ORDINANCE NO. 1534

AN ORDINANCE AUTHORIZING THE ISSUANCE OF A SEWER REVENUE BOND OF THE CITY OF DAVID CITY, NEBRASKA, IN THE PRINCIPAL AMOUNT OF UP TO TWENTY-ONE MILLION SIXTY FIVE THOUSAND DOLLARS ($21,065,000) FOR THE PURPOSE OF PAYING THE COSTS OF REHABILITATION, EXPANSION AND UPGRADES TO THE EXISTING SANITARY SEWER PLANT AND SEWER SYSTEM OF THE CITY; AUTHORIZING THE ISSUANCE OF SAID BOND IN THE FORM OF A PROMISSORY NOTE AND RELATED AMENDMENT TO LOAN AGREEMENT TO EVIDENCE A LOAN FROM THE NEBRASKA DEPARTMENT OF WATER, ENERGY AND ENVIRONMENT; APPROVING THE EXECUTION AND DELIVERY OF AN AMENDMENT TO LOAN CONTRACT WITH THE NEBRASKA DEPARTMENT OF WATER, ENERGY AND ENVIRONMENT; APPROVING RELATED DOCUMENTS WITH RESPECT TO SAID LOAN; PRESCRIBING THE FORM, TERMS AND DETAILS OF SAID BOND; PLEDGING AND HYPOTHECATING THE REVENUES AND EARNINGS OF THE SANITARY SEWER PLANT AND SEWER SYSTEM OWNED BY THE CITY FOR THE PAYMENT OF SAID BOND; ENTERING INTO A CONTRACT ON BEHALF OF THE CITY WITH THE HOLDER OF SAID BOND; AUTHORIZING THE DELIVERY OF THE BOND AND AMENDMENT TO LOAN AGREEMENT TO THE NEBRASKA DEPARTMENT OF WATER, ENERGY AND ENVIRONMENT; DETERMINING THAT INTEREST ON SAID BOND SHALL NOT BE EXCLUDABLE FROM GROSS INCOME FOR PURPOSES OF FEDERAL INCOME TAXATION; PROVIDING FOR THE DISPOSITION OF THE BOND PROCEEDS AND ORDERING THE ORDINANCE PUBLISHED IN PAMPHLET FORM.

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

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

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

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

i. Sanitary Sewer System Revenue Bond, Series 2020, dated July 13, 2020, issued in the original drawable principal amount of $3,000,000 (the "Series 2020 Bond"), issued to evidence a loan from The United States Department of Agriculture ("USDA"), of which the remaining principal balance outstanding as of September 30, 2025 was $2,694,054; and

ii. Sanitary Sewer System Revenue Bond, Series 2024, dated July 18, 2024, issued in the original drawable principal amount of $19,665,000 (the "Series 2024 Bond"), evidenced by a note (the "2024 NDWEE Note") from the Nebraska Department of Water, Energy, and Environment ("NDWEE"), of which the remaining principal balance outstanding as of September 30, 2025 was $9,348,485.

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

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

e) NDWEE has approved a project designated as NDWEE Project No. C318068 relating to the acquisition, construction, improvement, repair, rehabilitation or extension of the City's sewer utility (the "Sewer Project") for which the estimated total cost is not less than $21,065,000 and NDWEE has agreed to lend the City funds in such amount (the "NDWEE Loan") and in such connection has agreed to accept the Bond (in such amount and as defined below) payable from the revenues of the Sewer utility;

f) in connection with the Loan it will be necessary for the City to approve, execute and deliver an agreement entitled "Amendment No. 01 to Loan Agreement (Governmental Borrower) between NDWEE and the City of David City DWEE Project No. C318068" as an amendment to "Loan Agreement (Governmental Borrower) between Nebraska Department of Environment and Energy and the City of David City, Nebraska, NDEE Project No. C318068" (such agreement, incorporating such amendment, the "NDWEE Loan Contract") and it is necessary and advisable for the City to approve the execution and delivery of said NDWEE Loan Contract and the "Note" as described therein (for the borrowed amount of up to $21,065,000, which Note shall evidence, be and constitute the NDWEE Note as herein authorized);

