

CITY COUNCIL PROCEEDINGS
September 13, 2023

The City Council of the City of David City, Nebraska, met in open public session at 7:00 p.m. in the meeting room of the City Office at 490 "E" Street, David City, Nebraska. The Public had been advised of the meeting by publication of notice in The Banner Press on September 7, 2023, 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 Agenda which is a part of these minutes. The advance notice to the Public, Mayor, and Council members conveyed the availability of the agenda, which was kept continuously current in the office of the City Clerk and was available for public inspection on the City's website. No new items were added to the agenda during the twenty-four hours immediately prior to the opening of the Council meeting.

Present for the meeting were: Mayor Jessica Miller, Council President Bruce Meysenburg, Council members Kevin Woita, Pat Meysenburg, Jim Angell, Keith Marvin, Tom Kobus, City Attorney David Levy, and Interim City Administrator/City Clerk Tami Comte.

Also present for the meeting were: Deputy Clerk Lori Matchett, Police Chief Marla Schnell, Ethan Joy with JEO, Brad Swerczek with K-Tech Project Services, Recreation Coordinator Will Reiter, Alan Zavodny, John Vandenberg, Kevin Hotovy and Jerry Kosch. Bob Veenstra with Veenstra & Kimm was present via Zoom.

The meeting opened with the Pledge of Allegiance.

Mayor Jessica Miller informed the public of the "Open Meetings Act" posted on the west wall of the meeting room and asked those present to please silence their cell phones. She also reminded the public that if they speak tonight in front of the Council that they must state their name and address for the record.

Council member Tom Kobus made a motion to approve the minutes of the August 23, 2023 Council meeting as presented. Council Member Pat Meysenburg seconded the motion. The motion carried.

Jim Angell: Yea, Tom Kobus: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Woita: Yea
Yea: 6, Nay: 0

Council member Keith Marvin made a motion to approve the claim to D-Sign Shop. Council Member Pat Meysenburg seconded the motion. The motion carried.

Jim Angell: Abstain (With Conflict), Tom Kobus: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Woita: Yea
Yea: 5, Nay: 0, Abstain (With Conflict): 1

Council member Pat Meysenburg made a motion to approve the claims as presented. Council Member Kevin Woita seconded the motion. The motion carried.

Jim Angell: Yea, Tom Kobus: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Woita: Yea
Yea: 6, Nay: 0

Mayor Jessica Miller presented a forty-year certificate of appreciation to City Clerk Tami Comte.

Council member Tom Kobus made a motion to approve the committee and officers' reports as presented. Council Member Keith Marvin seconded the motion. The motion carried. Jim Angell: Yea, Tom Kobus: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Woita: Yea
 Yea: 6, Nay: 0

Council member Bruce Meysenburg made a motion to approve Certificate of Payment #6 in the amount of \$78,787.30 to Velocity Constructors Inc. for the 2022 Water Treatment Plant Upgrades. Council Member Tom Kobus seconded the motion. The motion carried. Jim Angell: Yea, Tom Kobus: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Woita: Yea
 Yea: 6, Nay: 0

Contractor's Application for Payment	
Owner:	City of David City
Engineer:	JEO Consulting Group, Inc.
Contractor:	Velocity Constructors Inc.
Project:	2022 Water Treatment Plant Upgrades, SRF Project No. D311686
Contract:	2022 Water Treatment Plant Upgrades, SRF Project No. D311686
Application No.:	6
Application Date:	9/1/2023
Application Period:	From 8/1/2023 to 9/1/2023
1. Original Contract Price	\$ 10,562,772.00
2. Net change by Change Orders	\$ 54,560.00
3. Current Contract Price (Line 1 + Line 2)	\$ 10,617,332.00
4. Total Work completed and materials stored to date (Sum of Column G Lump Sum Total and Column J Unit Price Total)	\$ 843,173.03
5. Retainage	
a. 5% X \$ 646,064.25 Work Completed =	\$ 32,303.21
b. 5% X \$ 197,108.78 Stored Materials =	\$ 9,855.44
c. Total Retainage (Line 5.a + Line 5.b)	\$ 42,158.65
6. Amount eligible to date (Line 4 - Line 5.c)	\$ 801,014.38
7. Less previous payments (Line 6 from prior application)	\$ 722,227.08
8. Amount due this application	\$ 78,787.30
9. Balance to finish, including retainage (Line 3 - Line 4 + Line 5.c)	\$ 9,816,317.62
Contractor's Certification	
The undersigned Contractor certifies, to the best of its knowledge, the following:	
(1) All previous progress payments received from Owner on account of Work done under the Contract have been applied on account to discharge Contractor's legitimate obligations incurred in connection with the Work covered by prior Applications for Payment;	
(2) Title to all Work, materials and equipment incorporated in said Work, or otherwise listed in or covered by this Application for Payment, will pass to Owner at time of payment free and clear of all liens, security interests, and encumbrances (except such as are covered by a bond acceptable to Owner indemnifying Owner against any such liens, security interest, or encumbrances); and	
(3) All the Work covered by this Application for Payment is in accordance with the Contract Documents and is not defective.	
Contractor: James Sulzbach - Project Manager Velocity Constructors	
Signature:	Date: 8/30/2023
Recommended by Engineer	
By:	Approved by Owner
Title:	By: <i>Jessica M. Miller</i>
Date:	Title: Mayor
	Date: 9-13-23

Progress Estimate - Lump Sum Work						Contractor's Application for Payment			
Owner:	City of David City					Owner's Project No.:			
Engineer:	JEO Consulting Group, Inc.					Engineer's Project No.:	202024.00		
Contractor:	Velocity Constructors Inc.					Contractor's Project No.:			
Project:	2022 Water Treatment Plant Upgrades, SRF Project No. D311686								
Contract:	2022 Water Treatment Plant Upgrades, SRF Project No. D311686								
Application No.:	6		Application Period:	From	08/01/23	to	09/01/23	Application Date:	09/01/23
A	B	C	D		E	F	G	H	I
Item No.	Description	Scheduled Value (\$)	Work Completed		Currently Stored (not in D or E) (\$)	Work Completed and Materials Stored to Date (D + E + F) (\$)	% of Scheduled Value (G / C) (%)	Balance to Finish (C - G) (\$)	
			(D + E) From Previous Application (\$)	This Period (\$)					
BASE BID GROUP A - General Water Plant Improvements¹									
Original Contract									
B-1.01	Mobilization	1,030,293.00	257,573.25	-	-	257,573.25	25%	772,719.75	
B-1.02	Bonding and Insurance	66,647.00	66,647.00	-	-	66,647.00	100%	-	
B-1.03	Aerator Rehabilitation and Cleaning	114,481.00	-	-	-	-	0%	114,481.00	
B-1.04	Existing Pipe Cleaning & Repainting	57,573.00	-	-	-	-	0%	57,573.00	
B-1.05	Electrical Improvements, Complete	1,840,041.00	50,000.00	-	-	50,000.00	3%	1,790,041.00	
B-1.06	Demolition of Exterior Infrastructure	32,732.00	30,000.00	-	-	30,000.00	92%	2,732.00	
B-1.07	Demolition of Interior Infrastructure	90,500.00	-	-	-	-	0%	90,500.00	
B-1.08	Building Improvements (Doors/Windows)	80,036.00	-	-	-	-	0%	80,036.00	
B-1.09	Building Improvements (Interior Painting)	523,405.00	-	-	-	-	0%	523,405.00	
B-1.10	First Floor Roof Membrane Replacement	174,179.00	-	-	-	-	0%	174,179.00	
B-1.11	Skylight Replacement	48,568.00	-	-	-	-	0%	48,568.00	
B-1.12	HVAC Improvements	148,128.00	-	-	-	-	0%	148,128.00	
B-1.13	Plumbing Improvements	92,021.00	-	-	-	-	0%	92,021.00	
B-1.14	Lab Improvements	21,099.00	-	-	-	-	0%	21,099.00	
B-1.15	Hardness Monitoring Equipment and Meters	77,743.00	-	1,000.00	-	1,000.00	1%	76,743.00	
B-1.16	Site Paving and Grading	58,690.00	-	-	-	-	0%	58,690.00	
B-1.17	Fencing and Gates	58,513.00	2,000.00	-	-	2,000.00	3%	56,513.00	
B-1.18	Misc. Site Improvements	148,846.00	10,000.00	-	-	10,000.00	7%	138,846.00	
B-1.19	Exterior Piping Improvements	338,959.00	9,000.00	4,000.00	105,566.64	118,566.64	35%	220,392.36	
B-1.20	Seeding, Fertilizer and Mulch	6,610.00	-	-	-	-	0%	6,610.00	
B-1.21	Erosion Control	5,751.00	5,751.00	-	-	5,751.00	100%	-	
BASE BID GROUP B - Gravity Filter System Improvements¹									
B-1.22	New Gravity Filter Equipment, Complete (Media/Wash Troughs/ Air Blower/ Control Panel / Solenoid Panel / Instrumentation / Piping / Valves / Media Strainers)	693,132.00	2,000.00	1,000.00	-	3,000.00	0%	690,132.00	
B-1.23	Gravity Filter Equipment Installation	45,979.00	-	-	-	-	0%	45,979.00	
B-1.24	Electrical	25,200.00	2,000.00	-	5,000.00	7,000.00	28%	18,200.00	

Progress Estimate - Lump Sum Work

Contractor's Application for Payment

Owners:	City of David City	Owner's Project No.:	
Engineer:	JEO Consulting Group, Inc.	Engineer's Project No.:	202204.00
Contractor:	Velocity Constructors Inc.	Contractor's Project No.:	
Project:	2022 Water Treatment Plant Upgrades, SNF Project No. D311686		
Contract:	2022 Water Treatment Plant Upgrades, SNF Project No. D311686		

Application No.: 6 Application Period: From 08/01/23 to 09/01/23 Application Date: 09/01/23

A Item No.	B Description	C Scheduled Value (\$)	D Work Completed		F Currently Stored (not In D or E) (\$)	G Work Completed and Materials Stored to Date (D + E + F) (\$)	H % of Scheduled Value (G / C) (%)	I Balance to Finish (C - G) (\$)
			(D + E) From Previous Application (\$)	This Period (\$)				
BASE BID GROUP C - Reverse Osmosis¹								
B-1.25	CCRO and CIP Tank Skids (Equipment Only)	2,126,760.00	-	2,000.00	-	2,000.00	0%	2,124,760.00
B-1.26	CCRO and CIP Tank Skids (Installation)	7,208.00	-	-	-	-	0%	7,208.00
B-1.27	Existing Maintenance Facility Demolition	27,093.00	27,093.00	-	-	27,093.00	100%	-
B-1.28	RO Room Expansion, Block Construction	245,926.00	6,000.00	-	13,900.00	19,900.00	8%	226,026.00
B-1.29	New Existing Maintenance Facility Floor Pavement	3,174.00	3,000.00	-	-	3,000.00	32%	2,174.00
B-1.30	New Existing Maintenance Facility Roof	28,709.00	-	-	-	-	0%	28,709.00
B-1.31	Overhead Doors	22,781.00	-	-	-	-	0%	22,781.00
B-1.32	Access Doors	8,791.00	-	-	-	-	0%	8,791.00
B-1.33	Single Girder Bridge Crane & Hoist (Equipment Only)	20,361.00	-	-	-	-	0%	20,361.00
B-1.34	Single Girder Bridge Crane & Hoist (Installation)	12,387.00	-	-	-	-	0%	12,387.00
B-1.35	Below Grade CCRO Skid Piping, Complete	57,740.00	15,000.00	15,000.00	-	30,000.00	52%	27,740.00
B-1.36	Above Grade CCRO & CIP Skid Piping, Complete	129,743.00	-	-	-	-	0%	129,743.00
B-1.37	Electrical	10,080.00	2,000.00	-	2,000.00	4,000.00	40%	6,080.00
BASE BID GROUP D - Intermediate Clearwell¹								
B-1.38	Intermediate Clearwell Structural Concrete	170,506.00	82,000.00	10,000.00	20,000.00	112,000.00	66%	58,506.00
B-1.39	Clearwell Hatches	15,613.00	-	-	-	-	0%	15,613.00
B-1.40	Vertical Turbine Pumps	113,608.00	2,000.00	-	-	2,000.00	2%	111,608.00
B-1.41	Degassifier (Equipment Only)	112,153.00	2,000.00	-	-	2,000.00	2%	110,153.00
B-1.42	Degassifier (Installation)	6,407.00	-	-	-	-	0%	6,407.00
B-1.43	Pump Building, Block Construction	116,781.00	2,000.00	-	-	2,000.00	2%	114,781.00
B-1.44	Stairs and Miscellaneous Metals	4,603.00	-	1,000.00	-	1,000.00	22%	3,603.00
B-1.45	Clearwell Ladders	4,749.00	-	-	-	-	0%	4,749.00
B-1.46	Fluid Applied Exterior Membrane	103,757.00	-	-	-	-	0%	103,757.00
B-1.47	Intermediate Clearwell Piping, Fittings, Valves, Meters, Complete	77,335.00	1,000.00	5,000.00	-	6,000.00	8%	71,335.00
B-1.48	Weir Plate and Weir Window	4,398.00	-	1,000.00	-	1,000.00	23%	3,398.00
B-1.49	Electrical	50,400.00	1,000.00	1,000.00	10,000.00	12,000.00	24%	38,400.00

Progress Estimate - Lump Sum Work										Contractor's Application for Payment	
Owner:		City of David City				Owner's Project No.:					
Engineer:		JEO Consulting Group, Inc.				Engineer's Project No.:				202024.00	
Contractor:		Velocity Constructors Inc.				Contractor's Project No.:					
Project:		2022 Water Treatment Plant Upgrades, SRF Project No. D311686									
Contract:		2022 Water Treatment Plant Upgrades, SRF Project No. D311686									
Application No.:		G		Application Period:		From 08/01/23 to 09/01/23		Application Date:		09/01/23	
A	B	C	D		E	F	G	H	I		
Item No.	Description	Scheduled Value (\$)	Work Completed		This Period (\$)	Currently Stored (not in D or E) (\$)	Work Completed and Materials Stored to Date (D + E + F) (\$)	% of Scheduled Value (G / C) (%)	Balance to Finish (C - G) (\$)		
			(D + E) From Previous Application (\$)								
BASE BID GROUP E - Chemical Feed System Improvements¹											
B-1.50	Chemical Feed System Improvements	149,305.00	2,000.00		-		2,000.00	1%	147,305.00		
B-1.51	Gas Chlorine System Improvements	62,365.00	2,000.00		-		2,000.00	3%	60,365.00		
B-1.52	Electrical	15,120.00	2,000.00		-	3,000.00	5,000.00	33%	10,120.00		
BASE BID GROUP F - Backwash Improvements¹											
B-1.53	Backwash Waste Pump and Piping Improvements, Complete	161,971.00	3,000.00		-		3,000.00	2%	158,971.00		
B-1.54	Proposed Manhole Improvements	1,551.00					-	0%	1,551.00		
B-1.55	Backwash Pit Access Hatch	3,727.00					-	0%	3,727.00		
B-1.56	Backwash Supply Pump and Piping Improvements, Complete	103,300.00	2,000.00		-	26,934.00	28,934.00	28%	74,366.00		
B-1.57	Electrical/Generator	252,000.00	2,000.00			10,708.14	12,708.14	5%	239,291.86		
Bid Alternate #1											
BA1-1	Gravity Filter Effluent Valve Replacement ¹	220,730.00	1,000.00		-		1,000.00	0%	219,730.00		
Bid Alternate #2											
BA2-1	Demolish Existing Upflow Clarifier Unit, Complete ¹	113,190.00					-	0%	113,190.00		
		Original Contract Totals	\$ 10,343,448.00	\$ 590,064.25	\$ 41,000.00	\$ 197,108.78	\$ 828,173.03	8.47%	\$ 9,515,274.97		
Change Orders											
CO-1	12" Underslab Pipe	54,560.00			15,000.00		15,000.00	27%	39,560.00		
		Change Order Totals	\$ 54,560.00	\$ -	\$ 15,000.00	\$ -	\$ 15,000.00	27%	\$ 39,560.00		
Original Contract and Change Orders											
		Project Totals	\$ 10,398,008.00	\$ 590,064.25	\$ 56,000.00	\$ 197,108.78	\$ 843,173.03	8%	\$ 9,554,834.97		

¹ Sales Tax for Materials & Equipment Included

760238.89

Stored Materials Summary

Contractor's Application for Payment

Owner: City of David City						Contractor's Project No.:													
Engineer: JEO Consulting Group, Inc.						Engineer's Project No.:													
Contractor: Velocity Constructors Inc.						202024.00													
Project: 2022 Water Treatment Plant Upgrades, SRF Project No. D311686						Contractor's Project No.:													
Contract: 2022 Water Treatment Plant Upgrades, SRF Project No. D311686																			
Application No.: G		Application Period: From 08/01/23 to 09/01/23						Application Date: 09/01/23											
A Item No. (Lump Sum Tab) or Bid Item No. (Unit Price Tab)	B Supplier Invoice No.	C Submittal No. (with Specification Section No.)	D Description of Materials or Equipment Stored	E Storage Location	F Application No. When Materials Placed in Storage	G		H		I		J		K		L Total Amount Incorporated in the Work (I + K)	M Materials Remaining in Storage (I - J)		
						Previous Amount Stored (\$)	Amount Stored this Period (\$)	Amount Stored to Date (G + H) (\$)	Amount Previously Incorporated in the Work (\$)	Amount Incorporated in the Work this Period (\$)	Incorporated In Work		Materials Stored						
B-1.19	S881991		Yard Pipe	On Site	3	26,399.00	-	26,399.00	-	-	-	-		-	-	-	-	26,399.00	-
B-1.19	S881108		Yard Pipe	On Site	4	3,033.85	-	3,033.85	-	-	-	-	-	-	-	-	-	3,033.85	
B-1.19	S835976		Yard Pipe	On Site	4	4,484.62	-	4,484.62	-	-	-	-	-	-	-	-	-	4,484.62	
B-1.19	835125		Yard Pipe	On Site	4	6,039.99	-	6,039.99	-	-	-	-	-	-	-	-	-	6,039.99	
B-1.19	886907		Yard Pipe	On Site	4	23,979.17	-	23,979.17	-	-	-	-	-	-	-	-	-	23,979.17	
B-1.19	S897709		Yard Pipe	On Site	4	29,725.95	-	29,725.95	-	-	-	-	-	-	-	-	-	29,725.95	
B-1.29 & 38			Rebar	On Site	4	33,900.00	-	33,900.00	-	-	-	-	-	-	-	-	-	33,900.00	
B-1.19	T241554		Yard Pipe	On Site	5	320.34	-	320.34	-	-	-	-	-	-	-	-	-	320.34	
B-1.19	T203897		Yard Pipe	On Site	5	520.82	-	520.82	-	-	-	-	-	-	-	-	-	520.82	
B-1.19	T063782		Yard Pipe	On Site	5	1,012.90	-	1,012.90	-	-	-	-	-	-	-	-	-	1,012.90	
B-1.24, 27, 49, 52, 57	Pay App 2		Electrical Fixtures	On Site	5	30,708.14	-	30,708.14	-	-	-	-	-	-	-	-	-	30,708.14	
B1.56	0902556-III		Electric Pumps	On Site	6		26,934.00		26,934.00	-	-	-	-	-	-	-	-	26,934.00	
Totals						\$	170,174.78	\$	26,934.00	\$	197,108.78	\$	-	\$	-	\$	-	\$	197,108.78

Progress Estimate - Unit Price Work										Contractor's Application for Payment				
Owner:		City of David City								Owner's Project No.:				
Engineer:		JEO Consulting Group, Inc.								Engineer's Project No.:				
Contractor:		Velocity Constructors Inc.								Contractor's Project No.:				
Project:		2022 Water Treatment Plant Upgrades, SRF Project No. D311686												
Contract:		2022 Water Treatment Plant Upgrades, SRF Project No. D311686												
Application No.:		6		Application Period:		From 08/01/23 to 09/01/23		Application Date:		09/01/23				
A	B	C	D	E	F	G	H	I	J	K	L			
Bid Item No.	Description	Item Quantity	Units	Unit Price (\$)	Value of Bid Item (C X E) (\$)	Work Completed								
						Estimated Quantity Incorporated in the Work	Value of Work Completed to Date (E X G) (\$)	Materials Currently Stored (not in G) (\$)	Work Completed and Materials Stored to Date (H + I) (\$)	% of Value of Item (J / F) (%)	Balance to Finish (F - J) (\$)			
Original Contract														
Base Bid ¹														
B-2	Install Aggregate Surfacing	358.00	TONS	42.50	15,215.00					0%	15,215.00			
B-3	Final Clearwell Roof Slab Rehabilitation	100.00	SF	140.30	14,030.00					0%	14,030.00			
Bid Alternate #3														
BA3-1	Install 6" Concrete Pavement ¹	1,324.00	SY	143.56	190,079.00					0%	190,079.00			
					Original Contract Totals	\$	219,324.00	\$	-	\$	-	0%	\$	219,324.00
Original Contract and Change Orders														
					Project Totals	\$	219,324.00	\$	-	\$	-	0%	\$	219,324.00

¹ Sales Tax for Materials & Equipment Included

City Council Proceedings

September 13, 2023

Page #8

Council member Pat Meysenburg made a motion to approve Certificate of Payment #1 in the amount of \$8,000 to Woolsey Electric for the Campground construction. Council Member Tom Kobus seconded the motion. The motion carried.

