

VILLAGE OF BERTRAND  
REGULAR BOARD MEETING

September 12, 2023

The Village Board of Trustees of the Village of Bertrand, Nebraska held a Regular Meeting on September 12, 2023, at the Village Hall by publishing in the Holdrege Daily Citizen on August 31, 2023, and posting at the First State Bank, Post Office, and Village Office. The agenda for said meeting was kept continuously at the office of the Village Clerk. Present were Chairman TJ Wilcox, and Trustees Robert Dahlgren, Jason McNierney, and Brian Schroeder. Lucas Evans absent. Dahlgren left meeting at 6:39 PM.

The Chairman opened the meeting at 6:00 PM and publicly stated to all in attendance that a copy of the Nebraska Open Meeting Act was available for review and indicated the location of such copy posted in the room where the meeting was being held.

On a motion by Schroeder, seconded by Dahlgren, the consent agenda was accepted. Voting Aye, Schroeder, Dahlgren, McNierney, Wilcox. Evans absent. The items on the consent agenda were as follows: minutes for Regular Meeting on August 8, Budget Work Session on August 8, and Special Meeting on August 17, 2023; the Village financials for the month of August; the Village payables for the month of August in an amount not to exceed \$85,000; the Village employees' salaries for the month of September not to exceed \$24,000. The August payables were as follows:

AC-Armor Coating	AR-Auto Repair	CG-Curb & Gutter	DF-Dues, Fees Subscriptions
EL-Extra Labor	EQ-Equipment	ER-Equipment Repair	FP-Food Pantry
FR-Freight	FU-Fumigation	FUND- Pool Fundraiser	GA-Garbage Collection
GC-Gravel/Cold Mix	GG-g2g Donations	GO-Gas, Oil, Tires	GRA-Grant
GRO-Grave Opening	GS-Garage Sales	IMP-Improvement	INS-Insurance
INT-Internet	LAB-Labor	LAW-Law Enforcement	LEG-Legal
LF-Landfill	LP-Lease Payment	MH-Machine Hire	MI-Miscellaneous
MIL-Mileage/Meals	NH-Nursing Home Loan	OS-Office Supplies	PC-Pool Concessions
PF-Professional Fees	PP-Pool Project	PR-Printing/Publishing	RM-Repair/Maintenance
REN-Rental	SCH-Schooling	SR-Snow Removal	ST-Sales Tax
SS-Shop Supplies	SU-Supplies	TE-Telephone	TL-Tobacco/Liquor License
UT-Utilities	WT-Water Testing		

<b><u>CEMETERY</u></b>		<b><u>SEWER</u></b>	
Salaries/Taxes/Benefits (Aug)	63.72	Salaries/Taxes/Benefits (Aug)	2,003.98
Auto Shack AR GO	23.51	Atlas Automation RM	260.00
Jack Bowen GRO	400.00	C Plus GO	38.39
C Plus GO	211.52	Front Water Engineering ARPA	18,500.00
NAPA Auto Parts	42.56	Holdrege Daily Citizen	91.83
Southern Power UT	31.00	Southern Power UT	317.92
	<b>1,322.31</b>	Svoboda's ACE Hardware SU	16.81
		Verizon TE	10.88
			<b>21,239.81</b>
<b><u>GARBAGE COLLECTION</u></b>		<b><u>STREET</u></b>	
Waste Connection of NE. GA	5,601.89	Salaries/Taxes/Benefits (Aug)	7,302.24
	<b>5,601.89</b>	C Plus GO	454.96
<b><u>GENERAL</u></b>		NSG Logistics GC	8,978.03
Alpha Heating & Air RM	156.47	Pro Builders GC	41.40
ATC Communications INT	39.66	Southern Power UT	1,173.55
Black Hills Energy UT	41.30	Svoboda's ACE Hardware OS SU	30.00
Capital Business Solutions LP OS	447.11	Verizon TE	53.66
Chase Credit Card SCH OS ST	327.80		<b>18,033.84</b>
Cross Country Market FP	144.17	<b><u>WATER</u></b>	
Cristina GuaJardo CB	250.00	Salaries/Taxes/Benefits (Aug)	14,506.74
DeWald, Deaver, L'Heureux LEG	39.00	Alpha Heating & Air RM	156.47
Holdrege Daily Citizen PR	208.83	C Plus GO	76.79
NE Department of Revenue ST	4.10	Chase Credit Card SCH	278.75
One Call Concepts PF	7.58	Cross Country Market SU ST	20.14
Reliable Pest Control CB	40.00	Evans Repair GO LAB	84.52
Southern Power UT	264.00	Holdrege Daily Citizen DF	43.50
Spectrum IN TE DF	202.72	Municipal Supply SU ST	2,404.46
Village Uniform CB	32.96	NAPA Auto Parts SU ST	59.91
Woodward's Disposal MI DF	15.00	NE Department of Revenue ST	616.94
	<b>2,220.70</b>	Southern Power UT	2,838.00
<b><u>LAW ENFORCEMENT</u></b>		Spectrum INT TE DF	8.95
Salaries/Taxes/Benefits (Aug)	1,441.92	Svoboda's ACE Hardware OS	33.63
Verizon TE	42.76		
	<b>1,484.68</b>		