g) to satisfy the borrowing requirements described in this Section 1, it is necessary for the City to issue its Sewer Revenue Bond in the total principal amount of up to $21,065,000 (the "Bond" and sometimes referred to herein separately as the "NDWEE Note") pursuant to Sections 18-1803 to 18-1805 R.R.S. Neb. 2012;

h) the Series 2024 Bond and the principal borrowing evidenced or to be evidenced by the 2024 NDWEE Note is to be incorporated into the Bond from and after the issuance of the Bond and from and after the issuance of the Bond the Series 2024 Bond shall no longer be outstanding separate and independently from the Bond and the terms and conditions of the NDWEE Loan Contract, as amended, shall remain in full force and effect from and after the delivery of the Bond and the NDWEE Loan Contract as provided for in this Ordinance;

i) that under the terms of the ordinance(s) authorizing the Outstanding Bonds (the "Outstanding Bond Ordinances"), the City is permitted to issue "Additional Bonds" payable from the revenues of the Sewer utility of the City on a parity with the lien of the Outstanding Bonds and equally and ratably secured therewith and entitled to the security and benefits of the Outstanding Bond Ordinances provided, however, that before any such Additional Bonds are actually issued, the revenues of the Sewer utility, for the fiscal year next preceding the date of the authorization of such Additional Bonds, after deducting therefrom all costs of operation and maintenance of the

Sewer utility for such fiscal year and before deduction of depreciation or interest (the "Net Revenues") as based on a certified public accountants report shall have been equal to 1.20 times the average annual bond requirements of the Outstanding Bonds, any Additional Bonds then outstanding and the Additional Bonds proposed to be issued;

j) the Net Revenues, for the fiscal year ending September 30, 2025, as based on a certified public accountants report, does not exceed the average annual bond requirements of the Outstanding Bonds and the Bond (determined by adding all of the principal and interest which will become due when computed to the absolute maturity of the Outstanding Bonds and all of the principal and interest of the Bond to be issued, and dividing such total by the number of years remaining that the longest bond of any such issue of bonds (including the Bonds) has to run to maturity);

k) that USDA, as holder of the Series 2020 Bond, has consented to the issuance of the Bond payable from the revenues of the Sewer utility of the City on a parity with the lien of the Outstanding Bonds and equally and ratably secured therewith and entitled to the security and benefits of the Outstanding Bond Ordinances, upon satisfaction of the conditions outlined in the letter from USDA dated August 25, 2026 (the "USDA Conditions"), and attached as Exhibit A;

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

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

a) "Additional Bonds" shall mean any bond including refunding bonds authorized and issued pursuant to the provisions of Section 13 of this Ordinance at any time outstanding, which are payable on a parity with the Bond and equally and ratably secured therewith;

b) "Bond" shall mean the Bond authorized to be issued pursuant to Section 3 of this Ordinance at any time outstanding;

c) "revenues" shall mean all the rates, rentals, fees, charges, earnings and other monies from any source whatever derived by the City through its ownership and operation of its Sewer utility;

d) the "Sewer utility" shall mean the Sanitary Sewer plant and Sewer system of the City, as now existing and all additions (including any additional systems which might hereafter be lawfully included in the Sewer utility of the City), extensions and improvements hereafter made;

e) "Net Revenues" shall mean the Revenues (excluding receipts from insurance or attributable to condemnation of the Sewer System or any part thereof) less ordinary expenses of operating and maintaining the Sewer utility payable from the Operation and Maintenance Account. Operation and maintenance expenses for such purpose shall not include depreciation, amortization or interest on any bonds or other indebtedness. Also for such purposes "average annual debt service" shall be determined by adding all the principal and interest which will become due when computed to the absolute maturity on the Outstanding Bonds, the Bond and any Additional Bonds then outstanding and together with the total principal and interest which will become due when computed to absolute maturity on the proposed Additional Bonds and dividing such total by the number of years remaining that the longest bond of any such issue of bonds has to run to maturity, including the proposed Additional Bonds.