Jim Angell: Yea, Tom Kobus: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat

Meysenburg: Yea, Kevin Woita: Yea

Yea: 6, Nay: 0

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WOOLSEY ELECTRIC LLC
1707 41st Rd
David City, NE 68632
(402) 539-2060

BILL TO
City of David City
490 E St
P.O. Box 191
David City, NE 68632

INVOICE 2050

DATE 09/07/2023 **TERMS** Net 30

DUE DATE 10/07/2023

DESCRIPTION	QTY	RATE	AMOUNT
First draw for the west 21 campsite wiring. This bill will help cover the cost of the pedestals, under ground wire, material such as PVC, fittings, etc. And the labor to set the first batch of the pedestals.	1	8,000.00	8,000.00

TOTAL DUE **\$8,000.00**

City Council Proceedings

September 13, 2023

Page #10

Council member Bruce Meysenburg made a motion to approve Certificate of Payment #1 in the amount of \$612,140.10 to Rutjen's Construction, Inc. for the 2023 Water Main Improvements North Loop. Council Member Pat Meysenburg seconded the motion. The motion carried.

Jim Angell: Yea, Tom Kobus: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Woita: Yea

Yea: 6, Nay: 0

DocuSign Envelope ID: 3F4C95BD-9BBB-4F23-9CD9-B3D7BD24A38C

Contractor's Application for Payment	
Owner: <u>City of David City</u>	Owner's Project No.: _____
Engineer: <u>JEO Consulting Group, Inc.</u>	Engineer's Project No.: <u>221276.00</u>
Contractor: <u>Rutjens Construction Inc.</u>	Contractor's Project No.: _____
Project: <u>2023 Water Main Improvements North Loop</u>	
Contract: <u>2023 Water Main Improvements North Loop</u>	
Application No.: <u>1</u>	Application Date: <u>8/30/2023</u>
Application Period: From <u>8/1/2023</u> to <u>8/30/2023</u>	
1. Original Contract Price	\$ 3,521,576.00
2. Net change by Change Orders	\$ 83,231.00
3. Current Contract Price (Line 1 + Line 2)	\$ 3,604,807.00
4. Total Work completed and materials stored to date (Sum of Column G Lump Sum Total and Column J Unit Price Total)	\$ 644,358.00
5. Retainage	
a. <u>5%</u> X \$ <u>644,358.00</u> Work Completed =	\$ 32,217.90
b. <u>5%</u> X \$ <u>-</u> Stored Materials =	\$ -
c. Total Retainage (Line 5.a + Line 5.b)	\$ 32,217.90
6. Amount eligible to date (Line 4 - Line 5.c)	\$ 612,140.10
7. Less previous payments (Line 6 from prior application)	
8. Amount due this application	\$ 612,140.10
9. Balance to finish, including retainage (Line 3 - Line 4 + Line 5.c)	\$ 2,992,666.90
Contractor's Certification	
The undersigned Contractor certifies, to the best of its knowledge, the following:	
(1) All previous progress payments received from Owner on account of Work done under the Contract have been applied on account to discharge Contractor's legitimate obligations incurred in connection with the Work covered by prior Applications for Payment;	
(2) Title to all Work, materials and equipment incorporated in said Work, or otherwise listed in or covered by this Application for Payment, will pass to Owner at time of payment free and clear of all liens, security interests, and encumbrances (except such as are covered by a bond acceptable to Owner indemnifying Owner against any such liens, security interest, or encumbrances); and	
(3) All the Work covered by this Application for Payment is in accordance with the Contract Documents and is not defective.	
Contractor: <u>Rutjens Construction</u>	
Signature: <u>Adam Rutjens</u>	Date: <u>9/7/2023</u>
Recommended by Engineer	
By: <u>Ethan Joy</u>	Approved by Owner
Title: <u>Branch Manager</u>	By: <u>Jessica Miller</u>
Date: <u>9/12/2023</u>	Title: <u>Mayor</u>
	Date: <u>9-13-23</u>
Approved by Funding Agency	
By: _____	By: _____
Title: _____	Title: _____
Date: _____	Date: _____

City Council Proceedings
 September 13, 2023
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Progress Estimate - Unit Price Work											Contractor's Application for Payment	
Owner: City of David City Engineer: JEO Consulting Group, Inc. Contractor: Ruljens Construction Inc. Project: 2023 Water Main Improvements North Loop Contract: 2023 Water Main Improvements North Loop											Owner's Project No.: _____ Engineer's Project No.: 221276.00 Contractor's Project No.: _____	
Application No.: 1 Application Period: From 08/01/23 to 08/30/23											Application Date: 08/30/23	
A Bid Item No.	B Description	C Contract Information				D Work Completed		I Materials Currently Stored (not in G) (\$)	J Work Completed and Materials Stored to Date (H + I) (\$)	K % of Value of Item (J / F) (%)	L Balance to Finish (F - J) (\$)	
		E Item Quantity	F Units	G Unit Price (\$)	H Value of Bid Item (C X E) (\$)	G Estimated Quantity Incorporated in the Work	H Value of Work Completed to Date (E X G) (\$)					
Original Contract												
1	Mobilization	1	LS	195,000.00	195,000.00	0.50	97,500.00		97,500.00	0.50	97,500.00	
2	Bonding and Insurance	1	LS	35,000.00	35,000.00	1.00	35,000.00		35,000.00	100%	-	
3	Stabilized Construction Entrance	4	EA	3,250.00	13,000.00		-		-	0%	13,000.00	
4	Clearing and Grubbing	1	LF	4,500.00	4,500.00		-		-	0%	4,500.00	
5	Remove and Reset Fence	200	LF	15.00	3,000.00		-		-	0%	3,000.00	
6	Railroad Flagging	14	DAY	4,000.00	56,000.00		-		-	0%	56,000.00	
7	Railroad Track and Ground Monitoring	2	EA	5,500.00	11,000.00		-		-	0%	11,000.00	
8	Railroad Insurance Requirements	1	LS	5,500.00	5,500.00		-		-	0%	5,500.00	
9	16" PVC Water Main, DR 18	14668	LF	101.00	1,475,509.00	3,260.00	329,260.00		329,260.00	22%	1,146,249.00	
10	16" PVC Water Main, DR 18, RI, Directionally Bored	1652	LF	290.00	479,080.00		-		-	0%	479,080.00	
11	16" PVC Water Main, DR 18, RI, Dry Bored	190	LF	181.00	34,390.00	60.00	10,860.00		10,860.00	32%	23,530.00	
12	16" PVC Water Main, DR 18, RI, Inside 24" Steel Casing	625	LF	130.00	81,250.00		-		-	0%	81,250.00	
13	12" PVC Water Main, DR 18	22	LF	113.00	2,486.00		-		-	0%	2,486.00	
14	8" PVC Water Main, DR 18	120	LF	42.00	5,040.00	80.00	3,360.00		3,360.00	67%	1,680.00	
15	8" PVC Water Main, DR 18, RI, Directionally Bored	96	LF	75.00	7,200.00	96.00	7,200.00		7,200.00	100%	-	
16	8" PVC Water Main, DR 18, RI, Inside 14" Steel Casing	40	LF	45.00	1,800.00	40.00	1,800.00		1,800.00	100%	-	
17	24" Steel Casing, 0.375" Thickness, Jack and Bore	230	LF	620.00	142,600.00		-		-	0%	142,600.00	
18	24" Steel Casing, 0.375" Thickness, Jack and Bore, With	395	LF	690.00	272,550.00		-		-	0%	272,550.00	
19	14" Steel Casing, 0.188" Thickness, Jack and Bore	40	LF	255.00	10,200.00	40.00	10,200.00		10,200.00	100%	-	
20	16" Gate Valve and Box, MJ	12	EA	12,115.00	145,380.00	4.00	48,460.00		48,460.00	33%	96,920.00	
21	12" Gate Valve and Box, MJ	3	EA	3,915.00	11,745.00		-		-	0%	11,745.00	
22	8" Gate Valve and Box, MJ	4	EA	2,255.00	9,020.00	2.00	4,510.00		4,510.00	50%	4,510.00	
23	4" Gate Valve and Box, MJ	1	EA	1,315.00	1,315.00	1.00	1,315.00		1,315.00	100%	-	
24	16" x 16" x 16" Tee, MJ	3	EA	2,345.00	7,035.00	3.00	7,035.00		7,035.00	100%	-	
25	16" x 8" x 16" Tee, MJ	1	EA	2,020.00	2,020.00		-		-	0%	2,020.00	
26	16" x 6" x 16" Tee, MJ	12	EA	1,987.00	23,844.00	2.00	3,974.00		3,974.00	17%	19,870.00	
27	12" x 8" x 12" Tee, MJ	1	EA	999.00	999.00		-		-	0%	999.00	
28	8" x 6" x 8" Tee, MJ	3	EA	585.00	1,755.00	1.00	585.00		585.00	33%	1,170.00	
29	8" x 4" x 8" Tee, MJ	1	EA	555.00	555.00	1.00	555.00		555.00	100%	-	
30	16" 90° Bend, MJ	3	EA	1,915.00	5,745.00	1.00	1,915.00		1,915.00	33%	3,830.00	
31	12" 90° Bend, MJ	2	EA	988.00	1,976.00		-		-	0%	1,976.00	
32	8" 90° Bend, MJ	4	EA	500.00	2,000.00	2.00	1,000.00		1,000.00	50%	1,000.00	
33	16" 45° Bend, MJ	14	EA	1,885.00	26,390.00	2.00	3,770.00		3,770.00	14%	22,620.00	
34	16" 11.25° Bend, MJ	2	EA	1,885.00	3,770.00	1.00	1,885.00		1,885.00	50%	1,885.00	
35	16" x 12" Reducer, MJ	2	EA	1,051.00	2,102.00		-		-	0%	2,102.00	
36	16" x 8" Reducer, MJ	1	EA	1,044.00	1,044.00	1.00	1,044.00		1,044.00	100%	-	
37	16" Cap, MJ	1	EA	855.00	855.00		-		-	0%	855.00	

Unit Price

EJCOC C-620 Contractor's Application for Payment
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Progress Estimate - Unit Price Work										Contractor's Application for Payment			
Owner:		City of David City								Owner's Project No.:			
Engineer:		JEO Consulting Group, Inc.								Engineer's Project No.:		221276.00	
Contractor:		Rutjens Construction Inc.								Contractor's Project No.:			
Project:		2023 Water Main Improvements North Loop											
Contract:		2023 Water Main Improvements North Loop											
Application No.: 1										Application Period: From 08/01/23 to 08/30/23		Application Date: 08/30/23	
A	B	Contract Information			Work Completed			I	J	K	L		
Bid Item No.	Description	Item Quantity	Units	Unit Price (\$)	Value of Bid Item (C X E)	Estimated Quantity Incorporated in the Work	Value of Work Completed to Date (E X G)	Materials Currently Stored (not in G)	Work Completed and Materials Stored to Date (H + I)	% of Value of Item (J / K)	Balance to Finish (L - J)		
38	16" Plug, MI	1	EA	885.00	885.00	1.00	885.00		885.00	100%	-		
39	8" Plug, MI	1	EA	250.00	250.00	1.00	250.00		250.00	100%	-		
40	4" Plug, MI	1	EA	150.00	150.00	1.00	150.00		150.00	100%	-		
41	Combination Air Release Valve Manhole	2	EA	31,221.00	62,442.00		-		-	0%	62,442.00		
42	Connect to Existing Water Main	6	EA	1,310.00	7,860.00	1.00	1,310.00		1,310.00	17%	6,550.00		
43	Water Main Removals and Abandonments	1	LS	2,500.00	2,500.00		-		-	0%	2,500.00		
44	Removal and Replacement of Unsuitable Backfill	1000	CY	25.00	25,000.00		-		-	0%	25,000.00		
45	16" x 1" Saddle	4	EA	446.00	1,784.00		-		-	0%	1,784.00		
46	1" Corporation Stop	4	EA	215.00	860.00		-		-	0%	860.00		
47	1" PE Water Service (SDR 7)	54	LF	28.00	1,512.00		-		-	0%	1,512.00		
48	1" Curb Stop and Box	4	EA	410.00	1,640.00		-		-	0%	1,640.00		
49	Remove Existing CMP Culvert	7	EA	250.00	1,750.00		-		-	0%	1,750.00		
50	18" CMP Culvert	240	LF	60.00	14,400.00		-		-	0%	14,400.00		
51	18" CMP Flared End Section	14	EA	410.00	5,740.00		-		-	0%	5,740.00		
52	Remove Pavement	70	SY	15.00	1,050.00		-		-	0%	1,050.00		
53	8" Concrete Pavement	70	SY	115.00	8,050.00		-		-	0%	8,050.00		
54	Remove Driveway	60	SY	15.00	900.00		-		-	0%	900.00		
55	6" Concrete Driveway	60	SY	113.00	6,780.00		-		-	0%	6,780.00		
56	Crushed Rock Surface Course	328	TONS	51.00	16,728.00		-		-	0%	16,728.00		
57	Gravel Surface Course	1617	TONS	35.00	56,595.00		-		-	0%	56,595.00		
58	Bollard	6	EA	1,000.00	6,000.00		-		-	0%	6,000.00		
59	Repair Drain Tile	5	EA	500.00	2,500.00		-		-	0%	2,500.00		
60	Straw Wattle	3000	LF	4.50	13,500.00		-		-	0%	13,500.00		
61	Silt Fence, High Porosity	3000	LF	4.50	13,500.00		-		-	0%	13,500.00		
62	Erosion Control Mat	3000	LF	4.50	13,500.00		-		-	0%	13,500.00		
63	Seeding, Fertilizer, and Mulch	1	LS	25,155.00	25,155.00		-		-	0%	25,155.00		
64	County Road Restoration	1	LS	5,000.00	5,000.00		-		-	0%	5,000.00		
65	Temporary Traffic Control	1	LS	4,000.00	4,000.00		-		-	0%	4,000.00		
Group B - Fire Hydrants													
1	6" Fire Hydrant Assembly	12	EA	6,845.00	82,140.00	3.00	20,535.00		20,535.00	25%	61,605.00		
Alternate 1 - Modified Construction Schedule													
1	Completion of Milestone by September 1, 2023 (Add/Deduct)	1	EA	50,000.00	50,000.00	1.00	50,000.00		50,000.00	100%	-		
					Original Contract Totals	\$ 3,521,576.00		\$ 644,358.00	\$ -	\$ 644,358.00	18%	\$ 2,877,218.00	

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Progress Estimate - Unit Price Work										Contractor's Application for Payment					
Owner:		City of David City								Owner's Project No.:					
Engineer:		JEO Consulting Group, Inc.								Engineer's Project No.:		221276.00			
Contractor:		Rutjens Construction Inc.								Contractor's Project No.:					
Project:		2023 Water Main Improvements North Loop													
Contract:		2023 Water Main Improvements North Loop													
Application No.:		1		Application Period: From		08/01/23		to		08/30/23		Application Date:		08/30/23	
A Bid Item No.	B Description	C Contract Information				D Work Completed				K % of Value of Item (I / F) (%)	L Balance to Finish (F - J) (\$)				
		C Item Quantity	D Units	E Unit Price (\$)	F Value of Bid Item (C X E) (\$)	G Estimated Quantity Incorporated in the Work	H Value of Work Completed to Date (E X G) (\$)	I Materials Currently Stored (not in G) (\$)	J Work Completed and Materials Stored to Date (H + I) (\$)						
Change Orders															
CO1.1	Mobilization	1	EA	1,500.00	1,500.00						0%	1,500.00			
CO1.2	Bonding and Insurance	1	LS	500.00	500.00						0%	500.00			
CO1.3	1.5" HDPE Force Main, SDR 11	3784	LF	19.00	71,896.00						0%	71,896.00			
CO1.4	1.5" HDPE Force Main, SDR 11, Directionally Bored	130	LF	26.00	3,380.00						0%	3,380.00			
CO1.5	1.25" Uni-Lateral Valve with Curb Stop Box	1	EA	955.00	955.00						0%	955.00			
CO1.6	Connect to Existing Manhole	1	EA	1,000.00	1,000.00						0%	1,000.00			
CO1.7	Seeding, Fertilizer, and Mulch	1	LS	4,000.00	4,000.00						0%	4,000.00			
Change Order Totals					\$ 83,231.00	\$ -	\$ -	\$ -	\$ -	0%	\$ 83,231.00				
Original Contract and Change Orders															
Project Totals					\$ 3,604,807.00	\$ 644,358.00	\$ -	\$ 644,358.00	18%	\$ 2,960,449.00					

Mayor Jessica Miller declared the public hearing open at 7:14 p.m. concerning an engineering report for construction of improvements to the Wastewater Treatment Plant, and an associated trunk sewer as required for State Revolving Loan Funding from the Nebraska Department of Environment and Energy and other funding sources.

Bob Veenstra introduced himself and said, "Tonight we're having the public hearing on the environmental impacts and financial impacts of the Wastewater Treatment Plant project. The City is proposing to fund the project through the State Revolving Loan Fund and that program has federal money so we need to meet the requirements of the NEPA and in order to build the project we need to have a finding of no significant impact and one of the requirements for having a finding of no significant impact by NDEE is that the City has to have a public hearing to allow interested parties to comment on the project. The project that we are funding from the State Revolving Fund is the Wastewater Treatment Plant project. Originally, we had indicated the intent to potentially fund the trunk sewer that runs to AGP from the SRF program and subsequently we determined that project would be funded elsewhere. Although that project is included in the report, it is really not part of the finding of no significant impact and the public hearing. In speaking a little bit about the project itself, the overall project budget is about \$13.9 million dollars. It includes upgrades to the Wastewater Treatment Plant. The major components of it we're going to be replacing the head works building with a new head works building and just in talking a little bit about that, the existing head works building is beyond the end of its useful life and really a hazard. The new head works building will provide a much better environment for the staff. We are also going to be segregating the flow that comes from the City and the flow that comes from AGP so that we make sure that the AGP flow goes to the treatment plant and then any capacity that we have under normal conditions the City flow will go, if we have conditions where we have high flows due to infiltration inflow, that flow will be routed to the equalization ponds and so will give preference to the AGP flow. So, one of the major components of the project will also be constructing a new force main that will go along the access drive to the head works over to the treatment plant. At the treatment plant itself we're going to be rehabilitating two of the SBR units, replacing all of the internal equipment. We'll be adding two new SBR units directly west of the existing units. The additional capacity and associated improvements are really to address the additional flow and loading from AGP. The existing blower building, the blowers are reaching the end of their useful life so we're going to be replacing the blowers inside that building with blowers that would be compatible with the expanded SBR plant. They are a little newer style blowers so that we won't have some of the maintenance issues that we have. Right now, one of the concerns that we have with the existing building is that all of the electrical equipment is located inside the blower room that gets really hot in the summer and so we've had problems with the heat. We're going to move the electrical equipment into what would be the garage area so we can separate that and climate control that, so we can manage the heat that will expand the life span of that new equipment. We're going to be displacing the garage area and then building a new storage building north of the administration building. We're also going to be doing some piping changes associated with how we manage the flow in and out of the lagoons and we'll be relocating one of the access points for the irrigation systems that now take out of the same lagoon where the sludge is stored which is not really considered an appropriate location, so we'll be moving that to one of the other lagoon cells. So, that's an overview of the project. A little bit about the environmental impact, we'll be working in or near the existing treatment plant so the environmental impact is much less than it would be if we were out in a new area. The head works building will be located outside of the flood plain, so we won't have any issues. There's no tree removal. There are no known wetlands in that area. The same way with the treatment plant site with the SBR's

and the blower building, there are no tree removal and there's no impact to threaten endangered species so there's very minimal environmental impact. The short-term impact, there's obviously noise during construction and maybe some dust on occasion. We'll be committing resources to the construction of the project but overall, when the project is completed there will be minimal impact on the overall environment. It will allow us to improve the quality of the treatment so that the effluent that we're discharging downstream will be improved compared to what it is today. From a financial impact, in April we submitted rate study recommendations. From an overall project, the City is receiving forty-five percent loan forgiveness for the project and AGP is paying a portion of the debt service as well as a commodity rate so that although there will be rate increase as a result of the project, even if AGP were not coming to the City, the City needed to address the deficiencies in the existing head works building and the other equipment replacement. The cost of that project would probably have been greater than what the net cost is to the City. So, I think overall, we've negotiated a good balance between the cost that would be assigned to AGP which would be less than if we had to do a stand-alone project than something that works with AGP. That's really an overview of the project. As I noted earlier, there's a trunk sewer that extends north to AGP and that project is at a cost of about two million dollars, but it is not really part of the public hearing. With that, I'll be glad to answer any questions."

