

**PUBLIC WORKS, PUBLIC SAFETY,  
HOUSING AND COMMUNITY DEVELOPMENT AGENDA**  
August 3<sup>rd</sup>, 2020 @ 5:00 p.m.  
City Hall Council Chambers  
1615 1<sup>st</sup> Avenue, South Sioux City, Nebraska

1

**Members: Dan Bousquet, Jasper Kriens, John Sanders, Jason Bowman.**

***A current copy of the Open Meetings Act is posted on the north wall in the rear of the Council Chambers and is available for review by all citizens in attendance. A sign-in sheet is available at the entrance to the Council Chambers. We ask your assistance by signing in as this is a Federal Grant requirement. It is strictly voluntary to complete the sign-in sheet.***

***The City of South Sioux City reserves the right to adjust the order of items on this agenda if necessary and may elect to take action on any of the items listed.***

- 1. PUBLIC WORKS :**
  - a. Engineer's Report.
  - b. Gill Construction Change Order #1 Increase; \$28,375.00. Addition of 10 ft. wide bike trail to Hovey project. [Hyperlink](#)
- 2. PUBLIC SAFETY :**
  - a. Fireworks.
- 3. HOUSING AND COMMUNITY DEVELOPMENT:**
  - a. Ratify Electric Vehicle Site Host Agreement between City, HyVee and owner of 2501 Cornhusker Dr. [Hyperlink](#)
- 4. MISCELLANEOUS/ UNFINISHED BUSINESS:**
  - a. Adopt the City of Sioux City Residential Wiring Ordinance. Comes favorably from the Electric Board. [Hyperlink](#)
  - b. Sewer Plant Update.
  - c. Potential/Pending Litigation.
- 5. DEPARTMENT HEAD UPDATES:**

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2

Change order

## CHANGE ORDER

No. 1

**olsson®**

Date of Issuance: <u>August 3, 2020</u>	Effective Date: <u>August 3, 2020</u>
Project: <u>Hovey Residential Development</u>	Owner: <u>South Sioux City</u>
Contract: <u>Total of All Unit Price Bid Items</u>	Owner's Contract No.: <u>N/A</u>
Contractor: <u>Gill Construction</u>	Date of Contract: <u>5-27-20</u>
	Engineer's Project No.: <u>019-3057</u>

**The Contract Documents are modified as follows upon execution of this Change Order:**

Description: Addition of bike trail to the project.

Attachment: \_\_\_\_\_

CHANGE IN CONTRACT PRICE	CHANGE IN CONTRACT TIMES <i>[note changes in Milestones if applicable]</i>
Original Contract Price:  <u>\$ 365,407.72</u>	Original Contract Times: Substantial Completion (days or date): <u>08-01-2020</u> Ready for Final Payment (days or date): <u>08-15-2020</u>
Increase from previously approved Change Orders No. <u>   </u> to No. <u>   </u> :	[Increase] [Decrease] from previously approved Change Orders No. <u>   </u> to No. <u>   </u> : Substantial Completion (days or date): _____ Ready for Final Payment (days or date): _____
Contract Price prior to this Change Order:  <u>\$ 365,407.72</u>	Contract Times prior to this Change Order: Substantial Completion (days or date): <u>08-01-2020</u> Ready for Final Payment (days or date): <u>08-15-2020</u>
Increase of this Change Order:  <u>\$ 28,375.00</u>	Increase of this Change Order: Substantial Completion (days): <u>61</u> Ready for Final Payment (days): <u>62</u>
Contract Price incorporating this Change Order:  <u>\$ 393,782.72</u>	Contract Times with all approved Change Orders: Substantial Completion (days or date): <u>10-01-2020</u> Ready for Final Payment (days or date): <u>10-16-2020</u>

RECOMMENDED:	ACCEPTED:	ACCEPTED:
By: <u>Matthew Smith</u> Engineer (Authorized Signature)	By: _____ Owner (Authorized Signature)	By: <u>[Signature]</u> Contractor (Authorized Signature)
Title: <u>Project Engineer</u>	Title: _____	Title: <u>President</u>
Date: <u>7-29-2020</u>	Date: _____	Date: <u>7-29-20</u>
Approved by Funding Agency (if applicable):		
By: _____	Title: _____	Date: _____

## 3

## End Change Order

**PUBLIC WORKS, PUBLIC SAFETY,  
HOUSING AND COMMUNITY DEVELOPMENT AGENDA**  
**August 3<sup>rd</sup>, 2020 @ 5:00 p.m.**  
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4

**Electric Board Minutes**

***CITY OF SOUTH SIOUX CITY, NEBRASKA***  
***Electrical Board***  
**July 21, 2020**

A regular meeting of the Electrical Board of the City of South Sioux City, Nebraska was held at the City Hall on.

**CALL TO ORDER**

Staff member Conley called the meeting to order at 4:05 o'clock P.M.

