

## MINUTES OF MEETING

OF

### SANITARY AND IMPROVEMENT DISTRICT NO. 1 OF CASS COUNTY, NEBRASKA

A meeting of the Board of Trustees of Sanitary and Improvement District No. 1 of Cass County, Nebraska, was convened in open and public session at 8:00 a.m. on the 24th day of August, 2021, and to be held at 10250 Regency Circle, Suite 300, Omaha, Nebraska.

Present: Peggy L. Lawton, Jon Meyers, Wayne Breyfogle and Matt Burnham. Also, in attendance were Mark J. LaPuzza, attorney for the District, Ed Hobza of Thompson, Dreessen & Dorner, Inc., Kraig Thelen, John Kuehl of D.A. Davidson & Co., and Jim Noerrlinger.

Absent: Scott Pekarek.

Notice of the meeting was given in advance thereof by publication in The Plattsmouth Journal on August 19, 2021, a copy of the proof of publication being attached to these minutes. Notice of this meeting was simultaneously given to all members of the Board of Trustees, and a copy of their acknowledgment of receipt of notice is attached to these minutes. Availability of the agenda was communicated in the published notice and in the notice to the Trustees of this meeting. All proceedings of the Board were taken while the convened meeting was open to the attendance of the public. The agenda was at all times available at the office for the District at Regency Center, Suite 300, 10250 Regency Circle, Omaha, Nebraska 68114.

It was first 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 in the room where the meeting was being held.

The Board was next presented with consideration of its outstanding bills and invoices.

There was next presented a statement from Appraisal One, for appraisal services for the Noerrlinger property in Section 16 and 17-10-14, Cass County, Nebraska, Invoice #20210601, in the amount of Two Thousand Eight Hundred Fifty and no/100 Dollars (\$2,850.00).

There was next presented a statement from Kraig J. Thelen, for services rendered in connection with Federal Disaster DR 4420 NE, Statement No. 29, for the month of July, in the amount of One Thousand Twenty-Six and no/100 Dollars (\$1,026.00).

There was next presented a statement from Thompson, Dreessen & Dorner, Inc., engineers for the District, for services on the USACE Levee Project, Invoice #145411, in the amount of Five Thousand Nine Hundred Seventy-One and 60/100 Dollars (\$5,971.60).

The Clerk next directed the attention of the Board of Trustees to the fact that D.A. Davidson & Co. will purchase Nine Thousand Eight Hundred Forty-Seven and 60/100 Dollars (\$9,847.60) in warrants at this time and that the contracted charge for such purchase of warrants is two percent (2%) or One Hundred Ninety-Six and 96/100 Dollars (\$196.96) in accordance with the financing agreement previously adopted by the Board. The Chairman recommended the issuance of a warrant for such amount to D.A. Davidson & Co.

There was next presented a statement from Nebraska Public Power District, for lighting at Highway 75, Account #211010041398, **having a credit balance in the amount of Thirty-Eight and 36/100 Dollars (\$38.36), so no payment is due at this time.**

There was next presented a statement of Summary Account #5843000090 from Omaha Public Power District, for street lights and other electrical services, Statement dated August 5, 2021, in the amount of Two Thousand Seven Hundred Seven and 06/100 Dollars (\$2,707.06).

There was next presented a statement from Builders Supply Co., for purchases made for the pump house, Invoice #0002035131-001, in the amount of Two Hundred Forty-Three and 65/100 Dollars (\$243.65).

There was next presented a statement from One Call Concepts, Inc., for line locates within the District, Invoice #1070569, in the amount of Nine and 97/100 Dollars (\$9.97). **The Board was next reminded that it has a credit balance in the amount of Forty-Eight and 41/100 Dollars (\$48.41), so no payment is due at this time.**

There was next presented correspondence from Jim Noerrlinger, presenting and requesting payment in favor of Kerns Excavating, for water leak repair, Invoice #16472, in the amount of Eight Hundred Five and 55/100 Dollars (\$805.55).

There was next presented a statement of property taxes due from the District to the Cass County Treasurer's Office, in the amount of Eight Thousand Two Hundred Eight and 42/100 Dollars (\$8,208.42), related to real property owned by the District.

There was next presented a statement from Thompson, Dreessen & Dorner, Inc., engineers for the District, for services rendered in miscellaneous District matters through August 15, 2021, Invoice #145410, in the amount of Five Hundred Eighty-Six and no/100 Dollars (\$586.00).