Mayor Jessica Miller thanked Bob Veenstra for his explanation and asked if there were any questions regarding the project.

Hearing no further comment, Mayor Jessica Miller declared the public hearing closed at 7:21 p.m.

Mayor Jessica Miller declared the public hearing open at 7:21 p.m. to consider the replat of Northland Second Subdivision to the City of David City, Butler County, Nebraska.

Mayor Miller stated that the updated plat was to correct the easements and also to remove a lot along the east side and add in a future street.

Hearing no further comment, Mayor Jessica Miller declared the public hearing closed at 7:22 p.m.

Council member Keith Marvin made a motion to approve the replat of Northland Second Subdivision to the City of David City, Butler County, Nebraska, legally described as follows: **LEGAL DESCRIPTION OF NORTHLAND SUBDIVISION TO THE CITY OF DAVID CITY, BUTLER COUNTY, NEBRASKA AS LEGALLY DESCRIBED:** Point of beginning (POB) is the intersection of the centerlines of E. "N" Street and N. 7th Street thence going westerly along the centerline of E. "N" Street to the intersection of the centerlines of E. "N" Street and N. 6th Street; thence northerly along the centerline of N. 6th Street continuing to the intersection of N. 6th Street and E. "O" Street; thence easterly to the extended west property line to a tract referred to as Lot 2, STR 18-15-13; thence northerly along the west property line of said lot, continuing to the southern property line of a tract referred to as Part of Lot 6 and 7, STR 18-15-3; thence westerly along the southern property line of said lot to the northwest corner of a tract referred to as Lot 1, STR 18-15-3; thence southerly along the west property line of said lot to the northeast corner of a tract referred to as Part of Lot 7 in S ½ SE ¼, STR 18-15-3; thence westerly along the northern property line of said lot to the northwest corner of said lot; thence northerly along the east property line of a tract referred to as Lot 7, STR 18-15-3 continuing to the northeast corner of said lot; thence westerly along the northern property line of said lot continuing to the northwest corner of said lot; thence northerly along the west property line of a tract referred to as Part of Lots 6 and 7, STR 18-15-3, continuing to the northwest corner of said lot; thence easterly along the northern property line of said lot continuing to the northeast corner of said lot; thence southerly along the east property line of said lot continuing to the southeast corner of said lot; thence easterly along the northern property line of a tract referred to as Lot 2, STR 18-15-3;

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continuing to the northeast corner of said lot; thence southerly along the east property line of said lot continuing to the centerline of E. "O" Street; thence easterly along the centerline of E. "O" Street continuing to the intersection of E. "O" Street and N. 7th Street; thence southerly along the centerline of N. 7th Street continuing to the POB, +/- 17.3 acres.

Council Member Pat Meysenburg seconded the motion. The motion carried.

Jim Angell: Yea, Tom Kobus: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Woita: Yea
Yea: 6, Nay: 0

Council member Bruce Meysenburg made a motion to approve an RFP for a firm to complete a Zoning Book update. Council Member Pat Meysenburg seconded the motion. The motion carried.

Jim Angell: Yea, Tom Kobus: Yea, Keith Marvin: Abstain (With Conflict), Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Woita: Yea
Yea: 5, Nay: 0, Abstain (With Conflict): 1

Request for Proposals

To Update the Zoning Ordinance for the City of David City, Nebraska



Brad Swerczek
Senior Project Manager
KTECH Project Services
14121 Ames Avenue,
Omaha, NE 68164
bswerczek@ktech-ki.com



Introduction

The City of David City, Nebraska is soliciting proposals for a review and a complete update of its Zoning Ordinance dated November 14, 2007, and updated October 28, 2021. Firms may drop off Statement of Proposals in the front vestibule area of City Hall at 490 E Street, David City, NE 68632, or mail them to 490 E Street, P.O. Box 191, David City, NE 68632; in any case, submissions must be received in the City offices by the deadline date and time listed in the Timeline section of the Request for Qualifications/Proposal in order to be considered.

Consultants must submit proposals in a digital version in PDF format.

All communication on the Statement of Qualifications/Proposal should be made to the primary contact. The proposal primary contact is:

Brad Swerczek
Senior Project Manager
KTECH Project Services
14121 Ames Avenue,
Omaha, NE 68164
(402) 619-8245
bswerczek@ktech-ki.com

Community Description

The City of David City, the largest Community in Butler County as well as it is county seat, is located in eastern Nebraska, approximately 70 miles west of Omaha, Nebraska and approximately 25 miles north of Seward, Nebraska. The City is serviced by County Highway 15 and U.S. Highway 92 as well as the Interstate 80 Corridor, located south of the Community. Currently (2020), an estimated 3,000 persons reside in David City.

The City is in a position to determine the community and economic development enhancements most needed and desired to better serve persons and families interested in small town living. The Community of David City offers a variety of amenities including a public school system, restaurants, governmental services, grocery and convenience stores, senior center, hospital, etc.

Major employers in David City include David City Public Schools and the Butler County Health System. The Community has the unique advantage of being located in close proximity to the Interstate 80 Corridor, as well as the Communities of Seward, Lincoln and Omaha, Nebraska, allowing for expanded access to nearby amenities.

Update to the Zoning Ordinance

The City of David City requests proposals from qualified firms to assist in completing a major update to its Zoning Ordinance (the "Ordinance"). The intent of the Ordinance update is to create a more cohesive and comprehensive zoning ordinance that reflects best practices in modern development. The update should be sensitive to specific development patterns in David City and align with the City's goals and policies for the future. Some sections of the current Ordinance may be outdated, in conflict with other sections, and/or difficult to interpret. The Consultant, working alongside City staff, would be tasked with rewriting, and revising portions of the Ordinance, providing graphics, formatting, as well as conducting a thorough review of the Code. The update process will include a review and analysis of current regulations to inform the development of options and recommendations to address local issues and community interests. Revisions to the zoning ordinance should be in coordination with David City's current master plans including, Subdivision Regulations, and the City Municipal Codes. The City is seeking effective and innovative techniques to produce an updated zoning ordinance to facilitate sustainable development in David City over the next 20 years.

With oversight from City staff, the selected consultant will lead the planning process to develop an updated zoning ordinance for the City of David City. The City anticipates that the consultant will work with the community to develop a zoning ordinance that incorporates a zoning and subdivision process that implements the community vision in the City's comprehensive plan. The consultant will develop a final work program in conjunction with City staff prior to contract approval. The scope of work provided below are a general framework to be incorporated into proposals. However, the proposed scope of work is not limited to proposals for additional items. The minimum scope of work should include the following:

- **Project Management:** The consultant will take the lead in managing their time, staff, resources, budget, and related activities to ensure that the project objectives are met. The consultant will be in close communication with staff throughout the life of the project. Staff will provide general oversight of the consultant and will help to facilitate interactions with City staff, board/committee members, and project stakeholders.
- **Existing Conditions & Data Analysis:** The consultant will work to gain a firm understanding of the context, trends, and related information applicable to the project objective and utilize the data to inform outcome of the document
- **Review of Comprehensive Plan:** The consultant will review and identify Plan Implementation Strategies, Objectives, and Policies to ensure that the new ordinance will be consistent with current planning documents.
- The consultant will review state statutes to ensure that the new ordinance will be consistent with state law.
- **Public Outreach:** Presentations for City Council and Planning Commission meetings and hearings as needed.
- **Drafting the Document:** Consultant will develop recommendations for reorganization or formatting changes in order to make the document as user-friendly as possible to be implemented by City staff. Recommendations should aim to streamline the process of locating information within the document and within the online version. The consultant will prepare drafts of the zoning ordinance (text document and zoning map), including graphics, for review by staff and the city, Planning Commission, and Council Members, culminating in a final version to be acted upon by the Planning Commission and the City Council.
- **Integration of the New Code into User-Friendly Formats:** The consultant will work with City staff as well as its information technology vendors to make the new code accessible and interactive with the public, including GIS display.

- **Project Schedule:** The anticipated timeframe to complete the project is 1 year, unless reasoning can be provided to explain why it would exceed the 1-year time period. The consultant will provide the City an anticipated schedule for the above work, with a goal of completion by the end of 2024 or earlier. Proposals should include a proposed schedule showing major milestones for project completion, key public involvement events, and completion of draft and final deliverables.

Submission Content

The following information must be included as part of a firm's response to this request:

- **Letter of Interest:** Cover letter indicating interest in the project and identifying the firm's ability to provide services needed. (*maximum 2 pages*)
- **Overview of Firm:** A brief description of the firm including the number of years the firm has been in existence, range of professional services, office locations, and staff size. (*maximum 2 pages*)
- **Key Personnel:** Identify the key personnel who will be assigned to the project. For these individuals, include their respective titles, experience, and periods of service with the firm, including resumes if desired. (*maximum 1 page per person/resource*)
- **Work Program:** Describe the general project approach and process to be employed. Work program to include a project schedule, including timeline of major milestones, deliverables, and completion. (*maximum 4 pages*)
- **Relevant Work Experience and References:** Brief documentation of the firm's prior work relevant to this RFP, including three client references and their associated contact information. (*maximum 1 page per listed experience, maximum 1 page per reference*)
- **Cost Estimate:** Estimate for completing the entire project, including a lump sum dollar figure for all consultant services, fees, and charges, reproduction, and delivery. The basis of the total budget shall be on the required tasks identified in your proposal. The contract is expected to be constructed in a single total fee arrangement for all items. Consultant shall provide a break-down of the fee in to categories of effort. (*maximum 2 pages*)

Submission Deadline

Proposals will be accepted by electronic submittal only. Email proposals to bswerczek@ktech-ki.com. Firms wanting to submit hardcopy proposals contact Brad Swerczek at KTECH Project Services.

Proposals received via mail or fax will not be accepted. Proposals will not be accepted after the stated submission deadline.

All proposals must be submitted to email address provided with subject line noted "Zoning Ordinance Update Proposal, Attn: Brad Swerczek."

Selection Process & Evaluation Criteria

Proposals received will be evaluated by the Selection Committee in its sole discretion based on the materials submitted. The City may invite any or all firms for proposal interviews. It is the City's desire to select a consultant during the City Council meeting shown in the Timeline section of the RFP.

All proposals received will be evaluated based on the following criteria, among other things within the Selection Committee's and the City's sole discretion;

- Capabilities and previous experience in comparable projects, including qualifications of key personnel who will have direct involvement in tasks on this project.

- Firm's general approach to the project. Although the City has identified the general nature of services required, the consultant is given leeway toward the approach to the methodology to provide the proposed services. The City will pay particular attention to public input strategies proposed and responsiveness of the proposal to the City's unique characteristics and future growth potential.
- Proposed timeline to complete the work and demonstrated ability to meet proposed schedule.
- Past record and performance on similar projects, including quality of work, ability to meet deadlines, and cost control.
- Compatibility with the City's financial obligations.

Timeline

The following dates are the anticipated milestones for this effort. These dates, durations, and sequence of events may change as needed and directed by the City of David City.

- September 14, 2023 Release of Request for Proposals
- September 28, 2023 Deadline for submission of questions, 2:00 PM Local Time
- October 3, 2023 Deadline for Submittal of Statement of Proposals, 4:00 PM Local Time
- October 11, 2023 RFP Presented to City Council for approval

Request for Proposals Terms & Conditions

1. The City of David City reserves the right to reject any or all proposals.
2. Questions regarding the RFP shall be submitted in writing to Brad Swerczek, Senior Project Manager, at bswerczek@ktech-ki.com by the date and time listed in the Timeline section of this RFP.
3. Although cost is an important consideration, the City of David City shall not be obligated to accept the lowest cost proposal, but will base its decision on the criteria as noted.
4. All data, documents, and other information provided to the City of David City by a respondent to the RFP shall become property of the City of David City.
5. Expenses incurred in the preparation and submittal of proposals are solely the responsibility of the respondent and not the City of David City. No costs chargeable for work under the proposed contract may be incurred before receipt of either a fully executed contract with the City or specific written authorization from the City of David City.
6. Responses to this Request for Proposals in no way create a valid or binding contract between the respondent and the City of David City.

Council member Keith Marvin made a motion to approve the quote of Waste Connections to provide garbage service for the City of David City accounts, to authorize the Mayor, City Clerk

City Council Proceedings

September 13, 2023

Page #22

and City Attorney to approve the contract and authorize the Mayor to sign. Council Member Kevin Woita seconded the motion. The motion carried.

Jim Angell: Yea, Tom Kobus: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat

Meysenburg: Yea, Kevin Woita: Yea

Yea: 6, Nay: 0



Waste Connections of Nebraska, Inc.
 1200 Hamilton St, Fremont, Nebraska 68025
 P:(402) 721-7511 F:(402) 721-3695

CUSTOMER SERVICE AGREEMENT
 #01103401

SERVICE LOCATION

BILLING INFORMATION

Customer Name CITY OF DAVID CITY (CITY OFFICE)	Customer Name CITY OF DAVID CITY
Customer Name 2 CITY ADMINISTRATION OFFICE	Customer Name 2 DAVID CITY UTILITIES
Account Number 3054-30106573-001	Account Number 3054-30106573-001
Address 490 E ST	Address PO BOX 191
City, State, Zip DAVID CITY, NE, 68632	City, State, Zip DAVID CITY, NE, 68632
Contact TAMI COMTE	Contact TAMI COMTE
Phone (402) 367-3135	Phone (402) 367-3135
Email tcomte@davidcityne.com	Email tcomte@davidcityne.com

SERVICES AND RATES

Effective Date: 10/1/2023

Type	Quantity	Bin Size	Service Frequency	Service Type	Price
Recurring	1.00	96 GALLON	1XW	96 GAL 1X WEEK COMM	\$15.95
On Call	1.00	96 GALLON		EXTRA PICK UP 96 GL - COM	\$15.95

ADDITIONAL COMMENTS

PRICES LOCKED FOR ONE YEAR THEN NOT TO EXCEED 3.5% PER YEAR AFTER
 THIS SERVICE AGREEMENT SERVES AS THE MASTER SERVICE AGREEMENT, REFER TO SCHEDULE A
 FOR ALL LOCATIONS AND PRICING

PAYMENT TERMS

The undersigned individual signing this Agreement on behalf of Customer acknowledges that he or she has read and understands the terms and conditions of this Agreement and that he or she has the authority to sign the Agreement on behalf of the Customer. **TERMS: NET 10 DAYS.** State and local taxes, government franchise fees (if applicable), administrative fees, fuel surcharges and environmental fees also apply. Container relocation, container removal and seasonal restarts will be provided at additional costs.

The service agreement is for 36 months and the renewal period is for 36 months.

THIS CONTRACT CONTAINS AN ARBITRATION PROVISION WHICH MAY BE ENFORCED BY THE PARTIES.

CUSTOMER

REPRESENTATIVE

Authorized Signature	Jamie Johnson District Manager Waste Connections of Nebraska, Inc.		 WASTE CONNECTIONS
Printed Name	P: (402) 721-7511 M: +1 4027190074 @: jamiej@wcnx.org		
Title	Date (MM/DD/YYYY)		
	09/11/2023		

ARTICLE I
SERVICES RENDERED

Customer grants to Contractor the exclusive right to collect and dispose of all of Customer's Waste Materials (as defined below) and agrees to make payments to Contractor as described herein, and Contractor agrees to furnish the services and equipment specified above, all in accordance with the terms of this Agreement.

ARTICLE II
TERM

THE INITIAL TERM (THE "INITIAL TERM") OF THIS AGREEMENT IS 36 MONTHS FROM THE EFFECTIVE SERVICE DATE SET FORTH ON THE FIRST PAGE OF THIS AGREEMENT, WHICH IS THE DATE CONTRACTOR'S EQUIPMENT IS DELIVERED TO CUSTOMER'S LOCATION OR SERVICE UNDER THIS AGREEMENT COMMENCES, WHICHEVER IS EARLIER. THIS AGREEMENT SHALL AUTOMATICALLY RENEW FOR SUCCESSIVE 36 MONTHS TERMS (EACH A "RENEWAL TERM" AND TOGETHER WITH THE INITIAL TERM, THE "TERM") THEREAFTER UNLESS EITHER PARTY GIVES WRITTEN NOTICE OF TERMINATION BY U.S. CERTIFIED OR REGISTERED MAIL, POSTAGE PRE-PAID AND RETURN RECEIPT REQUESTED, TO THE OTHER PARTY AT LEAST NINETY (90) DAYS, BUT NOT MORE THAN ONE HUNDRED TWENTY (120) DAYS, PRIOR TO THE EXPIRATION OF THE INITIAL TERM OR ANY RENEWAL TERM. ANY SUCH NOTICE SHALL BE SENT TO THE OTHER PARTY'S ADDRESS SET FORTH ON THE FIRST PAGE OF THIS AGREEMENT, OR ANY CHANGE OF ADDRESS COMMUNICATED IN WRITING BY THE OTHER PARTY DURING THE TERM OF THE AGREEMENT. A RENEWAL TERM SHALL BECOME EFFECTIVE (THEREBY EXTENDING THE THEN-CURRENT TERM) UPON EITHER PARTY'S FAILURE TO GIVE NOTICE OF TERMINATION WITHIN THE TIME PERIOD SET FORTH ABOVE. NOTWITHSTANDING THE FOREGOING, CUSTOMER AGREES THAT IT SHALL NOT PROVIDE ANY SUCH NOTICE OF TERMINATION IF CONTRACTOR MEETS COMPETITIVE OFFERS MADE BY THIRD PARTIES IN WRITING FOR SIMILAR SERVICES AFTER CONTRACTOR'S REVIEW THEREOF PURSUANT TO ARTICLE XIII BELOW.

ARTICLE III
WASTE MATERIALS

The waste materials to be collected and disposed of by Contractor pursuant to this Agreement consist of all solid waste (including recyclable materials) generated or collected by Customer at the locations specified on the first page of this Agreement (the "Waste Materials"); provided, however, that the term Waste Materials specifically excludes and Customer agrees not to deposit in Contractor's equipment or place for collection by Contractor any radioactive, volatile, corrosive, highly flammable, explosive, biomedical, infectious, biohazardous, toxic or hazardous material as defined by applicable federal, state or local laws or regulations ("Excluded Waste"). Customer agrees to comply with any description of and/or procedures with respect to removal of contaminants or preparation of recyclable materials as reasonably provided by Contractor. In the event that any recyclable materials furnished to Contractor by Customer are, due to presence of contaminants, rejected by a recycling facility or otherwise are determined by Contractor not to be resalable or to have a reduced resale value, Contractor may, in addition to its other remedies, require Customer to pay Contractor, as liquidated damages and not as a penalty, the charges incurred by Contractor (plus overhead and profit) for hauling, processing and/or disposal of such materials and for the reduction in resale value of such materials. Contractor shall deliver properly prepared recyclable materials furnished to Contractor by Customer to a recycling facility owned and/or operated by Contractor or an affiliate of Contractor or a third party that Contractor understands will recycle the materials ("Third Party Facility"); provided, however, that Contractor shall not be responsible for and has not made any representation to Customer regarding the ultimate recycling of such recyclable materials by a Third Party Facility.

ARTICLE IV
TITLE

Contractor shall acquire title to the Waste Materials when they are loaded into Contractor's truck. Title to and liability for any Excluded Waste shall remain with Customer. Customer expressly agrees to defend, indemnify and hold harmless Contractor from and against any and all damages, penalties, fines, liabilities and costs (including reasonable attorneys' fees) resulting from or arising out of the deposit of Excluded Waste in Contractor's trucks, containers or other equipment.

