

EXTRACT FROM MINUTES

In accordance with Executive Order No. 20-03 of the Governor of the State of Nebraska waiving certain requirements of the Nebraska Open Meetings Act, a regular meeting of the Mayor and City Council of the City of South Sioux City, Nebraska, was held by telephone conference on the 13th day of April, 2020, at 5:00 o'clock p.m. Present were: Mayor Rod Koch (via telephone conference). Council Members physically present: Jim Gunsolley, Bruce Davis, Jasper Kriens. Council Members present via telephone conference: Carol Schuldt, Jason Bowman, Dan Bousquet, John Sanders. Absent: Jose "Lupe" Gonzalez.

Notice of the meeting was given in advance thereof by publication, the designated method for giving notice, as shown by the Affidavit of Publication attached to these minutes. Notice of this meeting was given to the Mayor and all members of the Council and a copy of their acknowledgment of receipt of notice and the agenda is attached to the minutes. Availability of the agenda was communicated in the advance notice and in the notice to the Mayor and Council of this meeting. In the notice, the public and the media were given the opportunity to participate in the telephone conference by contacting the Clerk's office for dial-in instructions. All proceedings hereafter shown were taken while the convened meeting was open to the attendance of the public.

The Mayor publicly stated to all in attendance that a current copy of the Nebraska Open Meetings Act was available for review and indicated the location of such copy posted in the Clerk's office.

A discussion was held concerning the proposed financing to be provided for the City by the Nebraska Department of Environment and Energy for the City's new wastewater treatment facility. Council Member Davis then introduced Ordinance No. 2020-02 entitled:

AN ORDINANCE AUTHORIZING THE ISSUANCE OF A COMBINED ELECTRIC, WATER AND SEWER REVENUE BOND, 2020C SERIES, OF THE CITY OF SOUTH SIOUX CITY, NEBRASKA, IN THE PRINCIPAL AMOUNT OF THIRTY-ONE MILLION FIVE HUNDRED NINETY ONE THOUSAND DOLLARS (\$31,591,000), IN THE FORM OF A PROMISSORY NOTE ISSUED TO EVIDENCE INDEBTEDNESS TO THE NEBRASKA DEPARTMENT OF ENVIRONMENT AND ENERGY; APPROVING THE FORM OF SAID BOND (ISSUED AS A SINGLE PROMISSORY NOTE) AND RELATED LOAN CONTRACT; PLEDGING AND HYPOTHECATING THE REVENUES AND EARNINGS OF THE ELECTRIC LIGHT AND POWER DISTRIBUTION SYSTEM, THE WATERWORKS PLANT AND WATER SYSTEM AND SANITARY SEWER SYSTEM OWNED OR TO BE OWNED BY THE CITY FOR THE PAYMENT OF SAID BOND; PROVIDING FOR THE ISSUANCE AND SALE OF SAID BOND; AUTHORIZING THE DELIVERY OF SAID BOND TO THE NEBRASKA DEPARTMENT OF ENVIRONMENT AND ENERGY; DETERMINING THAT INTEREST ON SAID BOND SHALL NOT BE EXCLUDABLE FROM GROSS INCOME FOR PURPOSES OF FEDERAL INCOME TAXATION; PROVIDING FOR THE DISPOSITION OF THE PROCEEDS OF SAID BOND AND ORDERING THE ORDINANCE PUBLISHED IN PAMPHLET FORM.

and Council Member Davis moved that the statutory rule requiring reading on three different days be suspended. Council Member Kriens seconded the motion to suspend the rules and upon roll call vote on the motion the following Council Members voted YEA: Sanders, Bowman, Bousquet, Schuldt, Davis Gunsolley, Kriens. The following voted NAY: None. The motion to suspend the rules was adopted by three-fourths of the Council and the statutory rule was declared suspended for consideration of said ordinance.

Said ordinance was then read by title and thereafter Council Member Davis moved for final passage of the ordinance, which motion was seconded by Council Member Kriens. The Mayor then stated the question was "Shall Ordinance No.2020-02 be passed and adopted?" Upon roll call vote, the following Council Members voted YEA: Kriens, Gunsolley, Sanders, Schuldt, Bousquet, Davis, Bowman. The following voted NAY: None. The passage and adoption of said ordinance having been concurred in by a majority of all members of the Council, the Mayor declared the ordinance adopted and the Mayor in the presence of the Council signed and approved the ordinance and the Clerk attested the passage and approval of the same and affixed such Clerk's signature thereto and

ordered the ordinance to be published as provided therein. A true, correct and complete copy of said ordinance is as follows:

ORDINANCE NO. 2020-02

AN ORDINANCE AUTHORIZING THE ISSUANCE OF A COMBINED ELECTRIC, WATER AND SEWER REVENUE BOND, 2020C SERIES, OF THE CITY OF SOUTH SIOUX CITY, NEBRASKA, IN THE PRINCIPAL AMOUNT OF THIRTY-ONE MILLION FIVE HUNDRED NINETY ONE THOUSAND DOLLARS (\$31,591,000), IN THE FORM OF A PROMISSORY NOTE ISSUED TO EVIDENCE INDEBTEDNESS TO THE NEBRASKA DEPARTMENT OF ENVIRONMENT AND ENERGY; APPROVING THE FORM OF SAID BOND (ISSUED AS A SINGLE PROMISSORY NOTE) AND RELATED LOAN CONTRACT; PLEDGING AND HYPOTHECATING THE REVENUES AND EARNINGS OF THE ELECTRIC LIGHT AND POWER DISTRIBUTION SYSTEM, THE WATERWORKS PLANT AND WATER SYSTEM AND SANITARY SEWER SYSTEM OWNED OR TO BE OWNED BY THE CITY FOR THE PAYMENT OF SAID BOND; PROVIDING FOR THE ISSUANCE AND SALE OF SAID BOND; AUTHORIZING THE DELIVERY OF SAID BOND TO THE NEBRASKA DEPARTMENT OF ENVIRONMENT AND ENERGY; DETERMINING THAT INTEREST ON SAID BOND SHALL NOT BE EXCLUDABLE FROM GROSS INCOME FOR PURPOSES OF FEDERAL INCOME TAXATION; PROVIDING FOR THE DISPOSITION OF THE PROCEEDS OF SAID BOND AND ORDERING THE ORDINANCE PUBLISHED IN PAMPHLET FORM.

