set as the time and place for the Mayor and City Council to conduct a hearing on the adoption of said resolution and to hear any objections to its passage, at which owners of real property located in said district may appear and make

objections to such improvements, and the City Clerk is hereby instructed to provide notice of such hearing as required by law.

PASSED AND APPROVED this 8th day of January, 2020.

Mayor Alan Zavodny

City Clerk Joan Kovar

[SEAL]

Council member Hotovy made a motion to appoint Tiffani Jahde to serve a four-year term on the Hruska Memorial Public Library Board of Trustees. Council member Pat Meysenburg seconded the motion. Voting AYE: Council members B. Meysenburg, Trowbridge, Vandenberg, Kobus, P. Meysenburg, and Hotovy. Voting NAY: None. The motion carried.

City Administrator Clayton Keller stated: "A harness coupling system is equipment that will keep our employees out of the sewer water when they are working on our Wastewater Treatment Plant. We don't want anybody falling in that."

Interim Water Supervisor Aaron Gustin stated: "There's a lot of maintenance that has been overlooked in the last 10 plus years. I have to climb in there tomorrow, climb in 15' in to detach those decanters. Those decanters that have been sitting out there for quite some time are finally going to be put in. That lagoon is being filled as we speak. The process is moving along, but as I said, there has been a lot of maintenance that has been overlooked that we are implementing taking care of. Most people won't walk those ledges because of the risk of fall."

Mayor Zavodny asked: "Is what you are doing tomorrow a task that this would come into play on?"

Interim Water Supervisor Aaron Gustin stated: "It would come into play on, but we are on a time restraint; we have a nine-day window."

Mayor Zavodny stated: "How long would it take to get this thing?"

Interim Water Supervisor Aaron Gustin stated: "It'll probably be a couple months out, but we have routine maintenance on those basins that's supposed to be done every 6 months. We have no other window to do this. For tomorrow, I will be spotted and tied off with the actual five-point harness that we used when we climbed the water tower. It is approved safety equipment but there are a lot, almost every maintenance item requires people walk on a narrow concrete ledge, and if you fall in half will die and the other half that can swim will die later of Dysentery; it's one way or the other."

Council member Kobus asked: "How come we never did before?"

Interim Water Supervisor Aaron Gustin stated: "You can ask the previous people; I don't know. If this is something we want to put off, we will have to drain the basins again and start over."

Council member Hotovy stated: "You are going to get the fall protection equipment, I don't think there is any question there, the bad part is we know about it, and the fall protection equipment is not in place."

Much discussion followed.

Mayor Zavodny stated: "There is no way, we can in good conscience, allow you to do this without the necessary equipment. I'm going to tell you right now, we are going to take a vote on this as soon as I tell you this: "You're not doing it, until you get the equipment". Anybody wish to disagree with that?"

The Council stated: "No".

Council member B. Meysenburg made a motion to approve the purchase of a harness coupling system estimated at \$12,580.00 from Central Ag Builders LLC. Council member Kobus seconded the motion. Voting AYE: Council members P. Meysenburg, Trowbridge, Hotovy, Vandenberg, Kobus, and B. Meysenburg. Voting NAY: None. The motion carried.

Kory Kuhlman and Mark Sloup were present to discuss recreation and working on an agreement with the Ball Association.

Kory Kuhlman stated: "I would like to be able to get to the point where we all have a long-term solution."

Mayor Zavodny stated: "Well, in the bigger picture of this, and we've been talking about it for a while, we certainly want to get to a point where we have a person running a recreation department that can do a variety of things and have it be self-sustaining. In the conversations with Clayton, we talked briefly a while back, we'd like to still run the Ball Association. To me, I still maintain the biggest problem you have is the debt, because you can't service the debt and run the ball program. So, do you know the exact number of what it would take to make the bank go away?"

Kory stated: "I believe \$110,000; not more than \$118,000."

Council member Trowbridge stated: "Two years ago it was \$136,000 so it hasn't come down much.

Kory stated: "We make a payment of \$6,500 twice a year, so \$13,000 a year."