ARTICLE V
PAYMENTS

Customer agrees to pay Contractor on a monthly basis for the services and/or equipment furnished by Contractor in accordance with the rates, charges and fees provided for herein ("Charges"). Payment shall be made by Customer to Contractor within the period of time set forth on the first page of this Agreement. Contractor may impose and Customer agrees to pay a late fee as determined by Contractor for all past due payments, and interest on all past due payments at the rate of one and one-half percent (1½%) per month, provided that no such late fee or interest charge shall exceed the maximum rate allowed therefor by applicable law. Any dispute or claim against Contractor concerning any amount invoiced by Contractor must be asserted by Customer in writing to Contractor at the address set forth on the first page of this Agreement not later than one hundred eighty (180) days following the event or circumstance giving rise to the underlying dispute or claim; the failure to abide by such time requirement shall constitute a release and waiver by Customer of any rights in respect of, and shall constitute a bar on, any claims or requests for relief by Customer on the basis of such dispute or claim. Customer will pay Contractor a standard recycling services and equipment charge set forth herein (irrespective of changing commodity values). Customer shall continue to provide, and Contractor shall continue to collect, recyclable materials from Customer in accordance with the terms of this Agreement for the Term hereof notwithstanding changing commodity values.

ARTICLE VI
RATE ADJUSTMENTS

Customer agrees that the Charges shall be increased from time to time to adjust for increases in the Consumer Price Index. Because disposal, fuel, materials and operations costs constitute a significant portion of the cost of Contractor's services provided hereunder, Customer agrees that Contractor may increase the Charges to account for any increase in such costs or any increases in transportation costs due to changes in location of the disposal facility. Customer agrees that Contractor may also increase the Charges to account for increases in the average weight per container yard of Customer's Waste Materials, increases in Contractor's costs due to changes in local, state or federal rules, ordinances or regulations applicable to Contractor's operations or the services provided hereunder, increases in taxes, fees or other governmental charges assessed against or passed through to Contractor (other than income or real property taxes), and changes in the values associated with recyclable materials. Contractor may increase Charges for reasons other than those set forth above with the consent of Customer. Such consent may be evidenced orally, in writing or by the practices and actions of the parties. In the event Contractor adjusts the Charges as provided in this Article, the parties agree that this Agreement as so adjusted will continue in full force and effect. Customer acknowledges and agrees that adjustments to the Charges might not be directly associated with increased costs of servicing Customer's specific account; rather, adjustments to the Charges might be based upon overall costs and expenses incurred by Contractor on a regional or national basis.

ARTICLE VII
SERVICE CHANGES AND AMENDMENTS

Changes to the type, size and amount of equipment, the type or frequency of service, and corresponding adjustments to the rates, may be made by agreement of the parties, evidenced orally in writing or by the practices and actions of the parties, without affecting the validity of this Agreement and this Agreement shall be deemed amended accordingly. This Agreement shall continue in effect for the Term provided herein and shall not be affected by any changes in Customer's service address if any new service address is located within Contractor's service area. Should Customer change its service address to a location outside Contractor's service area, Customer may cancel the Agreement upon thirty (30) days' written notice to Contractor. Any other amendment to this Agreement not otherwise expressly provided for herein shall be made in writing and signed by both parties.

dumpsters

ARTICLE VIII
RESPONSIBILITY FOR EQUIPMENT

Any equipment furnished hereunder by Contractor shall remain the property of Contractor; however, Customer acknowledges that it has care, custody and control of the equipment while at Customer's location and accepts responsibility for all loss or damage to the equipment (except for normal wear and tear or for loss or damage resulting from Contractor's handling of the equipment) and for its contents. Customer shall not overload (by weight or volume), move, alter or install any devices on the equipment, and shall not manually or mechanically compact any materials inside the equipment, except inside compactor receiver boxes specially designed for such purpose, and shall not allow any third party to take any such actions. Customer shall pay additional charges each time that a container is overloaded (by weight or volume). Customer shall use the equipment only for its proper and intended purpose. Customer agrees to indemnify, defend and hold harmless Contractor, its employees and agents against all claims, damages, suits, penalties, fines, liabilities and costs (including reasonable attorneys' fees) for injury or death to persons or loss or damage to property arising out of Customer's use, operation or possession of the equipment. Customer agrees to provide unobstructed access to the equipment on the scheduled collection day. If the equipment is inaccessible so that the regularly scheduled pick-up cannot be made, Contractor will promptly notify Customer and afford Customer a reasonable opportunity to provide the required access; however, Contractor reserves the right to charge an additional fee for such inaccessibility and/or delay or any additional collection service required by Customer's failure to provide such access. The word "equipment" as used in this Agreement shall mean all containers used for the storage of Waste Materials, and such other on-site devices as may be specified on the first page of this Agreement.

ARTICLE IX
DAMAGE TO PAVEMENT

Customer warrants that Customer's pavement, curbing or other driving surface or any right of way reasonably necessary for Contractor to provide the services described herein are sufficient to bear the weight of all of Contractor's equipment and vehicles reasonably required to perform such services. Contractor will not be responsible for damage to any such pavement, curbing, driving surface or right of way, and Customer agrees to assume all liabilities for any such damage, which results from the weight of Contractor's vehicles providing service at Customer's location. *Absent Contractor's negligence.*

ARTICLE X
EARLY TERMINATION; LIQUIDATED DAMAGES

In the event Customer requests termination of this Agreement prior to the expiration of its Term other than as a result of an uncured breach by Contractor or if Contractor terminates this Agreement for Customer's breach (including nonpayment), then, in addition to such other damages as may be sustained by Contractor, Customer agrees to pay to Contractor all past due sums plus, as liquidated damages, a sum calculated as follows: (a) if the remaining Term under this Agreement is six (6) or more months, the average of Customer's most recent six (6) monthly charges multiplied by six (6); or (b) if the remaining Term under this Agreement is less than six (6) months, the average of Customer's most recent six (6) monthly charges multiplied by the number of months remaining in the Term. Notwithstanding the foregoing, if Customer suspended Contractor's collection services or reduced the frequency of Contractor's collection services by 50% or greater during the most recent six (6) month period, then Contractor may calculate liquidated damages using the average of Customer's six (6) monthly charges prior to the suspension or reduction in services, instead of Customer's most recent six (6) monthly charges. If the Term has not yet run for six (6) months, the average of Customer's monthly charges to date shall be used. Customer expressly acknowledges that in the event of an early termination of this Agreement, the anticipated loss to Contractor in such event is estimated to be the amount set forth in the foregoing liquidated damages provision and such estimated value is reasonable and is not imposed as a penalty. The parties stipulate and agree that the liquidated damages set forth in this Article will compensate Contractor for the loss of revenue attributable to the early termination of this Agreement, but the payment of these liquidated damages shall not in any way limit Contractor's rights and remedies relating to a breach of any other provision(s) of this Agreement.

Customer acknowledges and agrees that any request for termination of this Agreement prior to expiration of the Term requires an unscheduled collection of Contractor's equipment, which may take up to thirty (30) days to complete after Contractor receives from Customer: (a) a written request to terminate this Agreement; and (b) full payment of all liquidated damages and past due amounts owed by Customer to Contractor. Customer agrees that it shall not move or allow any third party to move Contractor's equipment during the thirty (30) day period and any time prior thereto, within which Contractor has the sole and exclusive right to service and remove its equipment from Customer's service location, and hereby grants Contractor an irrevocable right and license to allow its equipment to remain on Customer's service location for such thirty (30) day period and all times prior thereto. This Article shall survive the termination or expiration of this Agreement.

ARTICLE XI
BREACH, SUSPENSION AND TERMINATION FOR CAUSE

If during the Term of this Agreement either party shall be in breach of any provision of this Agreement, the other party may suspend its performance hereunder until such breach has been cured or terminate this Agreement; provided, however, that no termination of this Agreement shall be effective until the complaining party has given written notice of such breach to the breaching party and the breaching party has failed to cure such breach within ten (10) days after its receipt of such notice. Upon any such failure to cure, the complaining party may terminate this Agreement by giving the breaching party written notice of such termination, which shall become effective upon receipt of such notice.

ARTICLE XII
ASSIGNMENT

Without the prior written consent of Contractor, which may be withheld in Contractor's sole and absolute discretion, Customer shall not take any one or more of the following actions: (a) assign or transfer this Agreement or any of its rights, or delegate any of its duties or obligations under this Agreement, whether voluntarily, by merger or operation of law, or otherwise; (b) appoint any third party agent (including without limitation any management company or broker) to exercise any rights, responsibilities, or take any action under this Agreement; or (c) request a change in Customer's billing address to any third party. Any violation of this Article by Customer shall constitute a breach of this Agreement for which Contractor may, in its sole and absolute discretion, seek damages and/or specific performance, including injunctive relief, without the requirement of establishing irreparable injury.

ARTICLE XIII
OPPORTUNITY TO PROVIDE ADDITIONAL SERVICES; RIGHT OF FIRST REFUSAL

Contractor values the opportunity to meet all of Customer's Waste Materials collection, disposal and recycling needs. Customer will provide Contractor the opportunity to meet those needs and to provide, on a competitive basis, any additional Waste Materials collection, disposal and recycling services during the Term of this Agreement. Customer also grants Contractor a right of first refusal to match any offer Customer receives (or makes) related to the provision of services to Customer similar to those covered hereunder upon expiration or termination of this Agreement for any reason, and Customer shall give Contractor prompt written notice of any such offer and a reasonable opportunity (but in any event at least five (5) business days from receipt of such notice) to match any such offer. In the event that Contractor matches such an offer, the parties hereto shall thereafter be bound by the terms of such offer. If Customer fails to comply with these right of first refusal provisions in any instance, then Customer shall pay to Contractor all resulting damages incurred by Contractor, including, without limitation, lost profits.

ARTICLE XIV
EXCUSED PERFORMANCE

Except for the payment of amounts owed hereunder, neither party hereto shall be liable for its failure to perform or delay in its performance hereunder due to contingencies beyond its reasonable control including, but not limited to, strikes, riots, compliance with laws or governmental orders, inability to access a container, fires, inclement weather and acts of God, and such failure shall not constitute a breach under this Agreement. For the avoidance of doubt, however, a law or government order, ordinance or award establishing an exclusive franchise or similar right for a service provider in Contractor's service area shall not excuse Customer's performance hereunder.

ARTICLE XV
BINDING EFFECT

This Agreement is a legally binding contract on the part of Contractor and Customer and their respective heirs, successors and permitted assigns, in accordance with the terms and conditions set out herein.

ARTICLE XVI
ATTORNEYS' FEES

In the event Customer fails to pay Contractor all amounts which become due under this Agreement (including any liquidated damages, late fees and interest assessed thereon), or fails to perform its obligations hereunder, and Contractor refers such matter to an attorney, Customer agrees to pay, in addition to all past due sums, any and all costs incurred by Contractor as a result of such action, including, to the extent permitted by law, reasonable attorneys' fees.

ARTICLE XVII

ENTIRE AGREEMENT; GOVERNING LAW; SEVERABILITY; SURVIVAL

This Agreement represents the entire understanding and agreement between the parties hereto concerning the matters described herein and supersedes any and all prior or contemporaneous agreements, whether written or oral, that may exist between the parties regarding the same. This Agreement shall be governed by the laws of the State in which Customer's service locations listed on the first page of this Agreement are situated, without regard to conflicts of law provisions, except that the agreement to arbitrate in Article XVIII shall be governed by the Federal Arbitration Act (9 U.S.C. sections 1 et seq.). If any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and the invalid, illegal, or unenforceable provision shall be modified only to the extent necessary to make it enforceable. All agreements, representations, warranties and acknowledgments of Customer shall survive any termination or expiration of this Agreement, including, without limitation, those set forth in Articles III, IV, V, VIII, IX, X, XII, XIII, XVI and XVIII.

ARTICLE XVIII

BINDING ARBITRATION AND CLASS ACTION WAIVER

Except for Excluded Claims (as defined below), any disputes, controversies or claims arising out of or relating to this Agreement or any prior agreement between the parties hereto, the breach of such agreement(s), or any amounts paid or invoiced between the parties, shall be resolved by mandatory binding arbitration before a single arbitrator administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules (collectively "Rules"), and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The following claims are not subject to mandatory binding arbitration (collectively, "Excluded Claims"): (A) either party's claims against the other in connection with bodily injury, real property damage or Excluded Waste; (B) Contractor's claims against Customer to collect past due Charges or liquidated damages under this Agreement or any prior agreements between the parties; (C) Contractor's pursuit of any claims or relief relating to the provisions in Articles VIII and/or X or any similar provisions in any prior agreements between the parties, and any injunctive relief sought in relation thereto; and (D) any claims or relief sought in relation to Article XII or any similar provision in any prior agreements between the parties. This agreement to arbitrate is governed by the Federal Arbitration Act.

THE PARTIES HERETO AGREE THAT ANY AND ALL DISPUTES, CONTROVERSIES OR CLAIMS OF ANY NATURE, WHETHER IN ARBITRATION OR OTHERWISE AND WHETHER RELATING TO THIS AGREEMENT OR OTHERWISE, MUST BE BROUGHT IN A PARTY'S INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS, CONSOLIDATED, COLLECTIVE OR REPRESENTATIVE PROCEEDING. ACCORDINGLY, EACH PARTY HEREBY WAIVES ANY AND ALL RIGHTS TO BRING ANY CLAIM OR ACTION AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS, CONSOLIDATED, COLLECTIVE OR REPRESENTATIVE PROCEEDING RELATING TO ANY DISPUTES, CONTROVERSIES OR CLAIMS BETWEEN THE PARTIES.

Notwithstanding anything to the contrary herein or in the Rules, any interpretation or adjudication related to this Article shall be done by a court, not an arbitrator.

ARTICLE XIX

CUSTOMER MASTER SERVICE AGREEMENTS

If Customer and Contractor or any of their respective parent companies or affiliates enter into a Master Service Agreement concerning the Waste Materials, and in the event of a conflict between the Master Service Agreement and this Agreement, the terms of this Agreement shall control, except to the extent the Master Service Agreement specifically references a provision of this Agreement, which reference shall include any applicable Article or Section reference, and the parties specifically express their intent in the Master Service Agreement to amend such provision.

10/1/2023

City of David City
Schedule A
Account # 30106573

Acct #	Service Address	Container Size	Frequency	Monthly Rate
-001	City Office (490 E St)	96-gal cart	1x/wk.	\$ 15.95
-002	Pool (485 S 9 th St/Seasonal)	2yd	1x/wk.	\$ 44.95
-003	Library (399 5 th St)	96-gal cart	1x/wk.	\$ 15.95
-004	Sewer Dept (3461 M Rd)	2yd	1x/wk.	\$ 59.95
-005	Auditorium (699 Kansas St)	8yd	1x/wk.	\$124.95
-006	Water Plant (1220 E St)	2yd	1x/wk.	\$ 49.95
-007	Street Dept (174 E St)	8yd	1x/wk.	\$124.95
-008	Ball fields (100 M Rd/Seasonal)	3yd	1x/wk.	\$ 59.95
-009	Water Dept Astro Bldg (660 5 th St)	2yd	1x/wk.	\$ 49.95

***Price Increase limited per Master Agreement

Customer (Authorized Signature)

Waste Connections of NE

Title_____

District Manager

Printed Name_____

Jamie Johnson

Mayor Miller stated that the next item on the agenda was discussion/action regarding the well and the lease at the soccer field.

Mayor Miller stated that she did not want to take any action on this at this time because we do not have a current lease for the soccer field.

Recreation Coordinator Will Reiter stated that the well at the soccer field is pumping sand and needs to either be replaced or they would need to hook on to City water.

Council member Keith Marvin stated that since the soccer field is within the City limits that we should follow our own policy and tap on to the City water system especially since we don't own the soccer field.

It was noted that Recreation Coordinator Will Reiter would give City Attorney David Levy the contact information for the Ag Society so that the City could get a lease negotiated with them.

Council member Keith Marvin made a motion to appoint a Park Committee consisting of Council members Jim Angell and Bruce Meysenburg, Park/Auditorium Supervisor Bill Buntgen, Recreation Coordinator Will Reiter and Jim Witter. Council Member Kevin Woita seconded the motion. The motion carried.

Jim Angell: Yea, Tom Kobus: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Woita: Yea
Yea: 6, Nay: 0

Mayor Jessica Miller stated that she hopes to see the Park Committee meet quarterly.

Mayor Jessica Miller stated that the next item on the agenda was discussion/action regarding campground signage, security cameras, flagpole, electrical circuit breaker size and determine rental rates.

Brad Swerczek with K-Tech Project Services introduced himself and asked if the Council wanted informational signage for the campground and also pad number locations.

There was discussion regarding putting the pad number on the electrical boxes.

RV site rental rates were discussed. Swerczek did a comparison of rates in the area of comparable campgrounds with full hookups. See the following.

Attached are the latest notes for the campground project based on our conversation on Monday. Also, below are some rental rates for a number of different campgrounds in the region that offer full hook-ups (sanitary sewer, water, power) at each pad.

Louisville State Recreation Area - \$35/day
Branched Oak - \$35/day
York Kampground - \$37/day
Kearney RV Park & Campground - \$50/day
Platte River State Park: \$35/day
Lake Cunningham, Omaha - \$45/day, \$50/day weekends and holidays
Ashland RV Campground - \$45/day
West Omaha KOA - \$65/day
Mahoney State Park - \$35/day

Discussion regarding rental rates followed. There will be a Resolution on the next agenda to set the rental rates.

Council member Keith Marvin made a motion to approve the Security Agreement with Nebraska Public Power District to install certain transmission facilities to serve a new load and to approve the Transmission Facilities Construction Agreement. Council Member Bruce Meysenburg seconded the motion. The motion carried.

Jim Angell: Yea, Tom Kobus: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Woita: Yea
Yea: 6, Nay: 0

SECURITY AGREEMENT

This Security Agreement (this "Security Agreement"), dated as of September 13, 2023, is entered into by City of David City, a municipal corporation and political subdivision of the State of Nebraska (the "Security Provider") in favor of and for the benefit of Nebraska Public Power District, a public corporation and political subdivision of the State of Nebraska ("**NPPD**", and together with Security Provider, the "**Parties**"). Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to them in the Agreement (as defined below).

RECITALS:

A. NPPD has entered into a Transmission Facility Construction Agreement dated as of September 13, 2023 (the "TFCA"), with Security Provider pursuant to which NPPD has agreed to install certain transmission facilities to serve a new load.

B. Security Provider is willing to irrevocably and unconditionally guaranty the amount of energy consumption from this new load that will be metered by NPPD and billed to the Security Provider as defined in the TFCA.

NOW THEREFORE, based on the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Security Provider hereby covenants and agrees as follows:

1. **GUARANTY.** Subject to the provisions hereof, Security Provider hereby irrevocably and unconditionally guarantees, as primary obligor and not merely as surety, the timely payment when due of any monetary damages or amounts owed to NPPD by Security Provider pursuant to the TFCA. The liability of Security Provider under this Security Agreement shall be subject to the following:

(a) The maximum aggregate amount payable under this Security Agreement shall not exceed the Stranded Cost Estimate as defined in the TFCA.

(b) The liability of shall be based on the terms of TFCA and reduced accordingly as actual energy is consumed by the new load defined in the TFCA and as adjusted once the terms of the TFCA are met.

(c) The Security Agreement shall be terminated automatically, and shall be of no further force and effect upon the earliest to occur of (i) the full satisfaction of the Full Build Out Guarantee defined in the TFCA or payment by Security Provider of the payments required for not achieving the Full Build Out Guarantee as defined in the TFCA, subject to the maximum aggregate liability set forth in Section 1(a) above, or (iii) the replacement of this Security Agreement with other forms of Security as allowed by the TFCA or NPPD's Transmission Extension Policy.