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF SOUTH SIOUX CITY, NEBRASKA, AS FOLLOWS:

Section 1. The Mayor and Council of the City of South Sioux City, Nebraska (the "City")

hereby find and determine as follows:

A. the City owns and operates its own electric light and power distribution system, which represents a "revenue-producing facility" of the City under the provisions of Sections 18-1803 to 18-1805, R.R.S. Neb. 2012, as amended; said system as now existing together with all additions and improvements thereto hereafter acquired or constructed is herein referred to as the "Electric System";

B. the City owns and operates its own waterworks plant and system, which represents a "revenue-producing facility" of the City under the provisions of Sections 18-1803 to 18-1805, R.R.S. Neb. 2012, as amended; said plant and system as now existing together with all additions and improvements thereto hereafter acquired or constructed are herein referred to as the "Water System";

C. the City owns and operates its own sanitary sewer system, which represents a "revenue-producing facility" of the City under the provisions of Sections 18-1803 to 18-1805, R.R.S. Neb. 2012, as amended; said system as now existing together with all additions and improvements thereto hereafter acquired or constructed is herein referred to as the "Sewer System";

D. The Electric System, the Water System and the Sewer System as combined (the “Combined Utilities”) further represent a revenue-producing undertaking and facility of the City under the provisions of Sections 18-1803 to 18-1805, R.R.S. Neb. 2012, as amended, for which the City is authorized to issue revenue bonds;

E. the City currently has outstanding the following issues of revenue bonds of the City (collectively, the “Outstanding Parity Bonds”) for which the revenues of the Combined Utilities have been pledged and which constitute the only outstanding indebtedness for which the revenues of the Combined Utilities have been pledged:

- (i) \$5,600,000 Combined Electric, Water and Sewer Revenue Bond, 2020B Series, (drawable up to such amount and payable initially to the Nebraska Department of Environment and Energy and issued on January 15, 2020) (the “2020B NDEE Bond”), and with principal amount outstanding of \$0, which bond was authorized by Ordinance No. 2019-24 of the City (the “2019B NDEE Ordinance”),
- (ii) \$6,300,000 Combined Electric, Water and Sewer Revenue Refunding Bonds, 2020 Series (the “2020 Bonds”), presently outstanding in the principal amount of \$6,300,000, which 2020 Bonds were authorized by Ordinance No. 2019-16 of the City (the “2019 Ordinance”),
- (iii) \$1,486,200 Combined Electric, Water and Sewer Revenue Bond, 2017 Series, (drawable up to such amount and payable initially to the Nebraska Department of Environment and Energy and issued on June 23, 2017) (the “2017 NDEE Bond”), and with principal amount outstanding of \$1,254,568.85, which bond was authorized by Ordinance No. 2017-09 of the City (the “2017 NDEE Ordinance”),
- (iv) \$3,155,000 Combined Electric, Water and Sewer Revenue Bonds, 2016 Series, Dated June 1, 2016 (the “2016 Bonds”), presently outstanding in the principal amount of \$3,045,000, which 2016 Bonds were authorized by Ordinance No. 2016-05 of the City (the “2016 Ordinance”),
- (v) \$1,410,000 Combined Electric, Water and Sewer Revenue Refunding Bonds, 2015B Series, Dated October 30, 2015 (the “2015B Bonds”), presently outstanding in the principal amount of \$830,000, which 2015B Bonds were authorized by Ordinance No. 2015-7 of the City (the “2015B Ordinance”),
- (vi) \$4,465,000 Combined Electric, Water and Sewer Revenue Bonds, 2015A Series, Dated September 1, 2015 (the “2015A Bonds”), presently outstanding in the principal amount of \$3,725,000, which 2015A Bonds were authorized by Ordinance No. 2015-3 of the City (the “2015A Ordinance”),

- (vii) \$1,444,535 Combined Electric, Water and Sewer Revenue Bond, Dated July 8, 2015 (drawable up to such amount and payable initially to the Nebraska Department of Environment and Energy (the “2015 Bond”) and presently outstanding in the principal amount of \$1,049,398.45, which bond was authorized by Ordinance No. 2012-20 of the City as amended by Ordinance No. 2014-7, Nebraska (the “2014 Ordinance”),
- (viii) \$3,128,000 Combined Electric, Water and Sewer Revenue Bond, 2014 Series, (drawable up to such amount and payable initially to the Nebraska Department of Environment and Energy and issued on October 2, 2014) (the “2014 NDEE Bond”), and presently outstanding in the principal amount of \$756,199.37, which bond was authorized by Ordinance No. 2014-08 of the City (the “2014 NDEE Ordinance”),
- (ix) \$2,300,000 Combined Electric, Water and Sewer Revenue Bond, 2009 Series, (drawable up to such amount and payable initially to the Nebraska Department of Environment and Energy and with principal outstanding as of \$1,019,283.64 (the “2009 Bond”), which bond was authorized by Ordinance No. 2009-09 of the City (the “2009 Ordinance”),
- (x) \$5,000,000 Combined Electric, Water and Sewer Revenue Bond, 2008 Series, (drawable up to such amount and payable initially to the Nebraska Department of Environment and Energy and with principal outstanding of \$1,758,161.55 (the “2008 Bond”) which bond was authorized by Ordinance No. 2008-8 of the City (the “2008 Ordinance”); and
- (xi) \$6,565,000 Combined Electric, Water and Sewer Revenue and Refunding Bonds, 2011A Series, dated June 23, 2011, presently outstanding in the amount of \$5,050,000, which bonds were authorized by Ordinance No. 2011-3 (the "2011 Ordinance).