Mayor Zavodny stated: "I guess I'd like to hear your guy's thoughts on this. The other we have, and it's come up is, this isn't an isolated issue, we have the soccer people who struggle. We have some very underutilized recreation land here and facilities that that director could put on a basketball tournament, a basketball league; runs don't cost hardly anything and people enter to run which is the greatest scam ever perpetrated on the human species if you ask me. That's a great thing, free money, so those kinds of things could happen moving forward. Would it be something you would consider if we as a Council said, "Our offer to you is, we take care of your remaining debt, City owns the property, and you run the program and

figure out finances from there". Can you make enough money to operate the program if you don't have that debt hanging over you?"

Kory stated: "Generally so, but we did speak about this a little bit, where we are working with a mower that's from 1994; that's a \$10,000+ potential expense that someday we... Jerry Abel is a fine dude; he helps us out a lot, he donates a lot of labor and even parts to keep that thing going, so I mean at some point we are talking a 25 year old mower. We are using a side by side Ranger, that's not ours, it's loaned to us by an individual. So those are probably some additional expenditures. The debt would suffice but it certainly doesn't allow us to do much more than that because we do have other expenses that probably could and should be done."

Mayor Zavodny stated: "I think one of the things we could maybe consider is, obviously as a City we need mowers, so if we could work something out that you know, we have mowers available if we own the property, we could probably get something worked out to get the mowing done. But I want to be clear, it wouldn't be dedicated to you, that's not your mower; it's something we would use on lots, Airport maybe, etc."

Kory stated: "No, I understand. Jim Bathen is at this point designated; he just mows."

Council member Trowbridge asked: "Can you generate enough revenue, from what you do, to pay for the program if you don't have to service debt, pay interest, buy mowers, hire people to mow for you? Can you make it work, for the kids, because I think this is what we are talking about?"

Kory stated: "No question. This last year we raised the cost of the girls, which we are going to revisit that again this year, but we spent over \$3,000 or close to \$3,000 for District and State registrations; you know the boys is \$300, so we raised the cost on them, for the girls, to \$75.00 but otherwise we try to keep it so that we're not making money there. We want to keep it feasible so that "all" people are able to play."

Mayor Zavodny stated: "But that's a balancing act. Can the program operate if we take away that 800-pound gorilla in the room, which is your debt service?"

Council member Trowbridge asked: "And can the program operate with a new partner? Because I can't see turning this over with us owning the Ball Fields, and us putting money into it, to turn it back over to a situation that wasn't workable before, unless we have some authority as to what happens."

Kory stated: "Ok, so there would be some of that along the lines of where we run into some difficulty too in terms of manpower. I have three (3) kids, I'm not able to be out there every single night, so if the Parks & Rec person, or possibility, could spend some time, evenings, throughout the ball season to oversee some of that, and I don't know if that's a possibility or not, that would alleviate...so it's not a money thing, it's a time thing, we have to have somebody out there to oversee things; obviously lights, restrooms, make sure the water; sometimes we do have a problem with the lift station, we always have somebody there just in case of storms to be the authority to say "there's lightning x amount of miles away". Just to make sure the facility is open and available. To be honest, most nights, it's sit out there and watch a ballgame."

Mayor Zavodny stated: "So, we don't have that currently but what I think we don't want to get in, we don't want to get really far in the weeds here. I think we're willing to say, "we'll assume the property, we'll assume some help with the maintenance", we've kind of done that

before. I don't want us to get bogged down and worrying about concessions and all that. A very limited involvement but certainly..."

Council member Trowbridge stated: "I would like some accountability, is what I was speaking of. We haven't seen a financial statement in a couple of years for the Ball Association."

Much discussion followed.

Kory stated: "It's never had a long-term solution. We keep kicking the can and kicking the can; I don't like it. I've told my parents, I've told Mike & Doug Behrns, I don't want it, I don't want to do this. I guess I'm not as strong as they were, or stubborn; I'm not sure. I've got a lot of stuff going on just like everybody else."

Council member Kobus stated: "I don't blame you."

Council member Trowbridge stated: "I think it's a difference in generations, it really is, nothing to apologize for."