2. DEMANDS AND NOTICE. A demand made by NPPD upon Security Provider under Section 1 hereof (hereinafter referred to as a “**Payment Demand**”) shall be in writing and shall briefly specify the basis for the payment under the Security Agreement, and the amount of the payment due thereunder, with a specific statement that NPPD is calling upon the Security Provider to pay under this Security Agreement.
3. REPRESENTATIONS AND WARRANTIES. Security Provider represents and warrants that:
 - (a) it is a Retail Service Provider duly organized and validly existing under the Laws of Nebraska and has the power and authority to execute, deliver and carry out the terms and provisions of this Security Agreement;
 - (b) no authorization, approval, consent or order of, or registration or filing with, any court or other Governmental Authority having jurisdiction over Security Provider is required for the execution and delivery of this Security Agreement; and
 - (c) this Security Agreement has been duly authorized by all necessary action, has been duly executed and delivered, and constitutes a valid and legally binding agreement of Security Provider, except as the enforceability of this Security Agreement may be limited by the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar Laws affecting creditors’ rights generally and by general principles of equity.
4. AMENDMENT OF SECURITY AGREEMENT. No term or provision of this Security Agreement shall be amended, modified, altered, waived or supplemented except by a writing signed by the Security Provider and NPPD.
5. Except as to applicable statutes of limitation, no delay of NPPD in the exercise of, or failure to exercise, any rights hereunder shall operate as a waiver of such rights, a waiver of any other rights or a release of Security Provider from any obligations hereunder.
6. NOTICE. Any default notice, notice, request, instruction, correspondence or other document to be given hereunder by any Party to another (herein collectively called “**Notice**”) shall be in writing (regardless of whether the applicable provision expressly requires a writing) and delivered personally or mailed by certified mail, postage prepaid and return receipt requested, or by email, as follows:

If to Security Provider:

City of David City
Clerk/Treasurer
P.O. Box 191
557 4th Street
David City, NE 68632-0191

If to NPPD:

Laura Kapustka
Vice President & Chief Financial Officer
Nebraska Public Power District
1414 15th Street
P.O. Box 499

Copy To:

Harold L. Hadland
Office of the General Counsel
Nebraska Public Power District
1414 15th Street
P.O.Box 499

Notice given by personal delivery, mail, or courier shall be effective upon actual receipt or rejection, as identified in the return receipt (in the case of mail) or on the tracking report (in the case of courier). Notice given by email shall be effective upon actual receipt if received during the recipient's normal business hours, or at the beginning of the recipient's next business day after receipt if not received during the recipient's normal business hours. Any Party hereto may change any address to which Notice is to be given to it by giving notice of such change of address as provided above.

7. MISCELLANEOUS. THIS SECURITY AGREEMENT SHALL IN ALL RESPECTS BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF NEBRASKA, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS. Security Provider hereby agrees to be subject to suit in the federal court in the State of Nebraska and submit to the jurisdiction and venue of said court for any suit to enforce this Security Agreement. This Security Agreement shall be binding upon Security Provider, its successors and assigns and inure to the benefit of and be enforceable to NPPD, its successors and assigns. The Security Agreement embodies the entire agreement and understanding between Security Provider and NPPD and supersedes all prior agreements and understandings relating to the subject matter hereof. The headings in this Security Agreement are for purposes of reference only and shall not affect the meaning hereof. This Security Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.

EXECUTED as of the day and year first above written.

CITY OF DAVID CITY, NEBRASKA:

Per: _____

Name Jessica J. Miller

Title Mayor

Date September 13, 2023

Per: _____

Name Tami L Comte

Title City Clerk-Treasurer

Date September 13, 2023

TRANSMISSION FACILITIES CONSTRUCTION AGREEMENT – NPPD’s RISING CITY SUBSTATION

THIS TRANSMISSION FACILITIES CONSTRUCTION AGREEMENT (“**Agreement**”) is made and entered into as of the 13th day of September, 2023, between CITY OF DAVID CITY, a municipal corporation and political subdivision of the State of Nebraska (hereinafter referred to as “Retail Service Provider”), and Nebraska Public Power District, a public corporation and political subdivision of the State of Nebraska (hereinafter referred to as the “**NPPD**”).

WHEREAS, Customer intends to own and operate the Customer Facility and wishes to enable the Customer Facility to obtain service from the Retail Service Provider by means of the Transmission System;

WHEREAS, Retail Service Provider owns and operates its electric system in parallel connection with NPPD’s electric system and wishes to provide service to the Customer Facility;

WHEREAS, NPPD is willing to construct the NPPD Transmission Facilities, and the NPPD Network Upgrades, which will be used to provide transmission service to the Retail Service Provider that will serve the Customer Facility;

AND WHEREAS, the Parties enter into this Agreement to establish the rights and obligations of each Party for construction and payment for the NPPD Transmission Facilities for the Customer Facility.

NOW THEREFORE, in consideration of, and subject to the mutual covenants contained herein, the Parties agree as follows:

Article 1 - DEFINITIONS AND INCORPORATED APPENDICES

1.1 Defined Terms. Unless otherwise specified in this Agreement, the following terms shall, for the purposes of this Agreement, have the following meanings:

“**Affiliate**” shall mean , in relation to a Party, any company or corporation which (i) directly or indirectly controls such Party; (ii) is directly or indirectly controlled by such Party; or (iii) is directly or indirectly controlled by a company or corporation which directly or indirectly controls such Party; where “controls”, “controlled by” and “under common control with” mean the possession directly, or indirectly through one or more intermediaries, of more than fifty percent (50%) of the outstanding voting stock or ownership of the company in question, or the power to direct or cause the direction of management policies of, any person, whether through ownership of stock, as a general partner or trustee, by contract or otherwise. Affiliate includes, but is not limited by, the meaning given to that term in the Business Corporation Act of Nebraska.

“**A.M. Best**” shall mean A.M. Best Company, Inc. or any successor thereto.

“**Business Day**” means any day on which banks in Nebraska are open for business, beginning at 8:00 a.m. and ending at 5:00 p.m. local time in Columbus, Nebraska.

“**Confidential Information**” means any non-public information (including, without limitation, any scientific, engineering, technical, commercial, financial, process, personnel or economic data or information, information about project-related costs, operating and maintenance history, and business and other plans) disclosed by or on behalf of either party to the other party, either directly or indirectly, in written, oral, graphic, electronic or other form, pursuant to this

Agreement, that: (a) is marked or identified as “confidential” or “proprietary” at the time of disclosure, (b) is provided under circumstances reasonably indicating its confidentiality, and confirmed in writing within five (5) Business Days, (c) the definition of Stranded Cost Estimate and Full Build Out Conditions, (d) each date contained in the definition of In-Service Date, Section 3.3, Section 3.5, or Section 4.4, or elsewhere in this Agreement. Confidential Information does not, however, include any information that (i) is now, or later becomes, publicly known and made generally available to the Receiving Party through no action or inaction of the Receiving Party; (ii) is already in the possession of the Receiving Party at the time of disclosure by the Disclosing Party; (iii) is obtained by the Receiving Party from a third party without a breach of such third party’s obligations of confidentiality to the Disclosing Party; or (iv) is independently developed by the Receiving Party without use of or reference to the Disclosing Party’s Confidential Information.

“**Construction Costs**” shall mean any costs and expenses incurred by NPPD including for NPPD’s consultants and contracted suppliers and service providers, to design, engineer, procure, construct, install, and test the NPPD Transmission Facilities.

“**Contribution in Aid of Construction or (CIAOC)**” shall mean a portion of the Construction Costs that are nonrefundable fund to be paid for by Customer, in accordance with Section 4.1.

“**Credit Rating**” means the rating then assigned to an entity’s senior, unsecured long-term debt obligations (not supported by third party credit enhancements) or if such entity does not have a rating for its senior, unsecured long-term debt, then the rating assigned to such entity as an issuer rating by Fitch, S&P, Moody’s or any other rating agency agreed to by the Parties.

“**Customer**” shall mean the entity that owns the Customer Facility.

“**Customer Facility**” shall mean the additional Customer-owned soybean crush facilities to be located near David City, Nebraska, whose load is shown in **Appendix B**.

“**Disclosing Party**” means either Party to this Agreement, when disclosing Confidential Information to the other Party hereto.

“**Effective Date**” shall have the meaning given in Section 2.1.

“**Fitch**” shall mean Fitch Ratings, Inc., or any successor thereto, or in the event that there is no such successor, a nationally recognized credit rating agency.

“**Force Majeure**” shall mean any cause beyond the control of the Party affected, including but not restricted to, acts of God, flood, drought, earthquake, storm, fire, lightning, epidemic, war, riot, civil disturbance or disobedience, labor dispute, nonresponsive or unacceptable bids by contractors and vendors, sabotage, acts of public enemy, acts of terrorism, explosions, orders, regulations or restrictions imposed by any Governmental Authority, or cancellation or revocation of any Regulatory Approval for reasons other than the affected Party’s failure to comply with the terms thereof, which, in any of the foregoing cases, by exercise of due diligence such Party could not reasonably have been expected to avoid, and which, by the exercise of due diligence, it has been unable to overcome, but does not include any cause arising out of a Party’s act of negligence or intentional wrongdoing nor mere economic hardship of a Party.

“**Formula Contribution in Aid of Construction (FCIAOC)**” shall mean a portion of the Construction Costs that are nonrefundable funds to be paid for by Customer, in accordance with Section 4.2.

“**Full Build Out Conditions**” shall mean when the Customer Facility has received delivery from its Retail Service Provider at least 166,440 Megawatt hours of electrical energy (based on 730 days times 24 hours per day times the minimum guaranteed load as stated in **Appendix B**), which were consumed after the In-Service Date, and that occurred over a consecutive period of no more than 730 days. This required amount of consumption shall be based on the metering used to determine billing from NPPD to Retail Service Provider.

“Good Utility Practices” shall mean, at any particular time, any of the practices, methods and acts engaged in or approved by a significant portion of the electric utilities located in the United States during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time a decision is made, could be expected to produce the desired result at the lowest reasonable cost consistent with reliability, safety and expedition. Good Utility Practices are not intended to be limited to the optimum practices, methods or acts to the exclusion of all others, but rather to be a range of acceptable practices, methods or acts.

“Governmental Authority” shall mean any federal, state, local governmental, regulatory, or administrative agency, court, commission, administration, department, board, governmental subdivision, or authority, or any person acting as a delegate or agent of any of the foregoing having jurisdiction over the subject matter and Party. Notwithstanding the foregoing, neither the Retail Service Provider nor NPPD shall be considered a Governmental Authority.

“Governmental Charges” shall mean any present or future tax, levy, impost, duty charge, assessment, or fee of any nature (including interest, penalties, and additions thereto) that is imposed by any Governmental Authority in respect of any payment under this Agreement.

“In-Service Date” shall mean the day that both of the following have occurred: (a) NPPD Transmission Facilities and NPPD Network Upgrades have been completed and energized, and (b) Customer has confirmed in writing to the Retail Service Provider and NPPD that Customer is prepared to receive the supply of power from the Retail Service Provider, via the NPPD Transmission Facilities, at a load no less than the minimum guaranteed load and no greater than the maximum load as stated in Appendix B. The In-Service Date is targeted to be December 31, 2025, or other such date as agreed upon in writing with a superseded **Appendix B**.

“Laws” shall mean all federal, state or local laws, codes, rules, regulations, and orders of any Governmental Authority applicable to the Party and matter at issue.

“Letter of Credit” shall mean a letter of credit issued by a Qualified Issuer either (a) in the form of the letter of credit attached hereto as Appendix B, or (b) otherwise in form and substance satisfactory to NPPD at NPPD’s discretion.

“Loss” shall have the meaning given in Section 8.1.

“Moody’s” shall mean Moody’s Investor Service, Inc. or any successor thereto, or in the event that there is no such successor, a nationally recognized credit rating agency.

MVA means mega-volt-amps (million volt-amps)

“National Electric Safety Code” shall mean the National Electrical Safety Code, as published by The Institute of Electrical and Electronics Engineers, Incorporated.

“NPPD Transmission Facilities” shall mean all facilities and equipment, including upgrades to the NPPD Transmission Substation(s) and/or line(s), owned, operated and maintained by NPPD, as located and described in Appendix A.

“NPPD Network Upgrades” shall mean all facilities and equipment, including upgrades to the NPPD Transmission Substation(s) and/or line(s), owned, operated and maintained by NPPD, that are part of the Transmission Network and are needed to serve the load defined in Appendix C, but are not considered part of the NPPD Transmission Facilities. NPPD shall design, engineer, procure, construct, install, test, own, operate, and maintain the NPPD Network Upgrades as described in a Notice to Construct (“NTC”) from the Southwest Power Pool (“SPP”). NPPD shall complete the NPPD Network Upgrades in accordance with NPPD’s applicable standards for the procurement, engineering, and construction of facilities in its electrical transmission and distribution system, **the project plan, the applicable SPP Requirements, all requirements of applicable electric industry safety and/or engineering**

codes and standards, including the National Electric Safety Code and those of NPPD, Good Utility Practices, and all applicable Laws. NPPD shall commence and continue performance of the NPPD Network Upgrades upon receipt and acceptance of a written NTC. Customer is not under any financial obligations associated with the NPPD Network Upgrades but acknowledges that these must be completed or otherwise mitigated, by NPPD, prior to Customer taking any service from the NPPD Transmission Facilities, as applicable.

“NTP” shall have the meaning given in Section 3.1.

“NTP Date” shall mean the date on which the NTP is issued under Section 3.2.

“Party” shall mean either Customer or NPPD and “Parties” shall mean both Customer and NPPD.

“Point of Interconnection” shall mean the location of NPPD facility ownership demarcation to serve the Retail Service Provider for the Customer, as depicted in Appendix A.

“Qualified Guarantor” shall mean an entity incorporated, doing business and having an office in the United States (a) with assets in the amount of One Billion Dollars (\$1,000,000,000) in the United States and an Investment Grade Credit Rating or (b) that has otherwise been approved in writing by NPPD, as shown by NPPD’s signing the acceptance of the Guaranty Agreement.

“Qualified Issuer” shall mean a U.S. commercial bank either organized under the laws of the United States or a state therein, in each case, having a Credit Rating equivalent to “A-” or better as determined by S&P or Fitch and “A3” or better as determined by Moody’s, provided, that if the Credit Ratings by S&P, Fitch and Moody’s are not equivalent, then the highest of the Credit Ratings shall control for purposes of determining whether the entity’s Credit Rating meets the requirements for a Qualified Issuer. For a surety bond it shall mean an insurance company with an “aaa” issuer credit rating by A.M. Best or a financial strength rating of “A++” by A.M. Best.

“Receiving Party” means either Party to this Agreement, when receiving Confidential Information from the other Party hereto.

“Records” shall have the meaning given in Section 3.6.

“Regulatory Approvals” shall have the meaning given in Section 10.8.

“Retail Service Provider” shall mean the City of David City.

“S&P” shall mean Standard & Poor’s or any successor thereto, or in the event that there is no such successor, a nationally recognized credit rating agency.

“Security” shall have the meaning given in Article 4.

“Stranded Cost Estimate” shall mean Three hundred thirty-seven thousand seven hundred thirty-five dollars (\$337,735) or other amount as agreed upon between the Parties in a superseded **Appendix B**.

“Transmission System” shall mean the electric transmission facilities of NPPD.

“Term” shall have the meaning given in Section 2.2.

“Termination Payments” shall mean the payments due to NPPD from Customer upon the termination of this Agreement, as set out in Section 6.3.

“Work” shall have the meaning given in Section 3.1.

1.2 Attachments and Appendices.

The following appendices are incorporated into and shall be part of this Agreement:

Appendix A	Depiction of NPPD Transmission Facilities, Point of Interconnection, Retail Service Provider Facilities and Customer Facility
Appendix B	Customer Facility Service Requirements
Appendix C	Form of Letter of Credit

Appendix D	Form of Escrow Agreement
Appendix E	Form of Surety Bond
Appendix F	Form of Security Guarantee (public power entity only)

Article 2 - TERM OF AGREEMENT

2.1 Effective Date. This Agreement shall become effective on the date first written above (the “**Effective Date**”).

2.2 Term. This Agreement shall continue in full force and effect from the Effective Date until the date that NPPD returns any remaining Security to Retail Service Provider under Section 4.2, unless NPPD terminates this Agreement pursuant to Article 4, or Retail Service Provider terminates this Agreement pursuant to Article 6.2 (the “**Term**”).

2.3 Survival. The applicable provisions of this Agreement shall continue in effect after termination hereof to the extent necessary to provide for final billings, billing adjustments, the determination and enforcement of liability and indemnification obligations arising from acts or events that occurred while this Agreement was in effect and for the enforcement of obligations that continue beyond the term of this Agreement as specifically provided herein.

Article 3 - CONSTRUCTION OF NPPD TRANSMISSION FACILITIES

3.1 NPPD Transmission Facilities. NPPD shall design, engineer, procure, construct, install, test, own, operate, and maintain the NPPD Transmission Facilities as described in **Appendix A** (the “**Work**”). NPPD shall perform the Work in accordance with NPPD’s applicable standards for the procurement, engineering, and construction of facilities in its electrical transmission and distribution system, the project plan, the Customer Service Requirements, all requirements of applicable electric industry safety and/or engineering codes and standards, including the National Electric Safety Code and those of NPPD, Good Utility Practices, and all applicable Laws. NPPD shall commence and continue performance of the Work upon receipt of a written notice to proceed (“**NTP**”) and contributions and/or Security under Article 4 from Retail Service Provider. NPPD may, at its sole discretion, proceed with constructing the NPPD Transmission Facilities with or without a NTP. NPPD shall make good faith efforts to complete construction of the NPPD Transmission Facilities so that the target In-Service Date is achieved. If installation of a 69 kV capacitor bank at the NPPD Rising City substation is not complete prior to the Customer Facility, Retail Service Provider and NPPD agree to mitigate, if needed, the known contingent loss of TL1153B, where such mitigation may include, but not limited to, reduction of Customer Facility load, load transfers, and/or production from Retail Service Provider’s local diesel generation at NPPD’s cost.

3.2 NPPD Notice to Proceed “NTP”. Execution of this Agreement will be deemed as meaning Customer has provided written authorization to proceed with the Work, and the date Retail Service Provider issues such **NTP** shall be the NTP Date (“**NTP Date**”).

3.3 Customer Facility Layout. As requested by NPPD, Retail Service Provider shall submit the legal description and a plot plan for the Customer Facility and any facilities owned by the Retail Service Provider to NPPD for review prior to commencement of construction of the NPPD Transmission Facilities. NPPD shall review and provide any comment on such plot plan which it deems necessary and advisable. NPPD shall then perform the Work in accordance with Section 3.1.

3.4 NPPD Completion Obligations and Project Schedule. NPPD shall use all good faith efforts and Good Utility Practices to (a) perform the Work in accordance with the project schedule, which schedule may be revised from time to time by mutual agreement of the Parties, and (b) in any event, to complete the Work on or before the target date in the definition of In-Service Date, or other such date as agreed upon in writing with a superseded Appendix B. NPPD shall, at Retail Service Provider's request and expense, use good faith efforts to accelerate the Work under this Agreement in order to meet any deadlines requested by Retail Service Provider that are earlier than those set forth in the project schedule, provided that Retail Service Provider authorizes such actions and the Construction Costs associated therewith in advance.

3.5 Land Rights and Access. Upon reasonable notice and supervision by NPPD. Retail Service Provider shall provide at no cost to NPPD any necessary access for ingress and egress across lands owned or controlled by Retail Service Provider, or as necessary, Customer and/or its Affiliates via Retail Service Provider for the construction, operation and maintenance of necessary lines, switches, and other equipment to interconnect the NPPD Transmission Facilities and the Point of Interconnection. NPPD shall obtain transmission line easements from third parties to the extent required for the NPPD Transmission Facilities in form and substance reasonably satisfactory to NPPD.

3.6 Records and Audit Rights. NPPD shall maintain all reports, documents, data, correspondence, books, and records created in connection with the performance of the Work and the incurrence of the Construction Costs (the "Records") and make the Records available to Retail Service Provider and its representatives for review and audit during NPPD's normal business hours upon at least twenty-four (24) hours notice. If applicable, NPPD shall maintain the Records in accordance with generally accepted accounting principles. NPPD shall maintain all Records throughout the Term and for a period of three (3) years thereafter or for such longer period as may be required by Law or Good Utility Practices.

3.7 Retail Service Provider Status Reports. Retail Service Provider shall inform NPPD in writing, within thirty (30) days, of any time that it determines there is a delay in the construction and commissioning of the Customer Facility that impacts the In-Service Date.

3.8 NPPD Status Reports. NPPD shall inform Retail Service Provider in writing, within thirty (30) days any time it determines there is a delay in the Work that impacts the In-Service Date.