Other than the Outstanding Parity Bonds, there are presently no other outstanding obligations of the City which constitute a lien upon the revenues and earnings of the City’s Combined Utilities;

F. the Nebraska Department of Environment and Energy (“NDEE”) has approved a project of the City for its Sewer System consisting of the following:

Construction of a new wastewater treatment facility consisting of two covered anaerobic lagoons, a granular activated sludge treatment system, an ultraviolet disinfection system, and a direct discharge system to the Missouri River, along with new conveyance improvements to direct wastewater to the new facility;

which project has been designated as Project No. C318016 (the "Project") and has agreed to lend from monies in NDEE's Clean Water State Revolving Fund or from other sources in the total principal amount of up to \$31,591,000 (the "NDEE Loan") and in connection with such loan has agreed to accept one or more bonds payable from the revenues of the Combined Utilities;

G. that as authorized by the terms of the 2019B NDEE Ordinance, 2019 Ordinance, 2017 NDEE Ordinance, 2016 Ordinance, 2015B Ordinance, 2015A Ordinance, 2014 Ordinance, 2014 NDEE Ordinance, 2011A Ordinance, 2009 Ordinance, 2008 Ordinance (collectively, the "Outstanding Parity Bond Ordinances"), the City may issue "Additional Bonds" (as defined in the Outstanding Parity Bond Ordinances) payable from the revenues and earnings of the Combined Utilities on a parity with the Outstanding Parity Bonds provided that the revenues of the Combined Utilities for the fiscal year next preceding the date of authorization of such Additional Bonds, after deduction of operation and maintenance expenses (not including depreciation or interest) based upon a certified public accountant's report (subject to certain modifications as set forth in the Outstanding Parity Bond Ordinances for those times when an audit report is not yet available) is equal to or better than 1.25 times the average annual bond requirements (as defined and described in the Outstanding Parity Bond Ordinances) of the Outstanding Parity Bonds and the Additional Bonds proposed to be issued, or if the report of a certified public accountant for the fiscal year immediately preceding the year in which the Additional Bonds are proposed to be issued is not yet available, the City may use the report of the certified public accountant available for the then most recent fiscal year for which financial statements have been reported on, provided that the City Treasurer shall provide a supplemental statement stating that, based upon all unaudited monthly reports available, the statements of revenues and expenses of the City in connection with its Combined Utilities will not have substantially or materially changed in an adverse manner from such prior fiscal year for which financial statements have been reported on;

H. the average annual bond requirements for the Outstanding Parity Bonds and the bond herein authorized (hereby designated as the City's Combined Electric, Water and Sewer Revenue Bond, 2020C Series" and herein referred to sometimes as the "2020C Bond" and sometimes as the "2020C NDEE Note") determined in accordance with the requirements of the Outstanding Parity Bond Ordinances will not be more than \$2,548,422; and the revenues of the Combined Utilities after deduction of operation and maintenance expenses as adjusted in accordance with the terms of the Outstanding Parity Bond Ordinances for the fiscal year ended September 30, 2019 were not less than \$4,398,846;

I. in connection with the NDEE Loan, as evidenced by the 2020C Bond, it is necessary and advisable for the City to approve the execution of the "2020C NDEE Contract" (as defined below) and the 2020C NDEE Note in substantially the forms attached hereto;

J. all conditions, acts and things required by law to exist or to be done precedent to the issuance of the 2020C Bond as an "Additional Bond" under the terms of the

Outstanding Parity Bond Ordinances and as herein authorized to evidence the City's obligation under the NDEE Loan do exist and have been done as required by law.

Section 2. Unless the context shall clearly indicate otherwise, the following terms (in addition to any terms herein defined by parentheses) shall have the following meanings when used in this Ordinance:

(a) the term "Additional Bonds" shall mean any and all bonds hereafter issued by the City pursuant to the terms of this Ordinance which are equal in lien to the Outstanding Parity Bonds and the 2020C Bond, including any such bonds issued pursuant to Section 11 of this Ordinance.

(b) the term "revenues" shall mean all the rates, rentals, fees, charges, earnings and other monies from any source whatever derived by the City of South Sioux City through its ownership and operation of the Combined Utilities.

Section 3. To provide for the payment of the costs of the Project, there shall be and there is hereby ordered issued the 2020C Bond, in the form of and evidenced by a single promissory note (sometimes referred to in this Ordinance, according to the context, as the "2020C NDEE Note" and sometimes as the "2020C Bond") in the principal amount of Thirty-one Million Five Hundred Ninety-one Thousand Dollars (\$31,591,000), with such 2020C NDEE Note to be substantially in such form and to have such payment terms as are set forth in Exhibit A to this Ordinance, which exhibit is by such reference incorporated herein as if fully set forth. In connection with the issuance of the 2020C NDEE Note, the City shall also enter into an agreement with NDEE entitled "Loan Agreement (Governmental Borrower) between Nebraska Department of Environment and Energy and City of South Sioux City, Nebraska Project No. C318016" (the "2020C NDEE Contract") in substantially the form set forth in Exhibit B to this Ordinance, which exhibit is by such reference incorporated herein as if fully set forth. The terms and conditions of the 2020C NDEE Note and the 2020C NDEE Contract are hereby approved and the Mayor and the City Clerk are hereby authorized to execute and deliver the 2020C NDEE Note and the 2020C NDEE Contract for and on

behalf of the City in substantially the form presented but with such changes from the forms presented and attached hereto as such officers shall deem appropriate for and on behalf of the City.

Section 4. The City hereby pledges and hypothecates the entire revenue and earnings of the Combined Utilities, subject only to the payment of reasonable operating expenses of said Combined Utilities, to the payment of the 2020C Bond and the Outstanding Parity Bonds, both principal and interest, as the same fall due. The pledge and hypothecation of the revenues and earnings of the Combined Utilities provided for in this Ordinance for the 2020C Bond and the Outstanding Parity Bonds, subject to the right of the City to issue Additional Bonds as provided for in this Ordinance, is intended to and shall provide for a first and prior pledge of, lien on and security interest in the revenues and earnings of the Combined Utilities for the payment of principal of and interest on the 2020C Bond and the Outstanding Parity Bonds superior to any pledge, lien or security interest or promise made or given with respect to any other indebtedness of the City as to its Combined Utilities and is intended as a full exercise of the powers of the City provided for in Sections 18-1803 to 18-1805, R.R.S. Neb. 2012, as now or hereafter amended, with respect to the City's Combined Utilities and the revenues and earnings thereof.