Section 3. To provide for paying the costs of the Sewer Project as described in Section 1 hereof, there shall be and there are hereby ordered issued the City's Sewer Revenue Bond in the form of a single promissory note (referred to in this Ordinance sometimes as the "Bond" or the "NDWEE Note") in the principal amount not to exceed $21,065,000 with such note to be in such form and to have such payment terms as are set forth in the NDWEE Loan Contract in Exhibit B to this Ordinance which exhibit is by such reference incorporated herein as if fully set forth. In connection with the NDWEE Note, the City shall also enter into an agreement with NDWEE entitled "Amendment No. 01 to Loan Agreement (Governmental Borrower) between Nebraska Department of Water, Energy and Environment and the City of David City, Nebraska, DWEE Project No. C318068" as an amendment to "Loan Agreement (Governmental Borrower) between Nebraska Department of Environment and Energy and the City of David City, Nebraska, NDEE Project No. C318068" (such agreement, incorporating such amendment, the "NDWEE Loan Contract") in substantially the form set forth in Exhibit B to this Ordinance, which exhibit is by such reference incorporated herein as if fully set forth. The terms of the NDWEE Note and the NDWEE Loan Contract are hereby approved and the Mayor and City Clerk are hereby authorized to execute and deliver the NDWEE Note and the NDWEE Loan Contract with such changes from the forms presented and attached hereto as such officers shall deem appropriate for and on behalf of the City. The Series 2024 Bond and the principal borrowing evidenced or to be evidenced by the 2024 NDWEE Note is to be incorporated into the Bond from and after the issuance of the Bond and from and after the issuance of the Bond the Series 2024 Bond shall no longer be outstanding separate and independently from the Bond. The terms and conditions of the NDWEE Loan Contract, as amended, shall remain in full force and effect from and after the delivery of the Bond and the NDWEE Loan Contract as provided for in this Ordinance. The Mayor and City Clerk and any other officer or officers of the City are hereby further authorized to take such further actions and to execute such certificates and other documents as shall be deemed necessary or appropriate by any of them in connection with the issuance and delivery of the NDWEE Note and the NDWEE Loan Contract. For all purposes of this Ordinance, the NDWEE Note shall constitute a revenue bond of the City as authorized by Sections 18-1803 to 18-1805, R.R.S. Neb. 2012, as amended, and shall be included within the terms "bond" where such inclusion is appropriate. Additional notes may be issued to NDWEE as Additional Bonds upon compliance with the terms of Section 13 of this Ordinance.

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

Section 5. The City hereby pledges and hypothecates all of the revenues of the Sewer utility for the payment of, the Bond, the Outstanding Bonds and any Additional Bonds, both principal and interest as the same fall due. The pledge of the revenues of the Sewer utility provided for in this Ordinance for the Bond, the Outstanding Bonds and any Additional Bonds, subject to the right of the City to issue Additional Bonds as provided in this Ordinance, is intended as a first and prior pledge of, lien on and security interest in the revenues of the Sewer utility for the payment of principal and interest of the Bond, the Outstanding Bonds and any Additional Bonds, superior to any pledge or promise made with respect to any other indebtedness of the City as to its Sewer utility and is intended to be a full exercise of the powers of the City provided for in Sections 18-1803 to 18-1805, R.R.S. Neb. 2012, with respect to its Sewer utility.

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

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

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

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

(d) to maintain Net Revenues in each fiscal year adopted by the City for the Sewer utility in an amount not less than 1.20 times the total amount of principal paid or payable (exclusive of any principal redeemed prior to maturity other than principal redeemed pursuant to a schedule of mandatory redemptions) and interest falling due during such fiscal year on the Outstanding Bonds, the Bond and any Additional Bonds.