Article 4 - CONTRIBUTION IN AID OF CONSTRUCTION AND CREDIT SUPPORT

Contribution in Aid of Construction. Within thirty (30) days of the NTP Date, Retail Service Provider shall pay zero dollars and zero cents (\$0.00) to NPPD prior to the start of construction. Any such nonrefundable payment(s) for CIAOC are to be used by NPPD to cover approximately 50% of the costs associated with installing a second transformer as part of the NPPD Transmission Facilities, as requested by Retail Service Provider. For the avoidance of doubt, this amount shall not be subject to change, regardless of actual Construction Costs. NPPD does not include these costs in its determination of the Stranded Cost Estimate.

Formula Contribution in Aid of Construction. In addition to any Contribution in Aid of Construction in Section 4.1 above, within thirty (30) days of the NTP Date, Retail Service Provider shall also pay zero dollars and zero cents (\$0.00) to NPPD prior to the start of construction. Any such nonrefundable payment(s) for FCIAOC are to be used by NPPD to cover a portion of the Construction Costs that, in NPPD's sole discretion, are costs associated with the NPPD Transmission Facilities that are at risk of not be recovered during the operation of the Customer Facility at the minimum guaranteed load as stated in **Appendix B**.

4.1 Financial Assurances. In accordance with the schedule below, Retail Service Provider shall obtain and provide to NPPD either 1) one or more standby Letters of Credit, cash to be held in an interest-bearing escrow account pursuant to an escrow agreement with a Qualified Issuer in the form attached hereto as Appendix D (with interest accruing to the benefit of Retail Service Provider) and/or surety bonds from a Qualified Issuer in form attached hereto as Appendix E, upon which Letter(s) of Credit, escrow agreement for cash or surety bonds (or any such combination of the foregoing) are in a form and substance acceptable to NPPD issued by Qualified Issuers or 2) a security guarantee in the form attached hereto as Appendix F, can be drawn, and shall be in the aggregate amount of the Stranded Cost Estimate less the Formula Contribution in Aid of Construction (the “**Security**”) listed in the table of this Section 4.3 below. NPPD’s obligations under this Agreement are conditional upon receipt and maintenance of the Security. This Security will remain in force until (i) drawn on by NPPD under the terms of this Agreement, (ii) reduced under Section 4.4, or (iii) released under Section 4.5. Retail Service Provider may substitute one form of Security for another of such forms upon sixty (60) days written notice to NPPD. Retail Service Provider may substitute one Letter of Credit for another Letter of Credit upon thirty (30) days notice if such notice identifies the Qualified Issuer and provides evidence of the credit rating of the issuer satisfactory to NPPD, and the substitute Letter of Credit is in a form and substance acceptable to NPPD.

Payment Date	Associated Work Being Secured	Security Required for Stranded Cost Estimate
Upon thirty (30) days from NPPD invoice following execution of this Agreement	Long Lead Time Equipment, Engineering, Project Management, Construction	\$337,735

4.2 Paying Down Security. Upon taking service, and for a period of up to three (3) years from such date, but not exceeding a cumulative total that is 50% of the Stranded Cost Estimate, Retail Service Provider may, at their option, lower their amount of required Security on a calendar quarterly basis, based upon a \$1 for \$1 ratio of the transmission charges (T-line) on their paid electrical bills for Customer Facility loads metered from the NPPD Rising City substation as determined by NPPD, in its sole discretion, in coordination with Retail Service Provider meter(s). At the end of each calendar quarter, Retail Service Provider may lower its Security by the total calendar quarterly amount that was paid for transmission electrical service in that calendar quarterly period, subject to the cumulative total limit above.

4.3 Release of Security. NPPD shall return any remaining Security or confirm release of the standby Letter of Credit not drawn by NPPD to Retail Service Provider promptly after the date that is two (2) years following the In-Service Date; provided, however, that if Customer has not accomplished the Full Build Out Conditions by such date, the Security shall remain in place until Customer has accomplished the Full Build Out Conditions. Retail Service Provider shall be entitled to, but shall not have any obligation to, replenish any portion of the Security drawn by NPPD.

4.4 Draws on Security. NPPD may draw on the Security upon Retail Service Provider’s failure to pay amounts due under Article 6.

4.5 Conditions Subsequent. This Agreement is predicated upon Customer’s plan to construct up to the Full Build Out Conditions. In the event Customer does not accomplish the Full Build Out Conditions by the third anniversary of the In-Service Date: 1) NPPD may consider this Agreement to have been terminated by the Retail Service Provider, 2) NPPD shall determine if the actual transmission service revenue plus risk-adjusted, future transmission

service revenues indicate that the previously calculated FCIAOC is not sufficient, and 3) NPPD may proceed under Section 6.3.

4.6 Failure of Retail Service Provider to provide the Security as required shall result in loss of all service to the Customer Facility. Within 2 business days of such failure to provide Security, NPPD is obligated to open any switches/breakers as needed to remove electric service to the Customer Facility.

4.7 Further Security Adjustments For Other Users. The following process will be used if other users are allocated any capacity from the NPPD Transmission Facility prior to the In-Service Date: Retail Service Provider's allocated percentage of the Security required for Stranded Cost Estimate less the FCIAOC in Section 4.3 shall be based on the projected peak use of the NPPD Transmission Facilities by the Customer Facility and any other users to have interconnection at the new NPPD Transmission Facilities pursuant to such other user(s) having a written agreement with NPPD entered into prior to the In-Service Date.

Payment. For any amount payable by Retail Service Provider to NPPD pursuant to Article 4 of this Agreement, NPPD shall render an invoice by electronic mail and regular mail to Retail Service Provider, with return receipt requested, to the address of a person designated by Retail Service Provider. Retail Service Provider shall pay all undisputed amounts to NPPD by electronic funds transfer within 30 days from the date Retail Service Provider receives the invoice. If the 30th day falls on a non-business day, payment shall be due on the immediately succeeding business day

Article 5 - FORCE MAJEURE

5.1 Notice. The Party unable to carry out an obligation imposed on it by this Agreement due to Force Majeure shall notify the other Party in writing or by telephone, followed up in writing, promptly after the occurrence of the cause relied on.

5.2 Duration of Force Majeure. Except as set forth in Section 5.3, no Party shall be considered in breach or default as to any obligation under this Agreement to the extent such Party is delayed or prevented from fulfilling the obligation due to an event of Force Majeure, whether occurring on the Transmission System, the Customer Facility, the NPPD Transmission Facilities, or any connecting electric generating, transmission or distribution system affecting the Party's operations. A Party shall be excused from whatever performance is affected only for the duration of the Force Majeure and while the Party exercises good faith efforts to alleviate such situation. As soon as the non-performing Party is able to resume performance of its obligations excused as a result of the occurrence of Force Majeure, such Party shall give prompt notice thereof to the other Party and shall recommence performance.

5.3 Obligation to Make Payments. Any Party's obligation to make payments under this Agreement shall not be suspended by Force Majeure.

Article 6 - SUSPENSION OF WORK; TERMINATION AND PAYMENT OF COSTS

6.1 Suspension. Once NPPD has commenced performance of the Work in accordance with Section 3.1, any suspension of the Work shall be at NPPD's discretion.

6.2 Termination for Convenience. Retail Service Provider may terminate this Agreement for any reason whatsoever at any time by providing a minimum of three (3) Business Days written notice of termination to NPPD. Such termination shall be effective upon Retail Service Provider's satisfaction of all Termination Payments as set out in Section 6.3.

6.3 Termination Payments. If this Agreement is terminated by Retail Service Provider per Section 6.2, or if this Agreement is terminated by NPPD pursuant to Section 4.7, NPPD may draw on the full value of the remaining Security (if any) and NPPD will retain all Contribution in Aid of Construction payments received as detailed in Section 4.1. Further, NPPD will retain all of the Formula Contribution in Aid of Construction payment received as detailed in Section 4.2.

Retail Service Provider shall pay to NPPD any insufficient contribution calculated pursuant to Section 4.7, if remaining Security retained by NPPD is less than such insufficient contribution amount calculated in Section 4.7.

6.4 Payment. For any amount payable by Retail Service Provider to NPPD pursuant to Section 6.3 of this Agreement, NPPD shall render an invoice by electronic mail and regular mail to Retail Service Provider, with return receipt requested, to the address of a person designated by Retail Service Provider. Retail Service Provider shall pay all undisputed amounts to NPPD by electronic funds transfer within thirty (30) days from the date Retail Service Provider receives the invoice. If the 30th day falls on a non-business day, payment shall be due on the immediately succeeding business day. If Retail Service Provider disputes any amounts included in the invoice delivered under this Section 6.4, Retail Service Provider shall deliver notice thereof to NPPD prior to the date such invoice would otherwise be due. Upon receipt of such notice, NPPD shall provide all documentation and evidence of NPPD's disputed amounts as may be reasonably requested by Retail Service Provider, and the Parties shall use commercially good faith efforts to promptly resolve the dispute. Failure of the Parties to settle the dispute shall not negate NPPD's right to draw on the Security.

6.5 Termination for Cause. Retail Service Provider may terminate this Agreement and exercise all other rights and remedies available at law or in equity if NPPD breaches this Agreement and fails to cure such breach within thirty (30) days thereafter. Retail Service Provider shall not be liable for the payments set forth in Section 6.3 following a termination pursuant to this Section 6.5. Upon termination under this Section 6.5, NPPD shall promptly return to Retail Service Provider any remaining Security.

Article 7 - ASSIGNMENT

7.1 General Provision. Neither Party may assign any of its rights or transfer or purport to transfer any of its obligations hereunder without the prior written consent of the other Party.

Article 8 - INDEMNITY

8.1 General. Each Party shall indemnify and hold harmless the other Party, the other Party's Affiliates, and its and their respective officers, shareholders, stakeholders, managers, representatives, directors, agents and employees, from and against any and all loss, liability, damage, cost or expense, for liability for bodily injury to or death of persons, or damage to property of persons (including reasonable legal fees and expenses, litigation costs, consultant fees, investigation fees and sums paid in settlements of claims and any such fees and expenses incurred in enforcing this indemnity or collecting any sums due hereunder) (collectively, "**Loss**") to the extent arising out of, in connection with, or resulting from (i) the indemnifying Party's breach of any terms or conditions of this Agreement, or failure to perform any of its obligations under, this Agreement; or (ii) the negligence or willful misconduct of the indemnifying Party, its Affiliates, or its or their contractors and regardless whether arising under law or otherwise; provided, however, that no Party shall have any indemnification obligations under this Section 8.1 with respect to any Loss to the extent the Loss results from the gross negligence or willful misconduct of the Party seeking indemnity.

8.2 Amount Owed. If an indemnifying Party is obligated to indemnify and hold any indemnified person harmless under this Article 8, the amount owing to the indemnified person shall be the amount of such indemnified person's actual Loss, not of any insurance or other recovery.

8.3 Defense of Claim. Promptly after receipt by a Party of any claim or notice of the commencement of any action, administrative, or legal proceeding, or investigation as to which the indemnity provided for in this Article 8 may apply, the indemnified Party shall notify the indemnifying Party in writing of such fact. The indemnifying Party shall assume the defense thereof with counsel designated by such indemnifying Party and satisfactory to the indemnified

Party, provided, however, that if the defendants in any such action include both the indemnified Party and the indemnifying Party and the indemnified Party and the indemnifying Party shall have reasonably concluded that there may be legal defenses available to it which are different from or additional to, or inconsistent with, those available to the indemnifying Party, the indemnified Party shall have the right to select and be represented by separate counsel, at the indemnifying Party's expense.

8.4 Failure to Defend. If the indemnifying Party fails to assume the defense of a claim meriting indemnification, the indemnified Party may, at the sole expense of the indemnifying Party, contest, settle, or pay such claim; provided, however, that settlement or full payment of any such claim may be made only following consent of the indemnifying Party or, absent such consent, written opinion of the indemnified Party's counsel that such claim is meritorious or warrants settlement.

8.5 Consequential Losses. Neither Party shall be liable for any incidental, indirect or consequential economic, exemplary or punitive damages, costs or expenses, loss of profits, loss of revenue, or lost opportunity howsoever characterized suffered by an indemnified Party which arises due to the indemnifying Party's breach of or failure to perform its obligations under this Agreement.

Article 9 - NOTICE

9.1 General. Any notice, request, instruction, correspondence or other document to be given hereunder by any Party to another (herein collectively called "**Notice**") shall be in writing (regardless of whether the applicable provision expressly requires a writing) and delivered personally, mailed by certified mail, postage prepaid and return receipt requested, sent by nationally recognized overnight courier, or sent by email, as follows:

To NPPD:

Scott R. Walz
Vice President, Energy Delivery
Counsel
Nebraska Public Power District
District
1414 15th Street
P.O. Box 499
Columbus, NE 68602-0499
68602-0499
Telephone – (402) 362-7245
Email address srwalz@nppd.com
hlhadla@nppd.com

Copy To:

Harold L. Hadland
Office of the General
Nebraska Public Power
1414 15th Street
P.O. Box 499
Columbus, NE
Telephone – (402) 563-5046
Email address

To Retail Service Provider:

City of David City
Clerk/Treasurer
P.O. Box 191
557 4th Street
David City, NE 68632-0191

Notice given by personal delivery, mail, or courier shall be effective upon actual receipt or rejection, as identified in the return receipt (in the case of mail) or on the tracking report (in the case of courier). Notice given by email shall be effective upon actual receipt if received during the recipient's normal business hours, or at the beginning of the recipient's next business day

after receipt if not received during the recipient's normal business hours. Any Party hereto may change any address to which Notice is to be given to it by giving notice of such change of address as provided above.

Article 10 - MISCELLANEOUS

10.1 Mutual Representation. Each Party represents and warrants to the other that the execution and delivery of this Agreement (a) has been duly authorized by all necessary procedures, (b) does not violate any provision of the Party's governing documents or Laws applicable to the Party, and (c) does not result in the breach of any agreement by which such Party is bound.

10.2 Confidentiality.

(a) The Receiving Party shall not to use any Confidential Information of the Disclosing Party for any purpose other than performance of the Receiving Party's obligations under this Agreement. The Receiving Party shall not to disclose any Confidential Information of the Disclosing Party to any party other than the Receiving Party's Affiliates and its directors, officers, employees, consultants, agents, and advisors (including financial and technical advisors, legal counsel and accountants) (collectively, "**Representatives**") who are required to have the information in order to carry out the Receiving Party's obligations hereunder or to a potential assignee as contemplated under Section 7.1 item (b); provided, however, that the Receiving Party may disclose Confidential Information required to be disclosed by applicable Laws but must first give the Disclosing Party reasonable advance written notice of such requirement (to the extent reasonably practicable) prior to such disclosure in order to enable the Disclosing Party to seek an order protecting the Confidential Information from public disclosure. The Receiving Party will not (and will not attempt to) reverse engineer, disassemble or decompile any prototypes, software or other tangible objects that embody the Disclosing Party's Confidential Information and that are provided to the Receiving Party under this Agreement. The Receiving Party will notify the Disclosing Party immediately upon learning of any unauthorized use or disclosure of Confidential Information and will cooperate with the Disclosing Party in every reasonable way to help the Disclosing Party prevent further unauthorized disclosure or misuse.

(b) The Receiving Party will take reasonable measures to protect the secrecy of and avoid unauthorized disclosure and use of the Confidential Information of the Disclosing Party. Without limiting the foregoing, the Receiving Party will take at least those measures that it takes to protect its own similar confidential information to protect the Disclosing Party's Confidential Information and will ensure that its Representatives who have access to the Disclosing Party's Confidential Information are under obligations with respect to use and disclosure of the Confidential Information at least as protective of the Disclosing Party as this Agreement, prior to any disclosure of Confidential Information to such Representatives. Each party will be fully responsible to the other for any breach of this Agreement by its Representatives. The Receiving Party will only make copies of the Disclosing Party's Confidential Information as reasonably necessary in order to carry out the Purpose. The Receiving Party will reproduce the Disclosing Party's proprietary rights notices on any copies it makes of the Disclosing Party's Confidential Information, in the same manner in which such notices were set forth in or on the original.

(c) Upon any termination or expiration of this Agreement, the Receiving Party's obligations with respect to each item of Confidential Information disclosed prior to such expiration or termination will survive for five (5) years after the date of its disclosure.

(d) If either Party violates, or threatens to violate, any of the provisions of this Section 10.2, the other Party shall be entitled to immediate and permanent injunctive relief (without the necessity of posting of a bond as a pre-condition to the issuance of the relief sought), it being

agreed that the damages which the non-breaching Party would sustain upon such violation are difficult or impossible to ascertain in advance.

10.3 Waiver. Any waiver at any time by a Party of its rights with respect to a default under this Agreement, or with respect to any other matters arising in connection with this Agreement, shall not be deemed a waiver or continuing waiver with respect to any subsequent default or other matter. Except as provided in Article 6, the remedies of the Parties hereunder are cumulative and in addition to all rights and remedies at law and in equity.

10.4 Governing Law; Venue. The validity, interpretation and performance of this Agreement and each of its provisions shall be governed by the Laws of the State of Nebraska, without regard to the conflicts of law provisions. Any legal or equitable action arising out of or in any way connected with this Agreement shall be instituted only in the District Court of Platte County, Nebraska.

10.5 Amendments. This Agreement may be amended by and only by a written instrument duly executed by the Parties. Upon satisfaction of all applicable Laws, an amendment to this Agreement shall become effective and a part of this Agreement.

10.6 Entire Agreement. This Agreement constitutes the entire agreement among the Parties hereto with reference to the subject matter hereof and supersedes all prior oral and written communications pertaining hereto, except as specifically incorporated herein. In the event of a conflict between the body of this Agreement and any Appendix hereto, the terms and provisions of the body of this Agreement shall prevail and be deemed to be the final intent of the Parties.

10.7 Binding Effect. This Agreement and the rights and obligations hereof, shall be binding upon and shall inure to the benefit of the successors and assigns of the Parties hereto.

10.8 Regulatory Requirements. Each Party shall use commercially reasonable efforts to (a) seek any necessary regulatory approvals, permits, and certificates for which such Party is responsible ("**Regulatory Approvals**"), and (b) maintain such Regulatory Approvals for so long as such Regulatory Approvals are required for the continued performance of such Party's obligations hereunder.

10.9 No Partnership Created. Nothing contained in this Agreement shall be construed as constituting a joint venture or partnership between the NPPD and Retail Service Provider.

10.10 No Third Party Beneficiaries. This Agreement and all rights hereunder are intended for the sole benefit of the Parties and shall not imply or create any rights on the part of, or obligations to, any other person.

10.11 Severability. In the event all or part of any of the terms, covenants or conditions of this Agreement, or the application of any such terms, covenants or conditions, shall be held invalid, illegal or unenforceable by any court having jurisdiction, all other terms, covenants and conditions of this Agreement and their application not adversely affected thereby shall remain in force and effect; *provided, however*, that the remaining valid and enforceable provisions materially retain the essence of the Parties' original bargain.

10.12 Captions. The captions contained in this Agreement are for convenience and reference only and in no way define, describe, extend or limit the scope of intent of this Agreement or the intent of any provision contained herein.

10.13 Further Assurances. Each of the Parties hereto shall from time to time and at all times from and after the date hereof, without further consideration do all such further acts and execute and deliver all further agreements and other documents and instruments as may be reasonably necessary to give effect to this Agreement or to otherwise give effect to the provision of this Agreement.

10.14 Counterparts. This Agreement may be executed in any number of counterparts, and each executed counterpart shall have the same force and effect as an original instrument. A

signature page in "PDF" format or an electronic signature to this Agreement shall be deemed an original and binding upon the party against which enforcement is sought.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed by their duly authorized officers or agents on the day and year below written.

CITY OF DAVID CITY, NEBRASKA

NEBRASKA PUBLIC POWER DISTRICT

By:

By:

Name: Jessica J. Miller

Name: _____

Title: Mayor

Title: _____

Date: September 13, 2023

Date: _____

APPENDIX A
to
Transmission Facilities Construction Agreement
dated September 13, 2023
between
City of David City, Nebraska
and
Nebraska Public Power District

**Description of the NPPD Transmission Facilities for
Retail Service Provider Facilities to Customer Facility**

The NPPD Transmission Facilities to be constructed for Customer Facility, each connected to the Retail Service Provider's electric system and operated in parallel for Customer Facility to receive electric service from the Retail Service Provider, and of which will require securitization is as follows:

- In NPPD's Rising City Substation, add a 10.8 MVAR 69 kV capacitor bank

APPENDIX B
to
Transmission Facilities Construction Agreement
dated **September 13, 2023**
between
City of David City, Nebraska
and
Nebraska Public Power District

Customer Facility (in coordination with the Retail Service Provider) Service Requirements

The Customer Facility and facilities of the Retail Service Provider shall meet all Facility Connection Requirements posted on NPPD.com as of the Effective Date, currently posted at <https://docs.nppd.com/FacilityConnectionRequirements.pdf>

NPPD target for In-Service Date is December 31, 2025.