Mayor Zavodny stated: "I hate to keep hounding on this, but if you think you can handle, because I'd like the City to not be a part of that going out, kind of watching over it at night, and those kinds of things, it just complicates it, if you guys can hire someone to do that perpetually, so we don't have that piece, I'd like to have us consider the insurance if we could work that out, buying the property for that amount that the note has left, and figuring out how to get you a mower. (The need for a 2-wheel drive, side by side was also noted.) If you guys can do the rest, I'm good, if we could do that. So, if you guys can work with Clayton (City Administrator) and put a finer point on these details, I feel like we have somewhat of an agreement in principal saying "that's what we'd be willing to do", I think it probably makes things work. If you guys can get together, bring us something that spells out kind of what we discussed here, and we can maybe take care of that at the next meeting or so. Thank you, I appreciate the discussion I think it's really helpful."

City Attorney Jim Egr had prepared a letter to the Nebraska Power Review Board, as the Council had requested, and the drafted letter was presented to the Council for consideration.

Council member Hotovy made a motion to approve the language of the letter drafted by City Attorney James Egr, on behalf of the City, to the Nebraska Power Review Board, concerning Butler Public Power District's increase in the Wheeling Rate, and to take the next step. Council member B. Meysenburg seconded the motion. Voting AYE: Council members P. Meysenburg, Trowbridge, Hotovy, Kobus, and B. Meysenburg. Voting NAY: None. Council member Vandenberg abstained. The motion carried. (following is the letter)

STATE OF NEBRASKA
NEBRASKA POWER REVIEW BOARD

IN THE MATTER OF,)
CITY OF DAVID CITY, NEBRASKA)
)
vs.) APPLICATION NO: _____
)
BUTLER PUBLIC POWER DISTRICT.)

The City of David City, Nebraska makes Complaint to the Nebraska Power Review Board; pursuant to Rule 8 of the Board's Rules of Practice and Procedure, against the Butler Public Power District whose headquarters are located at 1331 North 4th Street, David City, Nebraska 68632, and in support thereof alleges as follows:

Butler Public Power District at its December 10, 2019 Board meeting by Resolution No 19-106 and Policy Number 515, copies of the same being attached hereto marked Exhibits "A" and "B" respectively, raised its Wheeling Rates effective January 1, 2020 to the City of David City, Nebraska. On March 11, 2019 Butler Public Power District by Resolution 19-105 raised its Wheeling Rates from \$1.10 to \$1.27. This new Resolution takes the rate from \$1.27 to \$1.48 for the year 2020. It is anticipated there will be another increase in 2021 to \$1.68 or possibly \$1.71. The increased Wheeling Rates imposes a substantial burden upon fixed income residents of the City of David City, Nebraska and is not justified in light of circumstances, alleged by the District's consultant who relied upon the increased costs to the District because of the oil pipeline which were to be pushed up by the pipeline and not the citizens of the District and the citizens of David City, Nebraska.

Pursuant to Section 70-1018 of the Revised Statutes of Nebraska as Amended, the City of David City, Nebraska submits this dispute in the Wheeling Rates, which was not able to be settled by negotiation, for intervention. The City respectfully requests that the Nebraska Power Review Board set this matter for a hearing setting the time and place for hearing thereon and give notice as provided in Section 70-1013 of the Revised Statutes of Nebraska as Amended. The City requests that the Power Review Board after such hearing make its recommendations for the settlement of such dispute.

DATED this ____ day of January, 2020

Prepared by: James M. Egr
By: JAMES M. EGR
TITLE: City Attorney of David City, Nebraska
Company Name: City of David City, Nebraska
Attorney's Address: P.O. Box 46, 465 4th Street
David City, Nebraska 68632
City's Address: City of David City
P.O. Box 191
David City, NE 68632



Exhibit "A"

RESOLUTION NO 19-106

RESOLUTION TO REVISE POLICY 515 (WHEELING RATE SCHEDULE)

WHEREAS, Butler Public Power District ("Butler") is the owner and operator of electric subtransmission facilities used for the sale of wholesale and/or retail electric power and energy; and

WHEREAS, certain municipalities and public power districts utilize Butler's subtransmission facilities for the delivery of WAPA and wholesale power and energy; and