<b>PARK</b>		<b>WATER (cont.)</b>	
Salaries/Taxes/Benefits (Aug)	1,140.39	Verizon TE	21.80
Auto Shack AR GO LAB	23.52	Woodward's Disposal	15.00
C Plus GO	211.52		<b>21,165.60</b>
Menards IMP	55.64	<b>YARD WASTE/RECYCLING</b>	
NAPA Auto Parts GO	42.57	Salaries/Taxes/Benefits (Aug)	243.16
Southern Power UT	153.81	ATC Communications INT	100.00
	<b>1,627.45</b>	NE Department of Revenue PF	25.00
<b>POOL</b>		Reliable Pest Control FU	57.00
Salaries/Taxes/Benefits (Aug)	5,495.88	South Central Sanitation LF	1,712.72
Courtney Johnson LAB	60.00		<b>2,137.88</b>
Cross County Market PC ST	157.09	<b>TOTAL</b>	
Hawkins SU FR	507.16		<b>83,093.05</b>
K&D Motor & Electric LAB	260.00		
NE Department of Revenue ST	111.79		
Southern Power UT	1,539.00		
Spectrum TE INT	127.97		
	<b>8,258.89</b>		

Amy Grube, Nursing Home and Assisted Living Administrator, gave her report to the Board. The current census for the Nursing Home is 18 residents and 8 residents in Assisted Living. On a motion by Schroeder, seconded by McNierney, the Nursing Home's financials for the month of July were accepted. Voting Aye, Schroeder, McNierney, Dahlgren, Wilcox. Evans absent. On a motion by Schroeder, seconded by McNierney, the Nursing Home's payables for the month of September were accepted in an amount not to exceed \$145,000. Voting Aye, Schroeder, McNierney, Dahlgren, Wilcox. Evans absent. On a motion by Dahlgren, seconded by Schroeder, the Nursing Home's employees' salaries for the month of October were accepted in an amount not to exceed \$100,000. Voting Aye, Dahlgren, Schroeder, McNierney, Wilcox. Evans absent. The Nursing Home's payables and salaries were as follows:

<b>NURSING HOME</b>			
<b>Paid</b>			
Salaries/Taxes/Benefits (August)	79,225.98	Nationwide	4,638.01
American Healthtech	409.30	Oriental Trading	58.94
Black Hills Energy	493.21	Quill	176.91
Charter	132.97	RHD	13,085.00
Direct TV	381.07	Sothern Power	2,924.98
HCIS	80.00	Hometown Leasing	186.50
Indeed	231.00	Jenna Wheat	112.20
Inovalon	3,725.07	Frontier	667.52
Menard's	1,902.62	Deb Bishop	75.00
			<b>108,506.25</b>
<b>Not Paid</b>			
AACO Health Care	707.19	Midwest Automatic Sprinklers	475.00
Barbara Metzger	270.60	Nurses Incorporated	30,641.25
C Plus	366.22	Oak Haven Aviaries	329.95
Cash Wa	3,260.88	Penner Patient Care	308.00
Compufact	11.00	Primary Electric	715.00
Central Valley Electric	27.36	Prioricare Staffing	4,354.50
CHS	350.76	Queen Bee Staffing	12,700.90
Cross Country Market	615.37	Quill	244.73
D & N Lammel's	213.60	Reliable Pest Control	46.00
Diane Mead	160.00	Secrest Consulting	300.00
Eclipse Staffing	4,427.25	Securitas Healthcare	765.33
Ecolab	904.72	SFM	1,460.00
First State Bank	1,879.10	Shane Smith	300.00
Fusion Medical Staffing	7,042.95	Spartan Nash	279.42
HD Supply	69.94	Stericycle	145.00
Holdrege Floral Expressions	46.00	Svoboda's ACE Hardware	167.32
Holdrege Pharmacy	153.85	Sysco	5,876.76
InSPIRE	4,461.60	TCI Business Capital	4,509.25
Integrated Security Solutions	250.00	Village of Bertrand	516.39
Kris Kuck	55.00	WeCare	1,061.50
McKesson	5,905.79	Woodward's Disposal	41.00
			<b>96,416.48</b>

Marcy Luth, AMGL, presented the Nursing Home's audit for the 2022-2023 fiscal year via phone conference.