Section 5. The City will maintain and collect rates and charges for all electric, water and sewer service furnished from the Combined Utilities adequate to produce revenue and earnings sufficient at all times:

- (a) to provide for the payment of interest on and principal of the 2020C Bond and the Outstanding Parity Bonds and any Additional Bonds as such interest and principal become due;
- (b) to pay all reasonable costs of operation and maintenance of the Combined Utilities, including adequate insurance as provided by this Ordinance and to pay for the necessary and reasonable repairs, replacements and extensions of said Combined Utilities;

(c) to establish and maintain the Combined Utility Bond Reserve Account and Improvement and Extension Account (including sub-accounts, if any, as established pursuant to this Ordinance and the Outstanding Parity Bond Ordinances) as hereinafter set forth; and

(d) to comply with all requirements with respect to maintaining net revenues as set forth in the Outstanding Parity Bond Ordinances and the 2020C NDEE Contract.

Section 6. The entire revenue and earnings derived from the operation of the Combined Utilities of said City shall be set aside as collected and deposited in a separate fund, previously created under Ordinance No. 76-32 and designated as the "Combined Utility Fund". The monies in the Combined Utility Fund shall be deposited in a separate bank account properly earmarked and deposit shall be made in a bank or banks designated by the Council and be secured as provided by law for deposits. The City shall maintain as long as the 2020C Bond and the Outstanding Parity Bonds are outstanding the following Accounts for the administration of said fund:

I. OPERATION AND MAINTENANCE ACCOUNT: The City shall set aside in this Account each month an amount sufficient for the operation and maintenance of its Combined Utilities and the expenses of maintenance and operation of said utilities shall be paid out of this Account.

II. COMBINED UTILITY REVENUE BOND ACCOUNT: On or before the first day of each calendar month, out of the Combined Utility Fund there shall be deposited monthly on the first day of each month into the Combined Utility Revenue Bond Account, starting with the month immediately following the month in which the 2020C NDEE Note is issued and delivered (such date, the "Initial Deposit Date"), the following amounts:

(1) during the period from the Initial Deposit Date, until and including that June 15 or December 15 (as the case may be with respect to the earliest occurring of such dates) which immediately follows the "Initiation of Operation" (as defined in the 2020C NDEE Contract; in this Ordinance hereafter referred to as the "Initiation of Operation") of the Project an amount such that if the same amount were credited on the first day of each calendar month from such date of credit until the next payment date upon which any amount falls due on the 2020C NDEE Note, whether for principal or interest, the

amount accumulated by such monthly credits would equal the amount falling due on such payment date on the 2020C NDEE Note, provided, however, that such credits shall be required only as and to the extent that such payments are not provided from other sources including amounts advanced by NDEE pursuant to the 2020C NDEE Contract and the 2020C NDEE Note;

(2) during the period from and including that June 15 or December 15 (as the case may be with respect to the earliest occurring of such dates) which immediately follows the Initiation of Operation until the 2020C NDEE Note has been paid in full an amount equal to one-sixth of the installment amount (principal and interest) due on the next installment payment date for the 2020C NDEE Note;

(3) during such periods, such amounts as are required to be credited under the terms of the Outstanding Parity Bond Ordinances for payments of principal and interest on the Outstanding Parity Bonds.

Such transfers to the Combined Utility Revenue Bond Account shall be made in such amounts and at such times that there will be sufficient sums in such Account to meet the required payments on all of said bonds as the same become due and amounts in such Account shall be applied to meet the payments on the 2020C Bond and the Outstanding Parity Bonds as the same fall due.

III. COMBINED UTILITY BOND RESERVE ACCOUNT: Pursuant to the Outstanding Parity Bond Ordinances, the City is required to maintain separate sub-accounts in the Combined Utility Bond Reserve Account for each separate issue included in the Outstanding Parity Bonds and the 2020C Bonds (if any). The Council hereby determines, taking into consideration the terms of the 2020C NDEE Contract, that the amount appropriate to be maintained with respect to the 2020C Bond in a separate sub-account shall be \$-0-. The amount required to be maintained with respect to the 2020C Bond and the Outstanding Parity Bonds as to each issue, shall not exceed the maximum amount permitted to be invested without yield restriction under the Internal Revenue Code of 1986, as amended, and applicable regulations of the United States Treasury Department thereunder. Monies credited to the Combined Utility Bond Reserve Account may be withdrawn, as needed but only from the designated sub-account for each issue, to provide funds to pay, when due, the principal of and interest on the 2020C Bond and the Outstanding Parity Bonds and any Additional Bonds issued pursuant to this ordinance, if the Combined Utility Revenue Bond Account contains insufficient funds for such purpose and the City Treasurer is hereby authorized and directed to make such withdrawal if and when needed. In the event of a withdrawal from the Combined Utility Bond Reserve Account for such purposes,

there shall be credited to the Combined Utility Bond Reserve Account all monies in the Combined Utility Fund remaining after making the payments required to be made in any month to the Operation and Maintenance Account and Combined Utility Revenue Bond Account and each month thereafter all such remaining monies shall be credited to the Combined Utility Bond Reserve Account until such Account, as to each sub-account therein, has been restored to the respective balance then required. Each sub-account in the Combined Utility Reserve Account, including sub-accounts established under the terms of the Outstanding Parity Bond Ordinances, shall secure the issue for which it is established and shall be drawn upon to meet payments on such issue only, until such issue is no longer outstanding. In the event of withdrawals from any such sub-account or sub-accounts, amounts available to restore deficiencies shall be applied to the respective deficient sub-accounts in the Combined Utility Bond Reserve Account on a pro rata basis in accordance with the respective principal amounts outstanding for each such issue of bonds (including the Outstanding Parity Bonds and any Additional Bonds as may be then outstanding) for which there is a deficient sub-account.

IV. IMPROVEMENT AND EXTENSION ACCOUNT: No amount shall be required to be maintained in such account under the terms of this Ordinance and the amount required to be maintained shall be determined with reference to the applicable provisions, if any, of the Outstanding Parity Bond Ordinances and any ordinances authorizing Additional Bonds, all as then outstanding, which shall govern the balance required to be maintained in the Improvement and Extension Account. Monies in this Account may be used for the maintenance, improvement, enlargement or extension of the Combined Utilities and at any time monies are spent from this Account so as to reduce the Account to an amount less than the then required balance, then equal monthly payments in an amount sufficient to fill the Account to its required balance (if any) in sixty months will commence and continue until the Improvement and Extension Account balance as may then be required is attained.