WHEREAS, Butler has Subtransmission Service Agreements with said municipalities and public power districts, which includes a provision to revise rates charged for subtransmission service as needed; and

WHEREAS, an analysis of subtransmission line and transformation rates has been completed, and indicates that an adjustment in said rates is necessary;

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors of the Butler Public Power District, hereby adopts Policy 515 (Wheeling Rate Schedule), with the following monthly rates becoming effective January 1, 2020

Subtransmission Line Rate - \$0.74/kW

Subtransmission Transformation Rate - \$0.74/kW

CERTIFICATE OF SECRETARY

I, James E. Papik, certify that I am the Secretary of the Butler Public Power District Board of Directors. I further certify that the above is true except from the minutes of a board meeting of this Board of Directors on the 10th day of December 2019, at which a quorum was present, and the above portion of the minutes has not been modified or rescinded.



Signature



Date

Exhibit "B"

BUTLER PUBLIC POWER DISTRICT
DAVID CITY, NEBRASKA

Policy Number 515

RATE SCHEDULE WS-1 – Wheeling Rate Schedule

AVAILABLE

For municipalities, villages or public power districts (Receiver) requiring the use of Butler Public Power District's (BPPD) subtransmission or distribution facilities to transmit their wholesale and/or retail power and energy requirements, whether purchased from BPPD or any other power supplier having such rights to provide wholesale power.

CHARACTER OF SERVICE

Three-phase, 60-cycle, alternating current, at standard BPPD voltages.

RATES

These wheeling rates are formulated using the attached calculations and are applied as specified. Said rate will be recalculated as outlined in applicable Subtransmission Service Agreement effective as of January 1, 2020 the monthly rates are as follows:

Subtransmission Facilities

The following rates are applied monthly to the Receiver's highest measured demand, adjusted for losses to BPPD's Point of Receipt, in any of the current or preceding eleven (11) months:

| | |
|---|-------------|
| 69 or 34.5 kV Line Portion | \$0.74 / kW |
| 69 or 34.5/lower voltage Transformation Portion | \$0.74 / kW |

Distribution Facilities

Line Portion: Applied as a fixed rate by multiplying the number of line segment miles used for wheeling purposes by the average value of distribution line plant per mile of distribution line in service. This result is divided by the total value of distribution line plant and then multiplied by the total distribution line revenue requirements to arrive at the revenue requirements necessary from the line segment used for wheeling purposes. This result is prorated to the Receiver based on the Receiver's proportionate share of the load on the facilities identified, and then divided by twelve (12) to establish a fixed monthly charge.

Transformation Portion: Applied as a fixed rate by multiplying the transformation kVa installed for the Receiver's use by the rate below and dividing by twelve (12) to establish a monthly charge.

Distribution Transformation Charge: Not applicable
As of 09-01-00

ADDITIONAL FACILITIES

Any charges and terms of payment for additional facilities shall be as outlined in Article 2 of the applicable Subtransmission Service Agreement.

There being no further business to come before the Council, Council member Trowbridge made a motion to adjourn. Council member Kobus seconded the motion. Voting AYE: Council members P. Meysenburg, Vandenberg, Trowbridge, Kobus, Hotovy, and B. Meysenburg. Voting NAY: None. The motion carried and Mayor Zavodny declared the meeting adjourned at 8:00 p.m.



CERTIFICATION OF MINUTES
January 8, 2020

I, Joan Kovar, duly qualified and acting City Clerk for the City of David City, Nebraska, do hereby certify with regard to all proceedings of January 8, 2020; that all of the subjects included in the foregoing proceedings were contained in the agenda for the meeting, kept continually current and available for public inspection at the office of the City Clerk; that such subjects were contained in said agenda for at least twenty-four hours prior to said meeting; that the minutes of the meeting of the City Council of the City of David City, Nebraska, were in written form and available for public inspection within ten working days and prior to the next convened meeting of said body; that all news media requesting notification concerning meetings of said body were provided with advance notification of the time and place of said meeting and the subjects to be discussed at said meeting.

Joan Kovar, City Clerk