ROLL CALL	Present	Absent (excused)	Absent
Bill Addison	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Kevin O'Dell	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
John O'Dell	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Staff in attendance: ☒ Joe Conley ☒ Paola Velazquez ☒ Kent Zimmerman ☒ Lance Hedquist

Notice of the meeting was given in advance by advertising in the Dakota Star as certified in the attached affidavit of printer. Notice of the meeting and agenda were simultaneously given to the members of the board.

**APPROVE MINUTES**

Kevin O'Dell moved and Bill Addison seconded to approve the minutes of the May 5<sup>th</sup>, 2020 Electric Board meeting. Motion carried with Bill Addison, Kevin O'Dell, and John O'Dell voting Aye.

VOTING	Aye	Nay	Abstaining
Bill Addison	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Kevin O'Dell	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
John O'Dell	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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**AGENDA ITEM:** Adopting the City of Sioux City Iowa Residential Wiring Ordinance

Councilman Jason Bowman attended the meeting to answer questions and informed the board members about adopting the residential wiring like Sioux City. K. O'Dell opened the discussion, talked about the safety changes on residential wiring. Jason Bowman talked about the disadvantage for economic development compared to Sioux City.

Bill Addison moved and Kevin O'Dell seconded to send a favorable recommendation to Public Works to adopt the City of Sioux City Residential Wiring Ordinance. Motion carried with Bill Addison, Kevin O'Dell voting aye. John O'Dell voting Nay.

**PUBLIC WORKS, PUBLIC SAFETY,  
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5

**Agenda Item** ADJOURNMENT

Kevin O'Dell moved and John O'Dell seconded to adjourn the meeting. Motion carried with Bill Adison, Kevin O'Dell, and John O'Dell voting Aye.

VOTING	Aye	Nay	Abstaining
Bill Adison	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Kevin O'Dell	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
John O'Dell	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

There being no further business to come before the Board, the meeting was adjourned at 4:32 o'clock P.M.

\_\_\_\_\_  
CHAIRMAN

End Electric Board Minutes

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6

Electric Vehicle Site Host Agree.

**ELECTRIC VEHICLE SITE HOST AGREEMENT**

THIS ELECTRIC VEHICLE SITE HOST AGREEMENT ("Agreement") is entered into this 27 day of May, 2020 ("Effective Date"), between the City of South Sioux City ("City"), Cornhusker Plaza Holdings LLC ("Host"), and Hy-Vee, Inc., an Iowa corporation ("Hy-Vee"). City, Host and Hy-Vee may be referred to individually as a "Party" or collectively as the "Parties."

**RECITALS**

WHEREAS, the City has been awarded and funding to install and maintain electric vehicle supply equipment ("EVSE") at designated locations throughout the City's service territory including a number of direct-current fast-chargers to enable long-distance electric vehicle travel; and

WHEREAS, Host is the owner of the property with an address of 2501 Cornhusker Dr., South Sioux City, Nebraska (the "Property"); and

WHEREAS, Hy-Vee is the occupant or lessee of the Property; and

WHEREAS, Host and Hy-Vee desire to have City install EVSE and associated wires, cables, and equipment (collectively, the "Equipment") at the Property; and

WHEREAS, City is willing to install the Equipment at the Property, subject to the following terms and conditions.

NOW, THEREFORE, in consideration of the mutual covenants and obligations contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. This Agreement shall remain in effect for a period of five years from the Effective Date, at which time this Agreement shall be automatically renewed for an additional, successive one-year periods ("Term"). However, either Party may terminate this Agreement at any time during the Term upon not less than thirty (30) days advance written notice to the other Party.
2. Subject to the terms of this Agreement, City shall be responsible for installing, operating, maintaining, and repairing all Equipment at the Property, and shall do so at City's expense, except as otherwise provided herein. At City's option, all Equipment may display the City name and logo prominently.
3. At all times during the Term City shall retain all right, title, and interest in and to the Equipment. The Parties agree that neither Host nor Hy-Vee shall have no right, title, or interest in or to the Equipment, or any part thereof, during the Term. The Parties further agree that the Equipment shall not be considered a "fixture" of the Property, nor shall Host or Hy-Vee take any actions that would lead to that conclusion. Notwithstanding the



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**August 3<sup>rd</sup>, 2020 @ 5:00 p.m.**

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7

foregoing, upon the expiration of the Term, City may, in its sole discretion, choose to transfer its right, title, and interest in and to the Equipment to Hy-Vee, unless at the time of transfer, Hy-Vee is not the occupant or lessee of the Property in which case title would be transferred to Host. Upon transferring its right, title, and interest in and to the Equipment to Hy-Vee or Host, Hy-Vee or Host, as applicable (a) shall release City from any and all liabilities, including without limitation, any claim or action for bodily injury or property damage resulting from or related to the Equipment or the use thereof, to the extent arising out of events occurring after the date of such transfer, and (b) shall assume responsibility for all costs and expenses associated with the Equipment, including without limitation all electrical consumption costs, network access fees, maintenance costs, and repair costs.