V. SURPLUS ACCOUNT: After providing for the Operation and Maintenance Account and after making the payments hereinabove required to be made into the Combined Utility Revenue Bond Account, Combined Utility Bond Reserve Account and Improvement and Extension Account, all remaining funds shall be deposited into a Surplus Account to be used as follows:

- 1) To fill any deficiency in the foregoing Accounts.
- 2) For the purpose of calling under their option provision or for purchasing on the open market any of the Outstanding Parity Bonds, the 2020C Bond and any Additional Bonds then outstanding.
- 3) For improvements, replacements, extensions and enlargements to the Combined Utilities including payment of principal and interest on

junior lien obligations issued to pay the costs of such improvements, replacements, extensions and enlargements.

4) For any other legal municipal purpose provided that money expended for other municipal purposes does not exceed 50% of the amount credited to the Surplus Account.

Monies on deposit in the Combined Utility Fund, which have not as yet been credited to an Account therein in accordance with this section and monies credited to the Operation and Maintenance Account and the Combined Utilities Revenue Bond Account may to the extent practicable and reasonable be invested in direct general obligations of or obligations the principal and interest of which are unconditionally guaranteed by the United States of America, maturing in the case of money invested from the Combined Utility Fund by not later than the first business day of the month next following such investment and maturing in the case of monies invested from the Operation and Maintenance Account and the Combined Utility Revenue Bond Account at such times and in such amounts as shall be required to provide monies to make the payments to be made from said Accounts. Monies credited to the Combined Utility Bond Reserve Account shall be invested in direct obligations of or obligations the principal and interest of which are unconditionally guaranteed by the United States of America maturing or redeemable at stated fixed prices at the option of the holder by not more than eight years from the date of such investment. Monies credited to the Improvement and Extension Account and the Surplus Account shall be invested in such obligations as are permitted by law for cities of the class of which South Sioux City is one, maturing at such times not later than ten years from the date of such investment and in such amounts as shall be determined by the City in accordance with its estimation of the payments to be made from said Accounts and, if permitted by law, in Outstanding Parity Bonds, the 2020C Bond or Additional Bonds, which Outstanding Parity Bonds, 2020C Bond or Additional Bonds so purchased shall be held for the credit of said

Accounts and not cancelled, and in Revenue Bond Anticipation Notes and in paving, sewer and water warrants which are to be funded by the issuance of bonds of the City. All interest and income derived from monies to the credit of the Combined Utility Fund, the Operation and Maintenance Account and the Surplus Account shall, when realized and collected, be credited to said Fund or to the respective Account from which such investments were made. All monies and income from investments made from monies credited to the Combined Utility Bond Reserve Account, the Improvement and Extension Account and the Combined Utility Revenue Bond Account shall, when realized and collected, be credited to the respective Account from which such investments were made, unless there shall then be credited thereto the respective full amounts required by paragraphs II, III and IV of this section in which event such interest and income shall be credited to the Surplus Account. All investments held for the credit of any Fund or Account may be sold when required to make the payments to be made from such Fund or Account. Any monies credited to the Combined Utility Fund or any Account therein which are not invested shall be secured in the manner provided by law for the security of funds of cities of the class of which South Sioux City is one. It is understood that the revenues of the Combined Utilities are to be credited to the various Accounts hereinabove established in the order in which said Accounts have been listed, and if within any period the revenues are insufficient to credit the required amounts in any of said Accounts, the deficiencies shall be made up the following period or periods after payment into all Accounts enjoying a prior claim on the revenues have been made in full.

Section 7. The City of South Sioux City shall keep proper books of record and account, separate and apart from all other records and accounts, showing complete and correct entries of all transactions relating to the Combined Utilities and the holder of the 2020C Bond or the

holders of any Additional Bonds or any of the Outstanding Parity Bonds or any duly authorized agent or agents of such holders shall have the right at all reasonable times to inspect all records, accounts and data relating thereto and to inspect said Combined Utilities and all properties comprising the same. Within sixty days following the close of each fiscal year, the City shall cause an audit of such books and accounts to be made by an independent firm of certified public accountants, showing the receipts and disbursements for account of the Combined Utilities and such audit will be available for inspection by the holders of any of the aforesaid bonds. Each such audit, in addition to whatever matters may be thought proper by the accountant to be included therein, shall include the following:

1. A statement in detail of the income and expenditures of each component of the Combined Utilities for such fiscal year.
2. A balance sheet as of the end of such fiscal year.
3. The accountant's comment regarding the manner in which the City has carried out the requirements of this Ordinance, and the accountant's recommendation for any changes or improvements in the operation of the Combined Utilities or the components thereof.
4. A list of the insurance policies in force at the end of the fiscal year, setting out as to each policy the amount of the policy and risks covered, the name of the insurer and the expiration date of the policy.
5. The number of properties connected with the systems composing the Combined Utilities at the end of the year and the number of metered electric, water and sewer customers at the end of the year.

All expenses incurred in the making of the audits required by this section shall be regarded and paid as a maintenance and operation expense. The City of South Sioux City shall furnish a copy of each such audit to the original purchaser of the 2020C Bond and of any series of Additional Bonds, and to the holder of at least twenty-five percent (25%) of any issue of bonds outstanding, upon request, after the close of each fiscal year, and said purchaser or any such holder shall have

the right to discuss with the accountant making the audit the contents of the audit and to ask for such additional information as each may require.

Section 8. The City Treasurer and the City Clerk shall be bonded, in addition to their official bond, by an insurance company licensed to do business in Nebraska, in amounts sufficient to cover at all times all the revenues and earnings of the Combined Utilities placed in their hands. Any other person employed by the City in the collection or handling of monies derived from the operation of the Combined Utilities shall also be bonded in an amount sufficient to cover all monies which may at any time be placed in such person's hands. The amount of such bonds shall be fixed by the Council and the cost thereof shall be paid from the earnings of said Combined Utilities, and they shall secure the faithful accounting of all monies.