Dana Peterson, Front Water Engineering, presented the Board with the sealed bids for the Sewer Lagoon project that were opened at 4:00 pm on September 12, 2023. The bids were as follows:

Evans Construction	\$442,785.00
Ostrgen's Construction	\$661,009.00
Meyers Construction	\$1,838,954.60

On a motion by Schroeder, seconded by McNierney, the bid from Evan's Construction for the Sewer Lagoon project in the amount of \$442,785.00 was accepted. Voting Aye, Schroeder, McNierney, Dahlgren, Wilcox. Evans absent.

Craig Bennett, Miller & Associates, presented the Board with Change Order #1 from McElhinny Builders, Inc. for the Bertrand Housing Authority's 5-Plex program. On a motion by Dahlgren, seconded by Schroeder, Change Order #1 with a deduction in the amount of \$91,090.00 was approved. Voting Aye, Dahlgren, Schroeder, McNierney, Wilcox. Evans absent.

On a motion by Schroeder, seconded by McNierney, the closing of Nelson Street on October 13, 2023 for food vendors at the Bertrand Craft Show was approved. Voting Aye, Schroeder, McNierney, Dahlgren, Wilcox. Evans absent.

No action was taken on the discussion regarding the ARPA Rural Workforce Housing grant.

Guest, Roxann Hunhoff, voiced concerns for trash and other debris located on a property adjoining hers. The Village Clerk will send a letter notifying the property owners of the ordinance violations.

On a motion by Schroeder, seconded by McNierney, the Village's restricted funds were approved to increase by 1%. Voting Aye, Schroeder, McNierney, Wilcox. Dahlgren and Evans absent. Chairman Wilcox introduced Ordinance No. 771 regarding the budget statement and appropriation of sums for necessary expenses and liabilities of the Village of Bertrand for the 2023-2024 fiscal year. On a motion by McNierney, seconded by Schroeder, the statutory rule requiring an ordinance to be fully and distinctly read on three different days was waived. Voting Aye, McNierney, Schroeder, Wilcox. Dahlgren and Evans absent. The motion to suspend the rule was adopted by three-fourths of the members elected to the Board and the statutory rule was declared suspended for consideration of said Ordinance. Thereupon said Ordinance No. 771 was then read by title and Trustee Schroeder moved for its final passage, which motion was seconded by McNierney. Voting Aye, Schroeder, McNierney, Wilcox. Dahlgren and Evans absent. Said Ordinance reads as follows:

**ORDINANCE NO. 771**

**of the**

**VILLAGE OF BERTRAND, NEBRASKA**

**AN ORDINANCE OF THE VILLAGE BOARD OF TRUSTEES OF THE VILLAGE OF BERTRAND, NEBRASKA TO ADOPT THE BUDGET STATEMENT TO BE TERMED THE ANNUAL APPROPRIATION BILL; TO APPROPRIATE SUMS FOR NECESSARY EXPENSES AND LIABILITIES; TO PROVIDE FOR AN EFFECTIVE DATE.**

**BE IT ORDAINED BY THE VILLAGE BOARD OF THE VILLAGE OF BERTRAND, NEBRASKA:**

**Section 1.** That after complying with all procedures required by law, the budget presented and set forth in the budget statement is hereby approved as the Annual Appropriation Bill for the fiscal year beginning October 1, 2023, through September 30, 2024. All sums of money contained in the budget statement are hereby appropriated for the necessary expenses and liabilities of the Village of Bertrand. A copy of the budget document shall be forwarded as provided by law to the Auditor of Public Accounts, State Capitol, Lincoln, Nebraska, and to the County Clerk of Phelps County, Nebraska, for use by the levying authority.

**Section 2.** This ordinance shall take effect and be in full force from and after its passage, approval, and publication or posting as required by law.

**PASSED AND APPROVED THIS 12<sup>TH</sup> DAY OF SEPTEMBER 2023.**

On a motion by Schroeder, seconded by McNierney, Resolution No. 500 to set the final property tax request for the 2023-2024 fiscal year was approved. Voting Aye, Schroeder, McNierney, Wilcox. Dahlgren and Evans absent. The Resolution reads as follows:

**RESOLUTION NO. 500**

**of the**

**VILLAGE OF BERTRAND, NEBRASKA**

**WHEREAS,** Nebraska Revised Statute 77-1632 and 77-1633 provides that the Governing Body of the Village of Bertrand passes by a majority vote a resolution or ordinance setting the tax request; and

**WHEREAS**, a special public hearing was held as required by law to hear and consider comments concerning the property tax request;