Note that the Customer Facility may desire electric service prior to the In-Service Date. NPPD and **Retail Service Provider agree the Customer Facility may come on-line prior to the completion of the cap bank installation, provided that the Retail Service and NPPD provide mitigation, if needed, for the contingent loss of TL1153B. Such mitigation may include, but not limited to, reduction of Customer Facility load, load transfers, and/or production from Retail Service Provider's local diesel generation at NPPD's cost.**

The Stranded Cost Estimate is \$337,735.

Customer Facility service requirements shall include:

- All service from NPPD Transmission Facilities to facilities of the Retail Service Provider shall be at 69 kV
- Maximum load of the Customer Facility shall be 11.2 MW .
- Minimum guaranteed load of the Customer Facility shall be 9.5 MW.
- The Retail Service Provider shall accommodate any metering needs as specified by NPPD and as may be further agreed to in a separate agreement between the applicable Parties for metering equipment, which shall be limited to that metering needed for the applicable rates desired by the Retail Service Provider and/or Customer.

Desired location of the Point of Interconnection at the voltage indicated above is to be located at NPPD's Rising City Substation 602 bay, where Retail Service Provider takes 69 kV service from Butler Public Power District to Retail Service Provider's distribution system.

APPENDIX C
to
Transmission Facilities Construction Agreement
dated _____, 2023
between
City of David City, Nebraska
and
Nebraska Public Power District

Form of Letter of Credit

[Issuer Letterhead]

Approved: _____

IRREVOCABLE STANDBY LETTER OF CREDIT NO. _____

DATE: _____

BENEFICIARY: NEBRASKA PUBLIC POWER DISTRICT

ADDRESS: Nebraska Public Power District
1414 15th Street
P.O. Box 499
Columbus, NE 68602-0499
Attn: Vice President & Chief Financial Officer
Telephone Number: (402) 563-5459
Facsimile Number: (402) 563-5528

APPLICANT: City of David City, Nebraska

ADDRESS: _____

Attn: _____
Telephone Number: _____
Facsimile Number: _____

WE, _____, N.A., ("BANK"), ISSUE THIS IRREVOCABLE STANDBY LETTER OF CREDIT NUMBER _____ ("LETTER OF CREDIT") IN FAVOR OF NEBRASKA PUBLIC POWER DISTRICT ("BENEFICIARY") FOR THE ACCOUNT OF City of David City, Nebraska ("CUSTOMER") AS ACCOUNT PARTY IN THE AMOUNT OF US \$ _____ UNITED STATES DOLLARS) AND

AUTHORIZE THE BENEFICIARY TO DRAW AT SIGHT ON _____ BANK.

WE ARE INFORMED BY CUSTOMER THAT THIS LETTER OF CREDIT IS ISSUED PURSUANT TO SECTION 4.3 OF THE TRANSMISSION FACILITIES CONSTRUCTION AGREEMENT DATED AS OF _____, ("AGREEMENT") BETWEEN CUSTOMER AND BENEFICIARY. THIS LETTER OF CREDIT IS AVAILABLE FOR PAYMENT AGAINST YOUR SIGHT DRAFT(S) DRAWN ON BANK MARKED "DRAWN UNDER BANK'S IRREVOCABLE STANDBY LETTER OF CREDIT NO. _____", AT SIGHT WHEN ACCOMPANIED BY A LETTER ON THE BENEFICIARY'S LETTERHEAD CONTAINING THE FOLLOWING STATEMENTS DATED AND PURPORTEDLY SIGNED BY AN AUTHORIZED REPRESENTATIVE OF BENEFICIARY (SIGNED AS SUCH):

"THE UNDERSIGNED HEREBY CERTIFIES THAT (I) I AM DULY AUTHORIZED TO EXECUTE THIS DOCUMENT ON BEHALF OF NEBRASKA PUBLIC POWER DISTRICT ("BENEFICIARY"), (II) THE AMOUNT OF THE DRAFT ACCOMPANYING THIS CERTIFICATE IS DUE AND OWING, OR OTHERWISE MAY BE DRAWN PURSUANT TO THE AGREEMENT BETWEEN CUSTOMER AND BENEFICIARY (WHICH DRAWING CONDITIONS INCLUDE THE RIGHT TO DRAW UPON THIS LETTER OF CREDIT IN FULL UPON AN EVENT AS DEFINED IN THE TRANSMISSION FACILITIES CONSTRUCTION AGREEMENT), AND (III) ALL REQUIRED NOTICES, IF ANY HAVE BEEN PROVIDED TO CUSTOMER."

IF A DEMAND FOR PAYMENT MADE BY YOU HEREUNDER DOES NOT, IN ANY INSTANCE, CONFORM TO THE TERMS AND CONDITIONS OF THIS LETTER OF CREDIT, WE SHALL GIVE YOU PROMPT NOTICE THAT THE PURPORTED DEMAND WAS NOT EFFECTED IN ACCORDANCE WITH THIS LETTER OF CREDIT, STATING THE REASONS THEREFOR AND THAT WE ARE RETURNING THE DOCUMENTS TO YOU, AS WE MAY ELECT. UPON BEING NOTIFIED THAT THE PURPORTED DEMAND WAS NOT EFFECTED IN CONFORMITY WITH THIS LETTER OF CREDIT, YOU MAY ATTEMPT TO CORRECT ANY SUCH NONCONFORMING DEMAND FOR PAYMENT.

THIS LETTER OF CREDIT EXPIRES ON _____ OR IF SUCH DATE IS EXTENDED PURSUANT TO THE TERMS HEREOF, THE DATE AS SO EXTENDED ("EXPIRATION DATE").

SPECIAL CONDITIONS:

THIS LETTER OF CREDIT MAY NOT BE AMENDED, CHANGED OR MODIFIED WITHOUT THE EXPRESS WRITTEN CONSENT OF THE BENEFICIARY AND THE LETTER OF CREDIT ISSUER; PROVIDED, HOWEVER, THE AMOUNT AVAILABLE FOR DRAWING UNDER THIS LETTER OF CREDIT MAY BE REDUCED AUTOMATICALLY, WITHOUT AMENDMENT, FROM TIME TO TIME UPON OUR RECEIPT OF REDUCTION CERTIFICATE STATING THE AMOUNT OF REDUCTION AND AVAILABLE AMOUNT AFTER SUCH REDUCTION, EXECUTED AND PURPORTEDLY SIGNED BY BOTH APPLICANT AND BENEFICIARY.

PARTIAL AND MULTIPLE DRAWINGS ARE PERMITTED, AND THE AMOUNT OF THIS LETTER OF CREDIT WILL BE REDUCED BY THE AMOUNT OF EACH DRAWING HONORED BY US.

WE HEREBY AGREE WITH YOU THAT DOCUMENTS PRESENTED UNDER AND IN CONFORMITY WITH THE TERMS AND CONDITIONS OF THIS LETTER OF CREDIT WILL BE DULY HONORED ON PRESENTATION IF PRESENTED ON OR BEFORE THE EXPIRATION DATE OF THIS LETTER OF CREDIT AT _____ BANK, N.A., C/O _____ USA.

IF A COMPLYING PRESENTATION IS MADE PRIOR TO 12:00 P.M. (NEW YORK TIME) ON A BUSINESS DAY THEN LETTER OF CREDIT ISSUER SHALL, PRIOR TO CLOSE OF BUSINESS ON THE SECOND FOLLOWING BUSINESS DAY, MAKE PAYMENT IN IMMEDIATELY AVAILABLE FUNDS. IF A COMPLYING PRESENTATION IS MADE AT OR AFTER 12:00 P.M. (NEW YORK TIME) ON A BUSINESS DAY, THEN LETTER OF CREDIT ISSUER SHALL, PRIOR TO CLOSE OF BUSINESS ON THE THIRD FOLLOWING BUSINESS DAY, MAKE PAYMENT IN IMMEDIATELY AVAILABLE FUNDS. AS USED IN THIS LETTER OF CREDIT, THE TERM "BUSINESS DAY" SHALL MEAN A DAY OTHER THAN SATURDAY OR SUNDAY OR ANY OTHER DAY IN WHICH BANKING INSTITUTIONS IN THE STATE OF NEW YORK ARE AUTHORIZED OR REQUIRED BY LAW TO CLOSE.

PAYMENTS OF DRAWINGS UNDER THIS LETTER OF CREDIT SHALL BE MADE FROM FUNDS OF THE LETTER OF CREDIT ISSUER AND NOT ANY MONEYS PROVIDED TO THE LETTER OF CREDIT ISSUER BY THE APPLICANT.

ALL LETTER OF CREDIT ISSUER CHARGES ARE FOR THE ACCOUNT OF THE APPLICANT.

IT IS A CONDITION OF THIS LETTER OF CREDIT THAT IT SHALL BE DEEMED AUTOMATICALLY EXTENDED, WITHOUT AMENDMENT, FOR ADDITIONAL PERIOD(S) OF ONE YEAR FROM THE EXPIRATION DATE HEREOF, OR ANY FUTURE EXPIRATION DATE UNLESS AT LEAST 90 (NINETY) DAYS PRIOR TO THE EXPIRATION DATE WE SEND YOU NOTICE BY CERTIFIED MAIL (RETURN RECEIPT REQUESTED) OR OVERNIGHT COURIER THAT WE ELECT NOT TO CONSIDER EXPIRATION DATE OF THIS LETTER OF CREDIT EXTENDED FOR ANY SUCH ADDITIONAL PERIOD. UPON RECEIPT OF SUCH NOTICE, YOU MAY DRAW ON THIS LETTER OF CREDIT BY PRESENTING YOUR ONE SIGHT DRAFT TO US FOR AN AMOUNT UP TO THE UNUSED BALANCE OF THIS LETTER OF CREDIT AT ANY TIME WITHIN 30 DAYS OF THE THEN RELEVANT EXPIRATION DATE.

UNLESS OTHERWISE EXPRESSLY STATED HEREIN, THIS IRREVOCABLE STANDBY LETTER OF CREDIT IS ISSUED SUBJECT TO THE UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS, 2007 REVISION, INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION NO. 600 (THE "UCP600") AND AS TO MATTERS NOT ADDRESSED BY UCP600 SHALL BE GOVERNED AND CONSTRUED IN ACCORDANCE TO THE LAWS OF THE STATE OF NEW YORK. IN THE EVENT OF CONFLICT, THE UCP600 WILL CONTROL.

PLEASE ADDRESS ALL CORRESPONDENCE REGARDING THIS LETTER OF CREDIT TO _____ BANK, N.A., VIA COURIER TO: _____ BANK, C/O, _____ USA INCLUDING THE LETTER OF CREDIT NUMBER MENTIONED ABOVE.

_____, N.A.
THE LETTER OF CREDIT ISSUER

AUTHORIZED SIGNATURE

APPENDIX D
to
Transmission Facilities Construction Agreement
dated September 13, 2023
between
City of David City, Nebraska
and
Nebraska Public Power District

Form of Escrow Agreement

ESCROW AGREEMENT

This Escrow Agreement (“Agreement”) is made and effective this ____ day of _____, 2023 (“Effective Date”),

BETWEEN: CITY OF DAVID CITY, NEBRASKA, a municipal corporation and political subdivision of the State of Nebraska (“Customer”)
AND: NEBRASKA PUBLIC POWER DISTRICT, a public corporation and political subdivision of the State of Nebraska (“NPPD”)
AND: (“Escrow Agent”), _____, a bank with its head office located:

RECITALS

WHEREAS, NPPD and Customer entered into that certain Transmission Facilities Construction Agreement dated March 6th, 2023 (the “Construction Agreement”), pursuant to which NPPD has agreed to construct transmission facilities which will be used to provide electric service to Customer’s data center facility, and which electric service will be provided through a retail service provider affiliated with NPPD.

WHEREAS, In connection with the construction of such transmission facilities and pursuant to Section 4.3 of the Construction Agreement, Customer agrees to place in escrow certain funds to provide security to NPPD with respect to Customer’s obligations under the Construction Agreement, and the Escrow Agent agrees to hold and distribute such funds in accordance with the terms of this Escrow Agreement.

WHEREAS, Customer agrees to deposit certain funds in escrow with the Escrow Agent, on the terms and conditions more particularly described herein.

WHEREAS, Terms used but not defined herein shall have the meanings assigned to such terms under the Construction Agreement.

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated herein by this reference, and the premises and mutual covenants herein contained, the parties hereto intending to be legally bound, agree as follows:

1. **Establishment of Fund.** Customer has caused to be deposited with the Escrow Agent the sum of \$_____ in immediately available cash (such sum, or the balance thereof remaining from time to time being referred to herein as the "Fund").

2. **Treatment of Fund.** Those monies, and subsequent monies deposited therein, constituting the Fund shall be deposited in a segregated, interest-bearing account pursuant to the terms of this Escrow Agreement. Such account shall be titled the "City of David City, Nebraska Electric Facilities Escrow Account" and held in the name of Customer. The parties agree that, for tax reporting purposes, all interest and other income from investment of the Fund shall, as of the end of each calendar year and to the extent required by the Internal Revenue Service, be reported as having been earned by Customer, whether or not such income was disbursed during such calendar year. Prior to the Effective Date, Customer shall provide the Escrow Agent with its certified tax identification number by furnishing a form W-9, and Customer and NPPD shall provide such other forms and documents that the Escrow Agent may reasonably request. The parties understand that if such tax reporting documentation is not provided and certified to the Escrow Agent, the Escrow Agent may be required by the Internal Revenue Code, as may be amended, and the regulations promulgated thereunder, to withhold a portion of any interest or other income earned on the investment of the Fund.

3. **Investment of Fund.** The Fund will be kept in a money market account with the Escrow Agent. The Fund will not be kept in any other investment account without the written consent of the parties. Escrow Agent will provide regular statements to Customer, including periodic statements reflecting transactions executed on behalf of the Fund. Any investment income earned by the Fund, to the extent it exceeds the amount stated in Section 1, shall not become part of the Fund and shall be disbursed to Customer upon termination of this Escrow Agreement in accordance with Section 4(c) of the Construction Agreement.

4. **Escrow Procedure and Payment Instruction.** The Fund shall be held and disbursed in accordance with the terms of this Escrow Agreement as set out in this Section 4.

(a) If NPPD claims a right to payment (a "Payment Claim") pursuant to either Article 4 or Article 6 of the Construction Agreement, then pursuant to the terms of this Section 4, NPPD may request a disbursement of the portion of the Fund equal to the Payment Claim (up to the amount of the Fund remaining) by providing notice to the Escrow Agent and Customer, in the form of Exhibit A, along with a certificate signed by an authorized representative of NPPD, stating the basis for such Payment Claim. The Escrow Agent shall deliver to NPPD within two (2) Business Days the amount of money specified in the Payment Claim, up to the amount remaining in the Fund.

(b) At any time during the term of this Escrow Agreement, and upon termination of Customer's obligations to post Security under the Construction Agreement, upon receipt of a joint disbursement request in the form of Exhibit B signed by both Customer and NPPD, the Escrow Agent shall deliver to the party specified in such joint disbursement request the amount of money specified in the joint disbursement request, up to the amount remaining in the Fund.

(c) The parties each acknowledge that Escrow Agent is authorized to use the funds transfer instructions provided below to disburse funds without a verifying the call-back

person set forth in Section 12 so long as the form of Exhibit A or Exhibit B is used to request the disbursement and the proceeds are wired to one of the recipient accounts designated below. The form of Exhibit A or Exhibit B may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The form of Exhibit A or Exhibit B may be executed and accepted by facsimile or portable data file (PDF) and any such signature shall be of the same force and effect as an original signature.

If to Customer to:

Bank Name: Wells Fargo Bank, N.A.
Bank Address: 420 Montgomery
San Francisco, CA 94104
ABA #:
Bank Account Name:
Bank Account #:

If to NPPD to:

Bank Name: Wells Fargo Bank, N.A.
Bank Address: 420 Montgomery
San Francisco, CA 94104
ABA Number: _____
Account Name: _____
Account Number: _____

5. **Termination.** This Escrow Agreement shall terminate upon the disbursement of the balance of the Fund in accordance with the provisions of Section 4 hereof.

6. **Limitation of Escrow Agent's Capacity.**

A. This Escrow Agreement expressly and exclusively sets forth the duties of Escrow Agent with respect to any and all matters pertinent hereto, and no implied duties or obligations shall be read into this Escrow Agreement against Escrow Agent. This Escrow Agreement constitutes the entire agreement between the Escrow Agent and the other parties hereto in connection with the subject matter of this escrow, and no other agreement entered into between the parties, or any of them, shall be considered as adopted or binding, in whole or in part, upon the Escrow Agent notwithstanding that any such other agreement may be referred to herein or deposited with the Escrow Agent or the Escrow Agent may have knowledge thereof, and the Escrow Agent's rights and responsibilities shall be governed solely by this Escrow Agreement.

B. Escrow Agent acts hereunder as a depository only, and is not responsible or liable in any manner whatsoever for the sufficiency, correctness, genuineness or validity of the subject matter of this Escrow Agreement or any part thereof, or for the form of execution thereof, or for the identity or authority of any person executing or depositing such subject matter. Escrow Agent shall be under no duty to investigate or inquire as to the validity or accuracy of any document, agreement, instruction or request furnished to it hereunder believed by it to be

genuine and the Escrow Agent may rely and act upon, and shall not be liable for acting or not acting upon, any such document, agreement, instruction or request. Escrow Agent shall in no way be responsible for notifying, nor shall it be its duty to notify, any party hereto or any other party interested in this Escrow Agreement of any payment required or maturity occurring under this Escrow Agreement or under the terms of any instrument deposited herewith.

7. Authority to Act.

A. Escrow Agent is hereby authorized and directed by the undersigned to deliver the subject matter of this Escrow Agreement only in accordance with the provisions of this Escrow Agreement.

B. Escrow Agent shall be protected in acting upon any written notice, request, waiver, consent, certificate, receipt, authorization, power of attorney or other paper or document which Escrow Agent in good faith believes to be genuine and what it purports to be, including, but not limited to, items directing the investment or non-investment of funds, items requesting or authorizing release, disbursement or retainage of the subject matter of this Escrow Agreement and items amending the terms of this Escrow Agreement.

C. Escrow Agent may consult with legal counsel at the cost and expense of Customer in the event of any dispute or question as to the construction of any of the provisions hereof or its duties hereunder, and it shall incur no liability and shall be fully protected in acting in accordance with the advice of such counsel.

8. Compensation. Escrow Agent shall be entitled to reasonable compensation as well as reimbursement for its reasonable costs (equal to \$30.00 per check issued) and expenses incurred in connection with the performance by it of service under this Escrow Agreement (including reasonable fees and expenses of Escrow Agent's counsel) and Customer agrees to so pay Escrow Agent reasonable compensation and reimburse Escrow Agent for reasonable costs and expenses. The parties hereto agree that escrow fees shall be due and payable in the amount of \$500.00 for the initial setup of the first two escrow accounts and \$250.00 for the setup of any subsequent accounts and such fees will be paid by Customer upon the commencement of the escrow and exclusive of amount in the Fund.

9. Indemnification. Customer agrees to indemnify and hold Escrow Agent, its affiliates and their officers, employees, successors, assigns, attorneys and agents (each an "Indemnified Party") harmless from all losses, costs, claims, demands, expenses, damages, penalties and attorney's fees suffered or incurred by any Indemnified Party or Escrow Agent as a result of anything which it may do or refrain from doing in connection with this Escrow Agreement or any litigation or cause of action arising from or in conjunction with this Escrow Agreement or involving the subject matter hereof or the Fund or monies deposited hereunder or for any interest upon any such monies, including, without limitation arising out of, the negligence of Escrow Agent; provided that the foregoing indemnification shall not extend to the gross negligence or willful misconduct of Escrow Agent.

10. **Miscellaneous.**

A. Escrow Agent shall make no disbursement, investment or other use of Fund until and unless it has collected funds for the Fund. Escrow Agent shall not be liable for collection items until the proceeds of the same in actual cash have been received or the Federal Reserve has given Escrow Agent credit for the funds.

B. Escrow Agent may resign at any time by giving written notice to the parties hereto, whereupon the parties hereto will immediately appoint a successor Escrow Agent. Until a successor Escrow Agent has been named and accepts its appointment or until another disposition of the subject matter of this Escrow Agreement has been agreed upon by all parties hereto, Escrow Agent shall be discharged of all of its duties hereunder, save to keep the Fund whole.