Section 9. The City will carry adequate insurance on the Combined Utilities in such amounts as are normally carried by private companies engaged in similar operations, including, without limiting the generality of the foregoing, fire and windstorm insurance, public liability insurance and any insurance covering such risks as shall be recommended by a consulting engineer. The cost of all such insurance shall be regarded and paid as an operation and maintenance expense.

All such insurance proceeds except from public liability insurance shall be deposited in the Improvement and Extension Account and shall be used in making good the loss or damage in respect of which they were paid either by repairing the property damaged or replacing the property destroyed, and expenditures from said monies shall be made only upon a certificate issued by a consulting engineer and filed with the City Clerk stating that such proceeds, together with any other monies available for such purposes, are sufficient for the repair or replacement of any such properties; and when the City shall have been furnished with a certificate of a

consulting engineer stating that the property damaged or destroyed has been fully paid for, the residue, if any, of such insurance monies shall be transferred from the Improvement and Extension Account to the Combined Utility Revenue Bond Account to make up any deficiency in said Account, if any such deficiency exists.

If the proceeds of any insurance shall be insufficient to repair or replace the property damaged or destroyed, the City may use and shall pay out for such purpose, to the extent of such deficiency, any money remaining in the Improvement and Extension Account and the Surplus Account. If in the opinion of a consulting engineer the proceeds of any insurance, together with any amount then available for that purpose in the Improvement and Extension Account and Surplus Account shall be insufficient to fully complete and pay for such repairs or replacements and if the City shall fail to supply such deficiency from other sources within a period of six months after receipt by the City of such insurance monies, or if in the opinion of a consulting engineer it is in the best interest of the City not to repair or replace all or any part of the damaged properties and that failure to repair or replace the damaged properties shall not affect the sufficiency of the income and revenue from the remaining properties to properly maintain and operate the same, provide funds for the Combined Utility Revenue Bond Account, Combined Utility Bond Reserve Account and Improvement and Extension Account, as herein provided for, then such insurance monies to the extent not applied to repair or replace the damaged properties shall deposited in the Combined Utility Bond Reserve Account as described in Section 6 of this Ordinance and used for the purposes for which said Account has been created, so as to fill any deficiency in said Account, or if no deficiency exists, then to the Improvement and Extension Account to fill such Account to its required balance and any amount which may be in excess of

the amount required in the Improvement and Extension Account shall be credited to the Surplus Account.

If the holders of sixty percent (60%) or more in principal amount of the Outstanding Parity Bonds, the 2020C Bond and any Additional Bonds at the time outstanding shall at any time direct the City in writing to do so, then any insurance monies theretofore credited to the Improvement and Extension Account and then in the hands of the City may be used for extensions and betterments of said Combined Utilities or applied to the pro rata payment of the principal of and accrued interest on all said bonds then outstanding.

The proceeds of any and all policies for public liability shall be paid to and be held by the City Treasurer and used in paying the claims on account of which they were received.

Section 10. The City will maintain the Combined Utilities in good condition and operate the same in an efficient manner and at a reasonable cost. The City agrees with the holder or holders from time to time of the 2020C Bond that the City will continue to own, free from all liens and encumbrances, and will adequately maintain and efficiently operate said Combined Utilities; provided, however, the City may dispose of property which is recommended for disposal by the manager or superintendent of the utilities, or an independent Consulting Engineer and which is determined as a matter of record by the Council to have become obsolete, non-productive or otherwise unusable to the advantage of the City.

Section 11. Nothing in this Ordinance shall be construed in such a manner as to prevent the issuance by the City of South Sioux City of Additional Bonds payable from the revenues of the Combined Utilities, which Additional Bonds shall be on a parity with the lien of the Outstanding Parity Bonds and the 2020C Bond and equally and ratably secured therewith and entitled to the security and benefits of this Ordinance; provided however, that before any such

Additional Bonds are actually issued, the revenues of the Combined Utilities, for the fiscal year next preceding the date of the authorization of such Additional Bonds, after deducting therefrom all costs of operation and maintenance of said system or systems, for such fiscal year and before deduction of depreciation or interest as based on a certified public accountant's report shall have been equal to 1.25 times the average annual bond requirements of the Outstanding Parity Bonds, the 2020C Bond and any Additional Bonds then outstanding and the Additional Bonds proposed to be issued or such revenues would have met such test by applying the provisions of the second paragraph of this Section 11. If the report of a certified public accountant for the fiscal year immediately preceding the year in which the Additional Bonds are proposed to be issued is not yet available, the City may use the report of the certified public accountant available for the then most recent fiscal year for which financial statements have been reported on, provided that the City Treasurer shall provide a supplemental statement stating that, based upon all unaudited monthly reports available, the statements of revenues and expenses of the City in connection with its Combined Utilities will not have substantially or materially changed in an adverse manner from such prior fiscal year for which financial statements have been reported on. For this purpose the average annual bond requirements shall be determined by adding all of the principal and interest which will become due when computed to the absolute maturity of the Outstanding Parity Bonds, the 2020C Bond and Additional Bonds, if any, then outstanding and all of the principal and interest of the Additional Bonds to be issued, and dividing such total by the number of years remaining that the longest bond of any issue of bonds (including the Additional Bonds to be issued) has to run to maturity.

In the event any change in the rates, rentals and charges for the use and service of the Combined Utilities has been made during the preceding fiscal year or during the interval between

the end of such fiscal year and the issuance of such Additional Bonds, or in the event the City shall covenant in the ordinance or resolution authorizing the issuance of such Additional Bonds to impose, effective upon the issuance of such Additional Bonds, higher rates, rentals and charges for such use and service, compliance with the provisions of this Section 11 of this Ordinance may be evidenced by a certificate of an independent Consulting Engineer or firm of engineers or Certified Public Accountant or independent Certified Public Accountants to be filed with the City Clerk prior to the issuance of any such Additional Bonds. Such certificate shall state fully the facts upon which such certificate is based, and if it is a certificate of the Consulting Engineer or firm of Consulting Engineers shall have attached thereto the certified financial statement for the fiscal year next preceding the date of authorization of such Additional Bonds used by the Engineer or firm of Engineers in arriving at the conclusion stated in said certificate. The Consulting Engineer or independent Certified Public Accountant of the City shall, in determining the earnings for such fiscal year adjust the collections to reflect the result as if such changed rates, rentals and charges, or such higher rates, rentals and charges had been in existence for such entire preceding fiscal year period, and the amount of such net collections and adjusted earnings as aforesaid shall be conclusive evidence and the only evidence required to show compliance with the provisions and requirements of this Section 11 of this Ordinance.