4. While City owns the Equipment, (a) City shall own any and all data gathered or generated by, or associated with, the Equipment for use in regulatory reporting, ordinary business use, industry forums, case studies, or other business or planning activities of City or its affiliates; and (b) Hy-Vee or Host, as applicable, shall have no right, title, or interest in or to such data. Following transfer of any Equipment to Hy-Vee or Host, as applicable, the Party to whom the Equipment was transferred shall own all such data.
5. Under no circumstances shall Hy-Vee or Host receive monetary or in-kind compensation for its performance of any duties or obligations under this Agreement during the Term of this Agreement.
6. Hy-Vee or Host, as applicable, shall use commercially-reasonable efforts to maintain the Property surrounding the Equipment in a clean, safe, and orderly condition, to at least the same standard as Hy-Vee or Host customarily maintains the common areas at the Property. City agrees to use commercially reasonable efforts to maintain the Equipment in good condition and repair at all times during the Term at City's sole cost and expense. In the event City damages any portion of the Property in connection with the installation, maintenance, repair and/or replacement of the Equipment, City shall at its expense, restore the Property to substantially its condition prior to the commencement of any such work.
7. Hy-Vee or Host shall promptly notify City if and when Hy-Vee or Host becomes aware of any unsafe, inoperable, or damaged Equipment. Hy-Vee or Host shall promptly report all claims or incidents to City that occur with respect to the Equipment and shall thereafter promptly confirm in writing any loss, injury, or damage incurred by Hy-Vee or Host. Hy-Vee and Host shall not damage, disable, modify, or tamper with the Equipment, except to the extent required by a legitimate emergency situation. If Host damages, disables, modifies, or tampers with the Equipment, except in a legitimate emergency situation, City shall repair or replace, as necessary, the Equipment at Hy-Vee's or Host's sole cost and expense.
8. Host agrees to grant City an easement in form and substance mutually agreeable by and among City, Host and Hy-Vee, for the installation of the Equipment (the "Easement"). Host shall execute and deliver the Easement to City within thirty (30) days of receipt of mutual written approval by Host, Hy-Vee and City. Promptly following the expiration of

**PUBLIC WORKS, PUBLIC SAFETY,  
HOUSING AND COMMUNITY DEVELOPMENT AGENDA**

**August 3<sup>rd</sup>, 2020 @ 5:00 p.m.**

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**1615 1<sup>st</sup> Avenue, South Sioux City, Nebraska**

8

the Term, City shall execute and deliver to Host a quitclaim deed, relinquishing and abandoning City's rights under the Easement.

9. Host represents and warrants that it is the owner or lessor of the Property and that it has the power, authority, and capacity to bind itself to discharge the duties under this Agreement, for the term of the Agreement, and to execute this Agreement.
10. Host shall provide City with written notice within fifteen (15) days after any sale of the Property after which Host will not be either the owner or occupant of the Property. Within thirty (30) days following receipt of such notice, City may, in its sole discretion, consent to Host's delegation of its duties to the purchaser of the Property; alternatively, City may, in its sole discretion, remove the Equipment at its sole cost. If City elects to remove the Equipment, this Agreement shall be deemed terminated as of the earlier of (a) the date on which the sale of the Property is consummated, or (b) the date the Equipment is removed.
11. The Parties acknowledge and agree that City does not guarantee continuity of service to or from the Equipment and is not responsible for interruption, curtailment, failure, or defect in the supply or character of electricity furnished to the Equipment.
12. The Parties expressly agree that this Agreement was jointly drafted and that each had the opportunity to negotiate its terms and to obtain the assistance of counsel in reviewing its terms prior to execution. The language in all parts of this Agreement will be in all cases construed according to its fair meaning and not strictly for or against either of the Parties. If a claim is made by any Party relating to any conflict, omission, or ambiguity in this Agreement, no presumption or burden of proof or persuasion will be implied by virtue of the fact that this Agreement was prepared by or at the request of a particular Party or counsel for any particular Party.
13. In no event shall a Party be liable to another Party for indirect, consequential, incidental, special, punitive, or exemplary damages of any nature, arising at any time, and regardless of the form of the action or theory of the claim. The foregoing waiver does not apply to an indemnity obligation with respect to a third-party claim.
14. Each Party shall indemnify, defend, and hold harmless the other Party(ies) against all losses or liability resulting from or arising out of the negligence or willful misconduct of such Party, or that of its officer, directors, or employees. No Party shall be liable for loss or liability to the extent caused by the negligence or willful misconduct of the other Party(ies), their officers, directors, employees or agents.
15. As of the Effective Date, each Party shall procure and maintain in good standing insurance limits as set forth below for claims against such party involving bodily injury or property damage which may arise from or in connection with the exercise of the rights or privileges granted under this Agreement:



**PUBLIC WORKS, PUBLIC SAFETY,  
HOUSING AND COMMUNITY DEVELOPMENT AGENDA**

**August 3<sup>rd</sup>, 2020 @ 5:00 p.m.**

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9

- a. Commercial general liability insurance or comprehensive general liability insurance with a minimum limit of \$1,000,000 per occurrence for bodily injury and damage to property, including contractual liability, premises and operations, products/completed operations, independent contractors, broad form property damage, and personal injury coverage, and a minimum aggregate amount of \$2,000,000; or
  - b. Umbrella Liability Insurance with a minimum limit of \$3,000,000 each occurrence/aggregate where applicable to be excess of the coverages and limits required in paragraph 15(a) above.
  - c. Provided Host maintains a tangible net worth in excess of \$100,000,000, Host may self-insure for any insurance obligation set forth above.
16. Each Party will act in good faith in the performance of its obligations under this Agreement and each Party will cooperate with the reasonable requests of the other Party and otherwise use commercially reasonable efforts to implement the provisions of and to administer this Agreement in accordance with its terms.
17. This Agreement may be executed in one or more counterparts, each of which will be an original, but all of which taken together will constitute only one legal instrument.
18. Notwithstanding any other provision in this Agreement, if any Applicable Law is changed, amended, or revoked, or any statutes, rules, regulations, permits, or authorizations are enacted or granted, such that: (i) the continued implementation of this Agreement would have a material adverse effect on either Party; or (ii) this Agreement or any part of this Agreement would be rendered unenforceable, then the Parties agree to negotiate in good faith to amend this Agreement to conform with such Applicable Law or new statutes, rules, regulations, permits, or authorizations (as applicable) in order to maintain the original intent of the Parties under this Agreement.
19. Each party, upon the reasonable request of another Party, will perform any further acts which are consistent with this Agreement and that do not materially increase the duties or financial obligations of the Parties or reduce any rights of the Parties.
20. The terms of this Agreement that, by their nature continue beyond the expiration of the Term (e.g., indemnification obligations of the Parties), will continue in effect after its termination to the extent necessary to allow or require either Party to fulfill rights or obligations that arose under this Agreement.
21. There are no third-party beneficiaries of this Agreement, and this Agreement should not be construed to create or confer any right or interest in or to, or to grant any remedies to, any third party as a beneficiary of this Agreement, or any duty, obligation, or undertaking established in this Agreement.

**PUBLIC WORKS, PUBLIC SAFETY,  
HOUSING AND COMMUNITY DEVELOPMENT AGENDA**

**August 3<sup>rd</sup>, 2020 @ 5:00 p.m.**

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10

22. This Agreement does not constitute a joint venture, association, or partnership between the Parties. No express or implied term, provision, or condition of this Agreement will create, or will be deemed to create, an agency, joint venture, partnership, or any fiduciary relationship between the Parties.
23. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof, and supersedes any prior oral or written agreements and all contemporaneous oral communications with respect thereto. All additions, amendments or modifications to this Agreement must be made in writing and must be signed by the Parties. This Agreement shall be effective upon execution.
24. This Agreement shall inure to the benefit of and be binding upon the Parties hereto and their permitted successors and assigns.
25. Each provision of this Agreement is severable and if any provision shall be finally determined to be invalid, illegal, or unenforceable in any jurisdiction, the remaining provisions shall not be affected thereby nor shall said provision be invalid in any other jurisdiction. Without limiting the foregoing, if a provision obligating a Party is found to be invalid, illegal or unenforceable, the other Party shall not be required to perform or resume performance of its corresponding obligations.
26. Each of the provisions of this Agreement shall be enforceable independently of any other provision of this Agreement and independent of any other claim or cause of action. In the event of any dispute arising under this Agreement, it is agreed between the Parties that the law of the State of Nebraska will govern, without regard to Nebraska's conflict of laws provisions the interpretation, validity and effect of this Agreement without regard to the place of execution or place of performance thereof.
27. **TO THE FULLEST EXTENT PERMITTED BY LAW, EACH OF THE PARTIES HERETO WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS CONTRACT. EACH PARTY FURTHER WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED.**
28. The rights of the Parties may not be waived except in writing signed by the waiving Party. A waiver by either Party of any of its rights under this Agreement or any breach of this Agreement shall not be construed as a waiver of any other or future rights or breaches. No waiver by either Party of any one or more defaults by the other Party in the performance of any provision of this Agreement shall operate or be construed as a waiver of any future default or defaults, whether of a like or a different character.

[SIGNATURES ON FOLLOWING PAGES]

End Electric Vehicle Site Host Agree.