C. All representations, covenants, and indemnifications contained in this Escrow Agreement shall survive the termination of this Escrow Agreement.

D. Escrow Agent shall provide monthly statements of the account to NPPD and Customer.

11. **Discharge of Escrow Agent.** Upon the delivery or return of all of the Fund pursuant to the terms of this Escrow Agreement, the duties of Escrow Agent shall terminate and Escrow Agent shall be discharged from any further obligation hereunder.

12. **Escrow Instructions.** Attached hereto as Schedule 1 (the "Security Schedule") is a list of authorized signatories (with signature identification) and authorized call-back persons for each of the parties to this Agreement (other than the Escrow Agent). In the event funds transfer instructions are given which differ from the funds transfer instructions to disburse funds as set out in Section 4(c), the Escrow Agent shall seek confirmation of such instructions or directions by making a successful telephone call to the person or persons designated on the Security Schedule, and the Escrow Agent may rely upon the confirmation of anyone purporting to be the person or persons so designated. The authorized signatures and the persons and telephone numbers for call-backs may be changed only in a writing actually received and acknowledged by the Escrow Agent, and in the case of an addition of an authorized signatory, the writing must be accompanied by an incumbency certificate with signature identification certified by an existing authorized signatory. If the Escrow Agent is unable to contact any of the authorized representatives identified in the Security Schedule for call-back confirmation, the Escrow Agent is hereby authorized to seek confirmation of such instructions by a successful telephone call-back to any one or more of the party's officers. Such officer shall deliver to the Escrow Agent a fully executed incumbency certificate certified by an existing authorized signatory, and the Escrow Agent may rely upon the confirmation of anyone purporting to be such officer.

13. **Notice.** Any payment, notice, request for consent, report, or any other communication required or permitted in this Escrow Agreement shall be in writing and shall be deemed to have been given when personally delivered to the party hereunder specified or when placed in the United States mail, registered or certified, with return receipt requested, postage prepaid and addressed as follows:

If to Escrow Agent:

If to Customer:

With a copy to:

If to NPPD:

Nebraska Public Power District
Attn: Scott R. Walz
Vice President Energy Delivery
1414 15th Street
P.O. Box 499
Columbus, NE 68602-0499
Telephone: (402) 362-7245
Email: srwalz@nppd.com

With a Copy to:

Nebraska Public Power District
Attn: Harold L. Hadland
Office of the General Counsel
1414 15th Street
P.O. Box 499
Columbus, NE 68602-0499
Telephone: (402) 563-5046
Email: hlhadla@nppd.com

Any party may unilaterally designate a different address by giving notice of each such change in the manner specified above to each other party. Notwithstanding the foregoing, no notice to the Escrow Agent shall be deemed given to or received by the Escrow Agent unless actually delivered to an officer of the Escrow Agent having responsibility under this Escrow Agreement.

14. **Governing Law.** This Escrow Agreement is being made in and is intended to be construed according to the laws of the State of Nebraska. It shall inure to and be binding upon the parties hereto and their respective successors, heirs and assigns. Any legal or equitable action arising out of or in any way connected with this Escrow Agreement shall be instituted only in the District Court of Lancaster County, Nebraska, or the United States District Court for the District of Nebraska sitting in Lincoln, Nebraska.

15. **Construction.** Words used in the singular number may include the plural and the plural may include the singular. The section headings appearing in this instrument have been inserted for convenience only and shall be given no substantive meaning or significance whatsoever in construing the terms and conditions of this Escrow Agreement.

16. **Amendment.** The terms of this Escrow Agreement may be altered, amended, modified or revoked only by an instrument in writing signed by Customer, NPPD, and Escrow Agent.

17. **Force Majeure.** Escrow Agent shall not be liable to the undersigned for any loss or damage arising out of any acts of God, strikes, equipment or transmission failure, war, terrorism, or any other act or circumstance beyond the reasonable control of Escrow Agent.

18. **Written Agreement.** This Escrow Agreement represents the final agreement between the parties, and may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties.

19. **Publication; Disclosure.** By executing this Escrow Agreement, Customer, NPPD, and the Escrow Agent acknowledge that the exhibits, schedules, and signatures to this Escrow Agreement (including related attachments) contain certain information that is sensitive and confidential in nature and agree that such information needs to be protected from improper disclosure, including the publication or dissemination of this Escrow Agreement and related information to individuals or entities not a party to this Escrow Agreement. The parties further agree to take reasonable measures to mitigate any risks associated with the publication or disclosure of this Escrow Agreement and information contained therein, including, without limitation, the redaction of the manual signatures of the signatories to this Escrow Agreement, or, in the alternative, publishing a conformed copy of this Escrow Agreement. If a party must disclose or publish this Escrow Agreement or information contained therein pursuant to any regulatory, statutory, or governmental requirement, as well as any judicial, or administrative order, subpoena or discovery request, it shall notify in writing the other parties of the legal requirement to do so. If any party becomes aware of any threatened or actual unauthorized disclosure, publication or use of this Escrow Agreement, that party shall promptly notify in writing the other parties.

20. **Counterparts.** This Agreement may be executed in any number of counterparts, and each executed counterpart shall have the same force and effect as an original instrument. A signature page in "PDF" format or an electronic signature to this Agreement shall be deemed an original and binding upon the party against which enforcement is sought.

This Escrow Agreement has been executed by the parties effective as of the Effective Date set forth above.

CITY OF DAVID CITY, NEBRASKA

Date: _____

By: _____

Name: _____

Title: _____

NEBRASKA PUBLIC POWER DISTRICT

Date: _____ By: _____
Name: _____
Title: _____

(Bank name), Escrow Agent, hereby accepts its appointment as Escrow Agent as described in the foregoing Escrow Agreement, subject to the terms and conditions set forth therein.

(Bank Name)

Date: _____ By: _____
Name: _____
Title: _____

Date: _____ By: _____
Name: _____
Title: _____

EXHIBIT A

PAYMENT CLAIM

Pursuant to that certain Escrow Agreement dated effective _____ among City of David City, Nebraska, NEBRASKA PUBLIC POWER DISTRICT ("NPPD"), and (Bank Name), NPPD hereby requests disbursement of funds pursuant to Section 4(a) in the amount and manner described below from account number _____ titled "City of David City, Nebraska Electric Facilities Escrow Account" Escrow Account.

Please disburse to: Nebraska Public Power District

Amount to disburse: \$ _____

Form of disbursement: Money Wire

Description of payment obligation:

Attached to this Disbursement Request is a certificate signed by an authorized representative of NPPD stating the basis for such claim payment.

IN WITNESS WHEREOF: NPPD has executed this Disbursement Request effective as of the date first written above.

Nebraska Public Power District

Name: _____
Title: _____
Date: _____

EXHIBIT B

JOINT DISBURSEMENT REQUEST

Pursuant to that certain Escrow Agreement dated effective _____ among City of David City, Nebraska (“Customer”), NEBRASKA PUBLIC POWER DISTRICT (“NPPD”), and (Bank name), Customer and NPPD hereby jointly request disbursement of funds in the amount and manner described below from account number _____ titled “City of David City, Nebraska Electric Facilities Escrow Account” Escrow Account.

Please disburse to:

Amount to disburse: \$ _____

Form of disbursement: Money Wire

IN WITNESS WHEREOF: the parties hereto have executed this Joint Disbursement Request in multiple counterparts, each of which is and shall be considered an original for all intents and purposes, effective as of the date first written above.

City of David City, Nebraska

Nebraska Public Power District

Name: _____
Title: _____
Date: _____

Name: _____
Title: _____
Date: _____

Schedule 1

SECURITY SCHEDULE

Telephone Number(s) for Call-Backs and Person(s) Designated to Confirm Funds Transfer Instructions and Execute Instructions, and Other Documents in Connection with this Escrow Agreement

City of David City, Nebraska Contact Information:

Name/Title	Telephone Number	Signature Identification
1. _____	_____	_____
2. _____	_____	_____
3. _____	_____	_____

NPPD Contact Information:

Name	Telephone Number	Signature Identification
1. _____	_____	_____
2. _____	_____	_____
3. _____	_____	_____

Escrow Agent will attempt to contact the contacts in the order they appear on this Security Schedule. Verification is needed from one contact for the party receiving the disbursement and the contact must be separate from the person who signed the Disbursement Request for dual control purposes.

APPENDIX E

to
Transmission Facilities Construction Agreement
dated September 13, 2023
between
City of David City, Nebraska
and
Nebraska Public Power District

Form of Surety Bond

TRANSMISSION FACILITIES CONSTRUCTION AGREEMENT PAYMENT BOND
Bond No. _____

KNOW ALL MEN BY THESE PRESENTS, that we, (hereinafter called "Principal"), as Principal, and _____ (hereinafter called "Surety"), as Surety, are held and firmly bound unto _____, a public corporation and political subdivision of the State of Nebraska (hereinafter called "Obligee"), as Obligee, in the maximum penal sum of _____ (\$ _____) for the payment of which the said Principal and Surety bind themselves, jointly and severally, firmly by these presents.

WHEREAS, Principal intends to own and operate a facility located at _____ (the "_____"), and wishes to enable the _____ to obtain service from the _____ (the "Retail Service Provider") by means of the electric transmission facilities of the Obligee (the "Transmission System");

WHEREAS, Obligee is willing to construct certain transmission facilities (the "_____"), which will be used to provide transmission service to the Retail Service Provider that will serve the _____, and the Principal is willing to use and pay for transmission service it receives from the _____ via the _____;

WHEREAS, the Principal and Obligee have entered into a Transmission Facilities Construction Agreement (the "Agreement") on March 6th, 2023 to establish the rights and obligations of the Principal and Obligee for construction and payment for the _____ that will be used to provide transmission service to the Retail Service Provider that will serve the _____; and

WHEREAS, Section 4.3 of the aforementioned Agreement between Principal and Obligee requires that the Principal obtain and provide security for its payment obligations under the Agreement, which may be in the form of one or more surety bonds acceptable to the Obligee, and shall be in the aggregate amount of the Stranded Cost Estimate less the Formula Contribution in Aid of Construction as defined in the Agreement as _____ (\$ _____) (this "Bond").

NOW, THEREFORE, the condition of this obligation is such that if the Principal shall well and truly accomplish its Full Build Out Conditions under said Agreement, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

PROVIDED, HOWEVER, that this Bond is subject to the following terms and conditions:

1. No parties other than the named Obligee may make a claim on this Bond, and no suit, action or proceeding in law or equity shall be brought or maintained by anyone other than the Obligee named herein.

2. In the event of any claim made under this Bond by the Obligee, the Surety shall have fifteen (15) calendar days to conduct an investigation and the Obligee shall provide such documentation or evidence as may be reasonably requested by the Principal and Surety.
3. The penal sum of this Bond shall be reduced by and to the extent of any payments made hereunder from the Surety to the Obligee.
4. Pursuant to Section 4.4 of the Agreement, the penal sum of this Bond shall be automatically reduced, on a quarterly basis, by the amount that the Obligee and the Principal mutually agree was paid for transmission electrical service in that quarterly period. This decrease in penal sum shall occur regardless of whether the Surety issues a decrease rider to this Bond.
5. The Obligee agrees that it will release this Bond pursuant to Section 4.3 of the Agreement upon the Principal having accomplished the Full Build Out Conditions. Until such release this Bond shall remain in full force and effect for the penal sum of this Bond stated in Section 4.3 of the Agreement and in the Whereas above.
6. Regardless of the number of years this Bond shall continue in force and the number of premiums which shall be payable or paid by Principal; the liability of the Surety shall not be cumulative from year to year nor period to period.

7. In no event shall the liability of the Surety exceed the penal sum of this Bond, as it may be decreased from time to time.

This Bond is governed by the laws of the state of Nebraska and the state courts located therein shall have exclusion jurisdiction and venue of any suit, action or proceeding in law or equity on this Bond.

Signed and sealed this _____ day of __, 20 ____.

By: _____
Print Name & Title

By: _____
Print Name & Title

[SEAL]

APPENDIX F
to
Transmission Facilities Construction Agreement
dated September 13, 2023
between
City of David City, Nebraska
and.
Nebraska Public Power District

Form of Security Guarantee

SECURITY AGREEMENT

This Security Agreement (this "Security Agreement"), dated as of _____, is entered into by _____, a _____ (the "Security Provider") in favor of and for the benefit of Nebraska Public Power District, a public corporation and political subdivision of the State of Nebraska ("NPPD", and together with Security Provider, the "Parties"). Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to them in the Agreement (as defined below).

RECITALS:

- A. NPPD has entered into a Transmission Facility Construction Agreement dated as of _____ (the "TFCA"), with Security Provider pursuant to which NPPD has agreed to install certain transmission facilities to serve a new load.
- B. Security Provider is willing to irrevocably and unconditionally guaranty the amount of energy consumption from this new load that will be metered by NPPD and billed to the Security Provider as defined in the TFCA.

NOW THEREFORE, based on the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Security Provider hereby covenants and agrees as follows:

7. **GUARANTY.** Subject to the provisions hereof, Security Provider hereby irrevocably and unconditionally guarantees, as primary obligor and not merely as surety, the timely payment when due of any monetary damages or amounts owed to NPPD by Security Provider pursuant to the TFCA. The liability of Security Provider under this Security Agreement shall be subject to the following:

(a) The maximum aggregate amount payable under this Security Agreement shall not exceed the Stranded Cost Estimate as defined in the TFCA.

(b) The liability of shall be based on the terms of TFCA and reduced accordingly as actual energy is consumed by the new load defined in the TFCA and as adjusted once the terms of the TFCA are met.

(c) The Security Agreement shall be terminated automatically, and shall be of no further force and effect upon the earliest to occur of (i) the full satisfaction of the Full Build Out Guarantee defined in the TFCA or payment by Security Provider of the payments required for not achieving the Full Build Out Guarantee as defined in the TFCA, subject to the maximum aggregate liability

set forth in Section 1(a) above, or (iii) the replacement of this Security Agreement with other forms of Security as allowed by the TFCA or NPPD's Transmission Extension Policy.

8. DEMANDS AND NOTICE. A demand made by NPPD upon Security Provider under Section 1 hereof (hereinafter referred to as a "**Payment Demand**") shall be in writing and shall briefly specify the basis for the payment under the Security Agreement, and the amount of the payment due thereunder, with a specific statement that NPPD is calling upon the Security Provider to pay under this Security Agreement.
9. REPRESENTATIONS AND WARRANTIES. Security Provider represents and warrants that:
 - (d) it is a Retail Service Provider duly organized and validly existing under the Laws of Nebraska and has the power and authority to execute, deliver and carry out the terms and provisions of this Security Agreement;
 - (e) no authorization, approval, consent or order of, or registration or filing with, any court or other Governmental Authority having jurisdiction over Security Provider is required for the execution and delivery of this Security Agreement; and
 - (f) this Security Agreement has been duly authorized by all necessary action, has been duly executed and delivered, and constitutes a valid and legally binding agreement of Security Provider, except as the enforceability of this Security Agreement may be limited by the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar Laws affecting creditors' rights generally and by general principles of equity.
10. AMENDMENT OF SECURITY AGREEMENT. No term or provision of this Security Agreement shall be amended, modified, altered, waived or supplemented except by a writing signed by the Security Provider and NPPD.
11. Except as to applicable statutes of limitation, no delay of NPPD in the exercise of, or failure to exercise, any rights hereunder shall operate as a waiver of such rights, a waiver of any other rights or a release of Security Provider from any obligations hereunder.
12. NOTICE. Any default notice, notice, request, instruction, correspondence or other document to be given hereunder by any Party to another (herein collectively called "**Notice**") shall be in writing (regardless of whether the applicable provision expressly requires a writing) and delivered personally or mailed by certified mail, postage prepaid and return receipt requested, or by email, as follows:

If to Security Provider:

Attention: _____
Fax No.: _____

Copy to:

Attention: _____
Fax No.: _____

If to NPPD:

Laura Kapustka
Vice President & Chief Financial Officer
Nebraska Public Power District
1414 15th Street
P.O. Box 499
Columbus, NE 68602-0499
Fax: 402-563-5145

Copy To:

Harold L. Hadland
Office of the General Counsel
Nebraska Public Power District
1414 15th Street
P.O. Box 499
Columbus, NE 68602-0499
Fax: 402-563-5837

Notice given by personal delivery, mail, or courier shall be effective upon actual receipt or rejection, as identified in the return receipt (in the case of mail) or on the tracking report (in the case of courier). Notice given by email shall be effective upon actual receipt if received during the recipient's normal business hours, or at the beginning of the recipient's next business day after receipt if not received during the recipient's normal business hours. Any Party hereto may change any address to which Notice is to be given to it by giving notice of such change of address as provided above.

7. MISCELLANEOUS. THIS SECURITY AGREEMENT SHALL IN ALL RESPECTS BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF NEBRASKA, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS. Security Provider hereby agrees to be subject to suit in the federal court in the State of Nebraska and submit to the jurisdiction and venue of said court for any suit to enforce this Security Agreement. This Security Agreement shall be binding upon Security Provider, its successors and assigns and inure to the benefit of and be enforceable to NPPD, its successors and assigns. The Security Agreement embodies the entire agreement and understanding between Security Provider and NPPD and supersedes all prior agreements and understandings relating to the subject matter hereof. The headings in this Security Agreement are for purposes of reference only and shall not affect the meaning hereof. This Security Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.

EXECUTED as of the day and year first above written.

CITY OF DAVID CITY, NEBRASKA:

Per: _____

Name Jessica J. Miller

Title Mayor

Date September 13, 2023

Per: _____

Name Tami L. Comte

Title City Clerk-Treasurer

Date September 13, 2023

Mayor Jessica Miller stated that the next item on the agenda was discussion regarding the 3rd & H Street Water Main Extension.

Interim City Administrator/City Clerk Tami Comte stated that the water department staff will not have time to finish up the water main extension and so we are taking bids to have the project finished. Craig Reinsch, with Olsson's, is engineering the rest of the project.

Good afternoon,

We received a request from Anthony to bid out the remainder of the 3rd and H Street water main projects. We have put together a preliminary bidding schedule for consideration. It'll take us a couple of weeks to prepare the front end/bidding documents

	Option 1	Option 2
Target Meeting Date	9/27/2023	10/11/2023
Submit Recommendation for Council meeting agenda	9/20/2023	9/29/2023
Bid Opening Date	9/13/2023	9/27/2023
Pre-Bid Mtg Date (if selected)	n/a	n/a
Weeks of Advertising	4	4
1st Day of Advertising	8/17/2023	8/31/2023
Notice to Paper	8/11/2023	8/25/2023
Council Meeting to Approve Bid Process	8/9/2023	8/23/2023

Target pre-con mtg date (+30 days) – range	10/27/2023	11/10/2023
Target pre-con mtg date (+45 days)	11/11/2023	11/25/2023

Council member Bruce Meysenburg made a motion to recess the City Council meeting. Council Member Keith Marvin seconded the motion. The motion carried and Mayor Miller declared the Council meeting in recess at 7:48 p.m.

Jim Angell: Yea, Tom Kobus: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Woita: Yea
 Yea: 6, Nay: 0

Mayor Jessica Miller declared the City Council meeting reconvened at 7:50 p.m.

Council member Keith Marvin made a motion to enter into closed session to discuss pending litigation. Council Member Bruce Meysenburg seconded the motion. The motion carried.

Jim Angell: Yea, Tom Kobus: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Woita: Yea
 Yea: 6, Nay: 0

Mayor Miller stated, "Now, at 7:51 p.m., we are going into closed session to discuss pending litigation. Mayor Miller, all of the Council members, and Interim City Administrator Tami Comte went into closed session at 7:51 p.m.

Council member Keith Marvin made a motion to reconvene in open session at 8:49 p.m. Council Member Bruce Meysenburg seconded the motion. The motion carried.

Jim Angell: Yea, Tom Kobus: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Woita: Yea
 Yea: 6, Nay: 0

Council member Jim Angell made a motion to adjourn. Council Member Bruce Meysenburg seconded the motion. The motion carried and Mayor Jessica Miller declared the meeting adjourned at 8:49 p.m.

Jim Angell: Yea, Tom Kobus: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Woita: Yea
Yea: 6, Nay: 0



CERTIFICATION OF MINUTES
September 13, 2023

I, Tami Comte, duly qualified and acting City Clerk for the City of David City, Nebraska, do hereby certify with regard to all proceedings of September 13, 2023; 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.

Tami Comte, City Clerk