Everything in this Section 11 to the contrary notwithstanding, if the Mayor and Council shall in the reasonable exercise of discretion determine that the electric power requirements of the City and its inhabitants are such that the construction or other acquisition of facilities for generation of electric power by the City, acting either by itself or in such joint undertakings as are permitted by Sections 18-412.07 through 18-412.10, Reissue Revised Statutes of Nebraska, 2012, as amended, is necessary and desirable and will not result in any impairment of the City's

ability to pay principal and interest as it falls due on all of the Outstanding Parity Bonds, the 2020C Bond and any Additional Bonds outstanding at such time, the forgoing requirement that the revenues of the Combined Utilities shall have been equal to 1.25 times the average annual bond requirements of the outstanding bonds shall not be applicable and Additional Bonds on a parity with the lien of the Outstanding Parity Bonds, the 2020C Bond and any Additional Bonds then outstanding and equally and ratably secured therewith and entitled to the security and benefits of this Ordinance may be issued in an amount sufficient to pay the cost of such construction or acquisition, provided, however, that the determination of the Mayor and Council to construct or acquire such facilities shall be based upon a study showing such construction or acquisition to be economically feasible without such impairment, such study to be furnished either by a firm of consulting engineers of recognized standing or of certified public accountants of recognized standing, which study may in demonstrating such feasibility take into consideration any contracts for sale of excess capacity, proposed electric service rate increases, anticipated savings, if any, to be realized from the City generating rather than purchasing all or part of the electric power requirements of its electric light and power distribution system and such other factors as shall be deemed relevant by such accountants or engineers.

If, prior to the payment of the 2020C Bond, it shall be found desirable to refund the 2020C Bond under the provisions of any law then available, said bond may be refunded with the consent of the holder thereof (except that to the extent that the 2020C Bond is then redeemable and has been properly called for redemption, such consent shall not be necessary except to the extent provided in the 2020C NDEE Contract) and the refunding obligations so issued shall enjoy complete equality of lien with the portion of the 2020C Bond which is not refunded, if any there be, and the refunding obligations shall continue to enjoy whatever priority of lien over

subsequent issues may have been enjoyed by the 2020C Bond or portion thereof refunded, provided, however, that unless all of the outstanding 2020C Bond and Outstanding Parity Bonds are being refunded, the total of the interest and principal payment obligation in any succeeding year shall not be greater, after such refunding, than it would have been in each such succeeding year without such refunding, without the consent of the holders of the unrefunded portion of said bonds. Nothing in this paragraph shall preclude the issuance of refunding bonds pursuant to the prior paragraphs of this Section 11 and, in connection with any required computation, debt service requirements on any bonds to be refunded may be excluded from and after the time when such refunded bonds shall no longer be outstanding.

Section 12. Nothing herein contained shall prevent the City from issuing bonds, revenue notes, or other forms of indebtedness, the payment of principal and interest of which is a charge upon all or a portion of the revenues of the Combined Utilities, junior or inferior to the Outstanding Parity Bonds and the 2020C Bond and to the payments to be made into the Operation and Maintenance Account, Combined Utility Revenue Bond Account, and the Combined Utility Bond Reserve Account described in Section 6 hereof, and the City shall have the right to pay interest thereon and the principal thereof, as long as no deficiency exists in the payments into such Accounts, from funds available for improvements and enlargements to the Combined Utilities or from other funds which are available for such debt service.

Section 13. The City will not hereafter grant any franchise or right to any person, firm or corporation to own or operate an electric, water or sewer plant or system in competition with those owned by the City.

Section 14. While the 2020C Bond is outstanding, the City will render bills to all customers for electric, water and sewer services. If bills are not paid within sixty days after due,

such utility service will be discontinued subject to state and federal laws governing the termination of utility service. The City agrees that it will order water service shut off on all properties served by water or sewer where there are delinquent water or sewer use charges and will order electric service shut off on all property served by electricity where there are delinquent electric charges and will make appropriate charge for use of all properties of the City connected to the electric, water and sewer systems.

Section 15. Except for amendments which are required for the correction of language to cure any ambiguity or defective or inconsistent provisions, omission or mistake or manifest error contained herein, no changes additions or alterations of any kind shall be made by the City in the provisions of this Ordinance in any manner; provided, however, that from time to time the holder of the 2020C Bond by an instrument or instruments in writing signed by such holder and filed with the City Clerk shall have power to assent to and authorize any modification of the rights and obligations of the City and of the holder of the 2020C Bond and interest thereon and the provisions of this Ordinance that shall be proposed by the City, and any action authorized to be taken with the assent and authority given as aforesaid of the holder of said bond shall be binding upon such holder and upon the City as fully as though such action were specifically and expressly authorized by the terms of this Ordinance; provided, always, that no such modification shall be made, without the written consent of the holder of the 2020C Bond, which will (a) extend the time of payment of the principal of or interest on said bond or reduce the principal amount thereof or the rate of interest thereon; or (b) authorize the creation of any lien prior to the pledge of the revenues afforded by this Ordinance for the 2020C Bond; or (c) reduce the percentage in principal amount of said outstanding bond required to assent to or authorize any

such modification. Any modification of the provisions of this Ordinance made as aforesaid shall be set forth in a supplemental ordinance to be adopted by the Mayor and Council of said City.