Section 7. The entire revenues derived from the operation of the Sewer utility shall be set aside as collected and be deposited in a separate fund previously established in connection with the issuance of the Outstanding Bonds (and which is hereby ratified and affirmed) and which is and shall be known as the "Sewer System Fund". The moneys in the Sewer System Fund shall be properly earmarked and deposit shall be made in a bank or banks designated by the Council and be secured as provided by law for public deposits. The City shall maintain as long as the Bond, the Outstanding Bonds or Additional Bonds are outstanding hereunder the following accounts for the administration of said Fund:

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 11. The City will maintain insurance on the property constituting the Sewer System (other than such portions of the Sewer System as are not normally insured against loss by casualty) in the amounts and against the risks customarily carried by similar utilities, but including fire and extended coverage insurance in an amount which would enable the City to repair, restore or replace the property damaged to the extent necessary to make the Sewer System operable in an efficient and proper manner to carry out the City's obligations under this Ordinance. The Mayor and City Council shall annually, within one month after the end of each fiscal year adopted by the City for the Sewer System examine the amount of insurance carried with respect to the Sewer System and shall evidence approval of such insurance by resolution. The proceeds of any such insurance received by the City shall be used to repair, replace or restore the property damaged or destroyed to the extent necessary to make the Sewer System operable in an efficient and proper manner, and any amount of insurance proceeds not so used shall be used to either (i) prepay the Outstanding Bond and the Bond or (ii) pay for additions, improvements and/or extensions to the Sewer System. In the event of any such insured casualty loss, the City may advance funds to make temporary repairs or provide for an advance on costs of the permanent repair, restoration or replacement from the Operation and Maintenance Account and any such advances shall be repaid from insurance proceeds received.

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

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

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

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

1) to reflect changes in the rates which have gone into effect since the beginning of the year for which the audit was made;

2) to reflect such engineer's estimate of the net increase over or net decrease from the revenues of the Sewer utility for the year for which the audit was made by reason of:

a) changes in the amounts payable under existing utility service contracts,

b) additional general operating income from sales to customers under existing rate schedules for the various classes of customers, or as such schedules may be revised under a program of change which has been adopted by the Mayor and Council of the City,

c) projected revisions in labor, wages, salary, fuel, machinery, equipment and supply costs,

d) revisions in production, transmission and distribution and in administration costs associated with increases in sales of Sewer utility services due to the acquisition of the additional facilities or due to other causes,

e) changes in costs of other Sewer utility services, and

f) such other projections of revenues and expenses as the consulting engineer deems reasonable and proper.

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

If the City shall find it desirable, the City shall also have the right when issuing Additional Bonds to combine with its Sewer utility any other utility or utilities of the City authorized to be combined under Sections 18-1803 through 18-1805 R.R.S. Nebraska 2012, and to cause all of the revenues of all such combined utility systems to be paid into the Sewer System Fund (which may be redesignated as appropriate), and to provide that all of the Bond, the Outstanding Bonds and any Additional Bonds previously issued, all as then outstanding, and the proposed issue of Additional Bonds shall be payable from the revenues of such Sewer utility and such additional utility or utilities as combined and shall stand on a parity and in equality as to security and payment, provided, however, no utility shall be combined with the Sewer utility as contemplated in this paragraph unless the City is current with all the payments required to be made into the accounts created in Section 7 and the Net Revenues of the Sewer utility shall and such additional utility or utilities, as combined, shall satisfy at least one of the requirements for Additional Bonds provided in this Section 13. For purposes of meeting such requirements, the definition of revenues shall include the revenues and earnings of the additional utility or utilities and take into consideration the ordinary expenses of operating and maintaining such additional utility or utilities and for such purposes any engineer furnishing projections may take into consideration the factors described in the second or third paragraphs of this Section 13 with respect to such additional utility or utilities.