There were next presented statements from Pansing Hogan Ernst & Bachman LLP, attorneys for the District, for legal services performed through July 31, 2021, as follows: i) Miscellaneous District matters, in the aggregate amount of Eleven Thousand Four Hundred Twenty-Seven and 38/100 Dollars (\$11,427.38), and (ii) March 2019 Flood, in the amount of Seven Thousand Seven Hundred Five and 49/100 Dollars (\$7,705.49); said statements being in the aggregate amount of Nineteen Thousand One Hundred Thirty-Two and 87/100 Dollars (\$19,132.87).

The previously described bills, invoices, recommendations and statements having been presented for the Board's consideration and after review and discussion of such items, the following resolution was duly moved and passed on a **4-0** vote.

RESOLVED, by the Board of Trustees of Sanitary and Improvement District No. 1 of Cass County, Nebraska, that the Chairman and Clerk be and they hereby authorized and directed to execute and deliver Warrant Nos. 5961 through 5965, of the District, dated the date of this meeting, to the following payees and in the following amount, said Warrants to be drawn on the **BOND** Fund of the District and to draw interest at the rate of five percent (5%) per annum (interest to be payable on February 10 of each year) and to be redeemed no later than August 24, 2026, subject to extension of said maturity date by order of the District Court of Cass County, Nebraska, after notice is given as required by law, to-wit:

Warrant No. 5961, for the amount of Two Thousand Eight Hundred Fifty and no/100 Dollars (\$2,850.00), payable to Appraisal One.

Warrant No. 5962, for the amount of One Thousand Twenty-Six and no/100 Dollars (\$1,026.00), payable to Kraig J. Thelen.

Warrant No. 5963, for the amount of Five Thousand and no/100 Dollars (\$5,000.00), and Warrant No. 5964, for the amount of Nine Hundred Seventy-One and 60/100 Dollars (\$971.60), payable to Thompson, Dreessen & Dorner, Inc.

Warrant No. 5965, for the amount of One Hundred Ninety-Six and 96/100 Dollars (\$196.96), payable to D.A. Davidson & Co.

FURTHER RESOLVED, by the Board of Trustees of Sanitary and Improvement District No. 1 of Cass County, Nebraska, that the Chairman and Clerk be and they hereby authorized and directed to execute and deliver Warrant Nos. 5966 through 5975, of the District, dated the date of this meeting, to the following payees and in the following amounts, said Warrants to be drawn on the General Fund of the District and to draw interest at the rate of six percent (6%) per annum and to be redeemed no later than August 24, 2024, subject to extension of said maturity date by order of the District Court of Cass County, Nebraska, after notice is given as required by law, to-wit:

Warrant No. 5966, for the amount of Two Thousand Seven Hundred Seven and 06/100 Dollars (\$2,707.06), payable to Omaha Public Power District, Account #5843000090.

Warrant No. 5967, for the amount of Two Hundred Forty-Three and 65/100 Dollars (\$243.65), payable to Builders Supply Co.

Warrant No. 5968, for the amount of Eight Hundred Five and 55/100 Dollars (\$805.55), payable to Kerns Excavating.

Warrant No. 5969, for the amount of Five Thousand and no/100 Dollars (\$5,000.00), and Warrant No. 5970, for the amount of Three Thousand Two Hundred Eight and 42/100 Dollars (\$3,208.42), payable to Cass County Treasurer's Office.

Warrant No. 5971, for the amount of Five Hundred Eighty-Six and no/100 Dollars (\$586.00), payable to Thompson, Dreessen & Dorner, Inc.

Warrant Nos. 5972 through 5974, each for the amount of Five Thousand and no/100 Dollars (\$5,000.00), and Warrant No. 5975, for the amount of Four Thousand One Hundred Thirty-Two and 87/100 Dollars (\$4,132.87), payable to Pansing Hogan Ernst & Bachman LLP.