Section 16. So long as the 2020C Bond is outstanding, each of the obligations, duties, limitations and restraints imposed upon the City by this Ordinance shall be deemed to be a covenant between the City and the holder of said bond, and this Ordinance and every provision and covenant hereof shall constitute a contract of the City with every holder from time to time of said bond. Any holder of the 2020C Bond may by mandamus or other appropriate action or proceeding at law or in equity in any court of competent jurisdiction enforce and compel performance of this Ordinance and every provision and covenant thereof including, without limiting the generality of the foregoing, the enforcement of the performance of all duties required by the City by this Ordinance and the applicable laws of the State of Nebraska, including in such duties the making and collecting of sufficient rates, rentals, fees or charges for the use and service of the Combined Utilities, the segregation of the revenues of the Combined Utilities and the application thereof to the respective Fund and Accounts referred to and described in Section 6 of this Ordinance.

Section 17. The City's obligations under this Ordinance and the liens, pledges, covenants and agreements of the City herein made or provided for with respect to the 2020C Bond, shall be fully discharged and satisfied and such bond shall no longer be deemed outstanding hereunder if such bond shall have been purchased and cancelled by the City or when payment of the principal of and interest thereon to the respective date of maturity or redemption (a) shall have been made or caused to be made in accordance with the terms thereof, or (b) shall have been provided for by depositing with a national or state bank having trust powers or trust company, in trust solely for such payment, (i) sufficient money to make such payment and/or (ii) direct general obligations of

the United States government or obligations guaranteed by the United States government (“Deposit Securities”) in such amount and bearing interest payable and maturing or redeemable at stated fixed prices at the option of the holder as to principal, at such time or times, as will ensure the availability of sufficient money to make such payment; provided, however, that, with respect to the 2020C Bond if it is to be paid prior to maturity, the City shall have duly given notice of redemption of such bond as provided by law or made irrevocable provisions for the giving of such notice. Any such money so deposited with a bank or trust company may be invested and reinvested in Deposit Securities and all interest and income from such Deposit Securities in the hands of such bank or trust company, in excess of the amount required to pay principal of and interest on the 2020C Bond for which such monies were deposited, shall be paid over to the City as and when collected. With respect to any deposit made for purposes of satisfying the 2020C Bond under this Section 17, there shall be furnished to NDEE and the Nebraska Investment Finance Authority (“NIFA”) an opinion of nationally recognized bond counsel that such deposit for payment of the 2020C Bond will not adversely affect the exclusion for interest from gross income for federal tax purposes on any bonds issued by NIFA to provide funds for deposit into the Wastewater Treatment Facilities Construction Loan Fund and the furnishing of such opinion shall be a condition required to be satisfied prior to the making of any such deposit in trust for payment and satisfaction with respect to the 2020C Bond unless the 2020C Bond is to be prepaid and redeemed within 60 days from the time of such deposit.

Section 18. If any section, paragraph, clause or provision of this Ordinance shall be held invalid, the invalidity of such section, paragraph, clause or provision shall not affect any of the other provisions of this Ordinance.

Section 19. The Mayor and Council hereby expressly declare the intent and understanding that interest on the 2020C Bond shall not be excludable from gross income under the terms of Section 103 of the Internal Revenue Code of 1986, as amended, and the City as issuer shall not file any information report with respect to the issuance of the 2020C Bond pursuant to Section 149(e) of said Code.

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


Section 21. This Ordinance shall be published in pamphlet form and take effect as provided by law.

PASSED AND APPROVED this 13th day of April, 2020.



Mayor

ATTEST:



City Clerk



Exhibit "A"

NDEE Note

Exhibit "B"

NDEE Contract

Motion for adjournment was duly made, seconded and on roll call vote was declared duly adopted by the Mayor.

I, the undersigned City Clerk for the City of South Sioux City, Nebraska, hereby certify that the foregoing is a true and correct copy of the proceedings had and done by the Mayor and Council on April 13, 2020; that all of the subjects included in the foregoing proceedings were contained in the agenda for the meeting, kept continually current and readily 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 a current copy of the Nebraska Open Meetings Act was publicly announced, available and accessible to members of the public, posted during such meeting in the room in which such meeting was held; that at least one copy of all reproducible material discussed at the meeting was available at the meeting for examination and copying by members of the public; that said minutes from which the foregoing proceedings have been extracted 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 advance notification of the time and place of said meeting and the subjects to be discussed at said meeting.



City Clerk

NOTICE OF PUBLICATION OF ORDINANCE IN PAMPHLET FORM

On April 13, 2020, the Mayor and Council of the City of South Sioux City, Nebraska, passed and approved Ordinance No. 2020-02, entitled:

AN ORDINANCE AUTHORIZING THE ISSUANCE OF A COMBINED ELECTRIC, WATER AND SEWER REVENUE BOND, 2020C SERIES, OF THE CITY OF SOUTH SIOUX CITY, NEBRASKA, IN THE PRINCIPAL AMOUNT OF THIRTY-ONE MILLION FIVE HUNDRED NINETY ONE THOUSAND DOLLARS (\$31,591,000), IN THE FORM OF A PROMISSORY NOTE ISSUED TO EVIDENCE INDEBTEDNESS TO THE NEBRASKA DEPARTMENT OF ENVIRONMENT AND ENERGY; APPROVING THE FORM OF SAID BOND (ISSUED AS A SINGLE PROMISSORY NOTE) AND RELATED LOAN CONTRACT; PLEDGING AND HYPOTHECATING THE REVENUES AND EARNINGS OF THE ELECTRIC LIGHT AND POWER DISTRIBUTION SYSTEM, THE WATERWORKS PLANT AND WATER SYSTEM AND SANITARY SEWER SYSTEM OWNED OR TO BE OWNED BY THE CITY FOR THE PAYMENT OF SAID BOND; PROVIDING FOR THE ISSUANCE AND SALE OF SAID BOND; AUTHORIZING THE DELIVERY OF SAID BOND TO THE NEBRASKA DEPARTMENT OF ENVIRONMENT AND ENERGY; DETERMINING THAT INTEREST ON SAID BOND SHALL NOT BE EXCLUDABLE FROM GROSS INCOME FOR PURPOSES OF FEDERAL INCOME TAXATION; PROVIDING FOR THE DISPOSITION OF THE PROCEEDS OF SAID BOND AND ORDERING THE ORDINANCE PUBLISHED IN PAMPHLET FORM.

Said ordinance was published in pamphlet form and copies thereof are available at the office of the City Clerk, in South Sioux City, Nebraska.



City Clerk