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

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

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

Section 16. Except for amendments which are required for the correction of language to cure any ambiguity or defective or inconsistent provisions, omission or mistake or manifest error contained herein, no changes, additions or alterations of any kind shall be made by the City in the provisions of this Ordinance in any manner; provided, however, that from time to time the holders of sixty percent (60%) in principal amount of the Bond, the Outstanding Bonds and of Additional Bonds outstanding authorized hereunder (not including any of said bonds credited to any of the accounts set out in Section 10 of this Ordinance or any other of said bonds owned or controlled directly or indirectly by the City) by an instrument or instruments in writing signed by such holders and filed with the City Clerk shall have power to assent to and authorize any modification of the rights and obligations of the City and of the holders of the Bond, the Outstanding Bonds and of Additional Bonds and the provisions of this Ordinance that shall be proposed by the City, and any action authorized to be taken with the assent and authority given as aforesaid of the holders of sixty percent (60%) in principal amount of said bonds shall be binding upon all holders of said Bond, the Outstanding Bonds and Additional Bonds at the time outstanding hereunder and upon the City as fully as though such action were specifically and expressly authorized by the terms of this Ordinance; provided, always, that no such modification shall be made which will (a) extend the time of payment of the principal of or interest on any of said bonds or reduce the principal amount thereof or the rate of interest thereon; or (b) give to any of said bonds any preference over any other of said bond or bonds; or (c) authorize the creation of any lien prior to the pledge of the revenues afforded by this Ordinance for the Bond, the Outstanding Bonds and any Additional Bonds; or (d) reduce the percentage in principal amount of said outstanding bonds required to assent to or authorize any such modification. Any modification of the provisions of this Ordinance made as aforesaid shall be set forth in a supplemental ordinance to be adopted by the Mayor and City Council of said City.

Section 17. So long as any of the Bond, the Outstanding Bonds or any Additional Bonds of equal lien are outstanding, each of the obligations, duties, limitations and restraints imposed upon the City by this Ordinance shall be deemed to be a covenant between the City and every holder of said bonds, and this Ordinance and every provision and covenant thereof shall constitute a contract of the City with every holder from time to time of said bonds. Any holder of a Bond or Additional Bond or Bonds may by mandamus or other appropriate action or proceeding at law or in equity in any court of competent jurisdiction enforce and compel performance of this Ordinance and every provision and covenant thereof including, without limiting the generality of the foregoing, the enforcement of the performance of all duties required by the City by this Ordinance and the applicable laws of the State of Nebraska, including in such duties the making and collecting of sufficient rates, rentals, fees or charges for the use and service of the Sewer utility, the segregation of the revenues of said systems and the application thereof to the respective Fund and Accounts referred to and described in Section 7 of this Ordinance. Any holder of a Bond or Additional Bond, in the event of any default in payment of principal or interest on any such bond, shall be entitled to the appointment of a receiver for the Sewer utility to take possession of the Sewer utility, to manage the Sewer utility and receive and apply the revenues of the Sewer utility in accordance with the terms of this Ordinance.