FURTHER RESOLVED by the Board of Trustees of Sanitary and Improvement District No. 1 of Cass County, Nebraska, that both they and the district hereby find and determine and covenant, warrant and agree as follows: the improvements and/or facilities being financed or refinanced by the above Warrants are for essential governmental functions and are designed to serve members of the general public on an equal basis; all said improvements have from the time of their first acquisition and construction been owned, are owned and are to be owned by the District or another political subdivision; to the extent special assessments have been or are to be levied for any of said improvements, such special assessments have been or are to be levied under Nebraska law as a matter of general application to all property specially benefited by said

improvements in the District; the development of the land in the District is for residential or commercial use and the development of the land in the District for sale and occupation by the general public has proceeded and is proceeding with reasonable speed; other than any incidental use of said improvements by a developer during the initial period of development of said improvements, there have been, are and will be no persons with rights to use such improvements other than as members of the general public; none of the proceeds of said Bonds or any refinanced indebtedness have been or will be loaned to any private person or entity; the District hereby authorizes and directs the Chairperson or Clerk to file or cause to be filed, when due, an information reporting form pursuant to Section 149(e) of the Internal Revenue Code of 1986, as amended, pertaining to the above Warrants; and the District does not reasonably expect to sell or otherwise dispose of said improvements and/or facilities, in whole or in part, prior to the last maturity of the above Warrants.

FURTHER RESOLVED by the Board of Trustees of Sanitary and Improvement District No. 1 of Cass County, Nebraska, that the District hereby covenants, warrants and agrees as follows: (a) to take all actions necessary under current federal law to maintain the tax exempt status (as to taxpayers generally) of interest on the above Warrants; and (b) to the extent that it may lawfully do so, the District hereby designates the above Warrants as its "qualified tax exempt obligations" under Section 265(b)(3)(B)(i)(III) of the Internal Revenue Code of 1986, as amended, and covenants and warrants that the District does not reasonably expect to issue warrants or bonds or other obligations aggregating in the principal amount of more than \$10,000,000 during the calendar year in which the above Warrants are to be issued.

FURTHER RESOLVED, by the Board of Trustees of Sanitary and Improvement District No. 1 of Cass County, Nebraska, that this and the preceding Resolutions are hereby adopted as the Certificate With Respect to Arbitrage of the District pertaining to the above Warrants and the District and the Chairman and Clerk of the District hereby further certify, as of the date of the registration of the above Warrants with the County Treasurer of Cass County, Nebraska, as follows:

1. No separate reserve or replacement fund has been or will be established with respect to the above Warrants. The District reasonably anticipates that monies in its Bond Fund reasonably attributable to the above Warrants in excess of the lesser of: (a) ten percent (10%) of the net principal proceeds of the above Warrants, (b) the maximum annual debt service due on the above Warrants, or (c) one hundred twenty-five percent (125%) of average annual debt service due on the above Warrants will be expended for payment of principal of and interest on the above Warrants within thirteen (13) months after receipt of such monies. That amount which is currently held in the District's Bond Fund which exceeds the amount which is to be expended for payment of principal and interest on the above Warrants within thirteen (13) months after receipt of such monies, plus that amount arrived at pursuant to the immediately preceding sentence, will not be invested in any securities or any other investment obligations which bear a yield, as computed in accordance with the actuarial method, in excess of the yield on the above Warrants.

2. To the best of their knowledge, information and belief, the above expectations are reasonable.

3. The District has not been notified of any listing of it by the Internal Revenue Service as an issuer that may not certify its bonds.

4. This Certificate is being passed, executed and delivered pursuant to Section 1.148-2(b)(2) of the Income Tax regulations under the Internal Revenue Code of 1986, as amended.

The next order of business was discussion regarding the pending FEMA appeal for the road project. The Trustees were informed that a request for arbitration had been filed with the CBCA in order to avoid letting the deadline pass. Jon Meyers explained that he had been in discussions with Mark LaPuzza, Ed Hobza and Kraig Thelen as to how to proceed with the options for appeal. He identified that the District functionally had three options for how to proceed: File a second written appeal with FEMA; pursue a CBCA arbitration or allow the first appeal determination to stand. The Trustees were reminded that the first-tier appeal had been denied on three grounds: Failure to timely submit the appeal; failure to prove the road damage to be the result of the disaster and not the result of deferred maintenance and a question regarding 2018 regulations as to whether the road constituted a road used by the general public. The Trustees were reminded that the issue with the road being used by the general public was distinct from the prior question as to the whether or not the road was a "private" road. FEMA was not arguing that the road was private but is arguing that, even as a public road, that the road may not qualify for FEMA funding if not used by the general public. This was not an issue with the 2011 appeal because the regulation was not enacted until 2018.

Jon Meyers reviewed the basis for denial of the appeal and explained that the District would have to be successful overcoming all three objections in order to make a recovery.

The Trustees discussed the issues inherent in overcoming each of the grounds for denial and discussing options as to how to proceed. The Trustees generally agreed that the second-tier appeal, submitted to FEMA and making some arguments which had already been made did not seem likely to produce a different result. Discussion then turned to the CBCA arbitration process. It was noted that no Nebraska project had ever been appealed through the CBCA and there was little to use as the basis for a likelihood of success. It was noted that the arbitration process would provide the District the opportunity to make arguments in a more conversational and informal fashion and the Trustees discussed the risks and benefits associated with such procedure. It was also discussed that the appeal appeared to run on a short timeframe and still involve in-person arbitration in Washington D.C. The cost of the arbitration with respect to legal fees, particularly if the parties began exchanging requests for additional information, could be significant.

The Trustees acknowledged that uncertain likelihood of success and potential for very high costs presented a good basis for the District withdrawing the CBCA appeal and taking no further action. While all of the Trustees expressed a desire to have the project funded, the consensus of the Board appeared to be that the CBCA appeal could not be justified from a cost benefit analysis. Motion duly made and seconded, and unanimously approved with the following resolution being thereby adopted and approved:

RESOLVED that the District directs its legal counsel to withdraw the request for arbitration presented to the CBCA with respect to the road repair project.

RESOLVED FURTHER that the District directs that no further appeal be taken from the first appeal for the project.

The next order of business was discussion regarding other outstanding FEMA considerations. Kraig Thelen reported that no further information had been received from the other pending FEMA appeal. There were discussions regarding the completion of the basketball court improvement project and the need to complete the work in a timely fashion prior to FEMA inspection.

The next order of business was discussion regarding the purchase of the Noerrlinger Farms property and the sale of the residential property owned by the District intended to be sold to Dana Altman. The Trustees were reminded that both properties were under binding purchase agreements and proceeding toward closing. In particular, the final actions necessary for the District engineer to subdivide the residential property were nearly complete with the Trustees told to expect the closing of that transaction in the coming weeks. The Noerrlinger Farms property, similarly, would potentially be ready for final approval by the Board of Trustees at the next meeting. Motion duly made and seconded, and unanimously approved with the following resolution being thereby adopted and approved:

RESOLVED that Jon Meyers, Matt Burnham or Peggy Lawton, consistent with prior authorization of the District, are authorized and directed to execute any such documents and agreements as necessary to effectuate the sale of the property located at 4120 Bullfrog Bay to Dana Altman under the executed Purchase Agreement.

FURTHER RESOLVED that Jon Meyers, Matt Burnham or Peggy Lawton, consistent with prior authorization of the District, are authorized and directed to execute any such documents and agreements as necessary to effectuate the purchase of the farm ground and associated easements from Noerrlinger Farms.

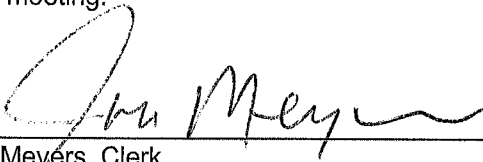
The next order of business was discussion regarding the remaining requirements for satisfaction of the Core of Engineers levy improvement project. Aside from property acquisition previously discussed, the Trustees discussed technical requirements regarding the location, availability and cost of fill dirt for the project. There was an extended discussion regarding the types of fill materials and some confusion as to the directives received from the Corp of Engineers. Ed Hobza of TD2 was directed to communicate with the Corp of Engineers to obtain clarification as to exactly what requirements needed to be met for the purpose of the project. The Trustees were reminded that the District is responsible for 100 percent of the cost of acquiring fill material but that the cost of transporting such material is subject to 80/20 cost share with the Corp.

There was then an extended discussion regarding the requirement to identify volumes and fill material types. It was discussed that every effort should be taken to expedite testing and move the project forward as quickly as possible.

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SIGNATURES APPEAR ON THE FOLLOWING PAGE]**

There was next reviewed the Agenda which had been available for public inspection in accordance with the law prior to this meeting of the Board of Trustees and reported that all matters considered by the Board at this meeting appeared on the Agenda.

Jon Meyers, as Clerk for Sanitary and Improvement District No. 1 of Cass County, Nebraska (the "District") does hereby certify that the above proceedings are a true and accurate statement of the proceedings had by the District at its August 24, 2021, meeting.

  
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Jon Meyers, Clerk