Section 18. The City's obligations under this Ordinance and the liens, pledges, dedications, covenants and agreements of the City herein made or provided for shall be fully discharged and satisfied as to any Bond, the Outstanding Bonds or Additional Bonds issued hereunder, and said bonds shall no longer be deemed outstanding hereunder, if such bonds shall have been purchased and canceled by the City or, as to any of said bonds not theretofore purchased and canceled by the City, when payment of the principal of and any applicable redemption premium, if any, on such bonds plus interest thereon, to the respective dates of maturities or redemption (a) shall have been made or caused to be made in accordance with the terms thereof; or (b) shall have been provided for by depositing in escrow with any state or national bank having trust powers, or trust company, in trust solely for such payment (i) sufficient monies to make such payment or (ii) direct general obligations of or obligations the principal and interest of which are unconditionally guaranteed by the United States of America (herein referred to as "Government Obligations") in such amount and bearing interest payable and maturing or redeemable at stated fixed prices at the option of the holder as to principal at such time or times as will insure the availability of sufficient monies to make such payment, and such bonds shall cease to draw interest from the date of their redemption or maturity and, except for the purposes of such payment, shall no longer be entitled to the benefits of this Ordinance except for payment from such deposit and shall no longer be considered as outstanding; provided that, with respect to any such bonds called or to be called for redemption, the City shall have duly given notice of redemption, or made irrevocable provision for giving such notice. Any such monies so deposited with the aforesaid bank or trust company as provided in this section may be invested and reinvested in Government Obligations at the direction of the City, and all interest and income from all such Government Obligations in the hands of the aforesaid bank or trust company which is not required to pay principal or interest on such bonds for which deposit has been made shall be paid to the City as and when realized and collected. For purposes of this Section 18, such Government Obligations shall be non-callable or callable only at the option of the holder. With respect to any deposit made for purposes of satisfying the Bond, under this Section 18, there shall be furnished to NDWEE and the Nebraska Investment Finance Authority ("NIFA") an opinion of nationally recognized bond counsel that such deposit for payment of the Bond, will not adversely affect the exclusion for interest from gross income for federal tax purposes on any bonds issued by NIFA to provide funds for deposit into the Nebraska Drinking Water Facilities Loan Fund and/or the Wastewater Treatment Facilities Construction Loan Fund (as applicable) and the furnishing of such opinion shall be a condition required to be satisfied prior to the making of any such deposit in trust for payment and satisfaction with respect to the Bond, unless the Bond then being defeased are to be prepaid and redeemed within 60 days from the time of such deposit.

Section 19. If any section, paragraph, clause or provision of this Ordinance shall be held invalid, the invalidity of such section, paragraph, clause or provision shall not affect any of the other provisions of this Ordinance.

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

Section 21. The Mayor and Clerk of the City are hereby authorized to do all things and execute all such documents as may by them be deemed necessary and proper to complete the issuance the Bond as contemplated by this Ordinance.

Section 22. The Bond shall be sold to NDWEE in accordance with the terms of the NDWEE Loan Contract, and the City Treasurer is authorized to deliver the Bond to NDWEE as provided in and subject to the conditions in the NDWEE Loan Contract. The proceeds of the Bond shall be applied to pay costs as described in the NDWEE Loan Contract. The Mayor and City Clerk of the City are hereby authorized to do all things and execute all such documents as may by them be deemed necessary and proper to complete the issuance and sale of the Bond and the execution and delivery of the NDWEE Loan Contract as contemplated by this Ordinance.

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

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

PASSED AND APPROVED this 9th day of September, 2026.

____
Jessica Miller, Mayor

ATTEST:

____
Lori Matchett, City Clerk

(S E A L)

Exhibit “A”

USDA Letter of Conditions

[see attached]

USDA

United States Department of Agriculture

August 25, 2026

City of David City
ATTN: Ms. Jessica Miller, Mayor
PO Box 191
David City NE 68632-0191

RE: Proposed $1,400,000 additional Sewer Loan from Nebraska Department of Water, Energy, and Environment (NDWEE)

Dear Mayor Miller:

This office has reviewed the April 19, 2024, Sewer Revenue Analysis/Rate Adjustment Recommendation provided by Veenstra & Kimm Inc., along with the actual audit (FY 2025) and updated ordinances and has found it acceptable and has found that the rate structures are being followed and there has been a continued increase until the City is maintaining a positive cash flow. The information contained in this document satisfies the information required to demonstrate the City's capacity to meet the 1.20x debt service coverage requirements contained in Section 10 of the Ordinance authorizing the issuance of the Sanitary Sewer System Revenue Bond, Series 2020 (Ordinance). USDA concurs with the proposed financing from NDWEE upon the following conditions:

1. The City agrees to collect rates and charges for all services furnished by the sewer system in accordance with Section 8 of the Ordinance. In reviewing the financial performance of the sewer system for the fiscal years 2023 through 2025 the following was observed:
    a. Cash from operations was positive in fiscal year 2025 with the revenues being ablet to cover the expenses minus depreciation on the system. This situation would allow for some repayment of the principal payments on long term debt, funding of reserves, the purchase of plant and equipment, or any other financing/ investing activities.
    b. The net change in cash was negative for fiscal years starting in 2022 and has resulted in the Sewer Fund going from a positive $1,264,228 to negative $1,040,049 through fiscal year 2024, with the increases in rates and the AGP agreement; the City is edging toward positive cash flows $334,711 not including the funding of construction or the capital outlay.
    c. The City has been out of compliance with Section 8 of the Ordinance from the onset of the USDA financing. *The City will need to continue to evaluate the user rate and charges ordinance each year and make sure it is generating sufficient revenues to cover all the costs of the system including reserves and reoccurring capital purchases.* Rate setting should consider customer count/utilization, historical financial performance, and the forecasted operating budget and cash flow for the upcoming fiscal year.

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

2. The current sewer rates of $17.80 Customer Charge and $5.65/1,000 gallons Commodity charge for residential and commercial customers that was made effective February 11, 2026. Subsequent rate adjustments will be made effective April of each year thereafter. Multiple-year rate adjustments can be incorporated into the sewer rate ordinance but it will need to allow for annual adjustments if the costs of operating the system exceed expectations. The rate guidance provided in the April 19, 2024, Veenstra & Kimm Inc. sewer rate analysis has been used as a resource in establishing future rate structures.
3. High volume customers such as Ag Processing Inc (AGP) will pay consumptive rates in accordance with the then current sewer rate ordinance for commercial users as specified in the Redevelopment Contract adopted by the City on April 26, 2023. Also, within this agreement AGP has agreed to pay $345,000 a year for 20 years in consideration of the capital improvement costs associated with expanding the City's sewer treatment facilities. The term of these payments is less than the term of the NDWEE loan. The City may want to consider a long-term plan in funding the retirement of the NDWEE loan in 20 years to lessen the impact on customer charges once the $345,000 payments from AGP cease.
4. NDWEE issuing the loan in accordance with the draft Loan Agreement for an additional $1,400,000, this will bring the total indebtedness to $21,065,000. The previous agreement (version 12:12.18.2023) authorized the issuance of a NDWEE loan in the amount $19,665,000. A portion of this loan may be repaid through subsidies, namely Loan Forgiveness. The maximum Loan Forgiveness cannot exceed 37.67% of the eligible project cost up to a ceiling of $7,408,125 for the original loan. The City will need to be prepared to adjust their rates accordingly if this amount of subsidy is later reduced by NDWEE. The percentage of debt that is owed to USDA RD is 8% of the total sewer project debt.
5. The City will manage the use of cash resources in the Sewer Fund so that it is maintained at a positive level. *The City will need to consider a plan to cure the negative cash position of the Sewer Fund* either through transfers of funds from other City Funds or *through the generation of excess net revenues from the sewer system*. USDA is not an advocate of interfund transfers but the current cash position of the sewer fund may necessitate such action.
6. The debt service coverage ratio requirement of 1.20x needs to be adhered to so long as USDA is a holder of the Sanitary Sewer System Revenue Bond, Series 2020. Compliance to this requirement and Section 8 of the ordinance will be done through the review of the annual audits.

If you should have any questions or concerns, please feel free to contact Luann Brown, Community Programs Specialist, at (402) 437-5571 or luann.brown@usda.gov.

Sincerely,

KELLEY MESSENGER

Digitally signed by KELLEY MESSENGER
Date: 2026.08.25 09:18:12 -05'00'

Kelley Messenger
Community Programs Director
USDA Rural Development

Exhibit "B"

NDWEE Loan Contract