**NOW, THEREFORE**, the Governing Body of the Village of Bertrand resolves that:

1. The 2023-2024 property tax request be set at:  
General Fund: \$170,654.65  
Bond Fund: \$176,750.00
2. The total assessed value of property differs from last year's total assessed value by -1.56 percent.
3. The tax rate which would levy the same amount of property taxes as last year, when multiplied by the new total assessed value of property would be 1.020632 per \$100 of assessed value.
4. The Village of Bertrand proposes to adopt a property tax request that will cause its tax rate to be 1.017855 per \$100 of assessed value.
5. Based on the proposed property tax request and changes in other revenue, the total operating budget of the Village of Bertrand will increase (or decrease) last year's budget by 4.06 percent.
6. A copy of this resolution be certified and forwarded to the County Clerk on or before October 15, 2023.

Dated this 12<sup>th</sup> Day of September 2023.

On a motion by Schroeder, seconded by McNierney, Resolution No. 498 regarding the Phelps County Local Emergency Operations Plan was approved. Voting Aye, Schroeder, McNierney, Wilcox. Dahlgren and Evans absent. The Resolution reads as follows:

**RESOLUTION NO. 498**  
**of the**  
**VILLAGE OF BERTRAND, NEBRASKA**

**RESOLVE:** That in order to provide for a coordinated response to a disaster or emergency in Phelps County, the Village of Bertrand and other cities and villages in Phelps County, the Bertrand Village Board deems it advisable and in the best interests of the community and the County to approve the attached Phelps County Local Emergency Operations Plan. Acceptance of this 2023 Local Emergency Operations Plan supersedes all previous approve Phelps County Local Emergency Operations Plan.

**PASSED AND APPROVED THIS 12<sup>TH</sup> DAY OF SEPTEMBER 2023.**

On a motion by Schroeder, seconded by McNierney, Resolution No. 499 regarding the Tri-Basin NRD Multi-Jurisdictional Hazard Mitigation Plan was approved. Voting Aye, Schroeder, McNierney, Wilcox. Dahlgren and Evans absent. The Resolution reads as follows:

**RESOLUTION NO. 499**  
**of the**  
**VILLAGE OF BERTRAND, NEBRASKA**

**WHEREAS**, the Federal Disaster Mitigation Act of 2000 was signed in to law on October 30, 2000, placing new emphasis on state and local mitigation planning for natural hazards and requiring communities to adopt a hazard mitigation action plan to be eligible for pre-disaster and post-disaster federal funding for mitigation purposes; and

**WHEREAS**, a Multi-Jurisdictional Hazard Mitigation Plan was prepared by the Tri-Basin Natural Resources District, with assistance from JEO Consulting Group, Inc.; and

**WHEREAS**, the purpose of the mitigation plan was to lessen the effects of disasters by increasing the disaster resistance of the counties and participating jurisdictions located within the planning boundary by identifying the hazards that affect the Village of Bertrand and prioritize mitigation strategies to reduce potential loss of life and property damage from those hazards; and

**WHEREAS**, FEMA regulations require documentation that the plan has been formally adopted by the governing body of the Village of Bertrand in the form of a resolution and further requesting approval of the plan at the Federal Level; and

**NOW, THEREFORE**, the governing body of the Village of Bertrand does herewith adopt the most recent and FEMA approved version of the Tri-Basin NRD Multi-Jurisdictional Hazard Mitigation Plan Update in its entirety.

**PASSED AND APPROVED THIS 12<sup>TH</sup> DAY OF SEPTEMBER 2023.**

Wilcox introduced Ordinance No. 772 regarding the franchise agreement between the Village of Bertrand and Black Hills Energy. On a motion by Schroeder, seconded by McNierney, the statutory rule requiring an ordinance to be fully and distinctly read on three different days was waived. Voting Aye, Schroeder, McNierney, Wilcox. Dahlgren and Evans absent. The motion to suspend the rule was adopted by three-fourths of the members elected to the Board and the statutory rule was suspended for consideration of said Ordinance. Thereupon said Ordinance No. 772 was then read by title and Trustee

McNierney moved for its final passage, which motion was seconded by Schroeder. Voting Aye, McNierney, Schroeder, Wilcox. Dahlgren and Evans absent. Said Ordinance reads as follows:

**ORDINANCE NO. 772**

of the

**VILLAGE OF BERTRAND, NEBRASKA**

**AN ORDINANCE GRANTING BLACK HILLS NEBRASKA GAS, LLC d/b/a BLACK HILLS ENERGY, A DELAWARE CORPORATION, ITS LESSEES, SUCCESSORS, AND ASSIGNS, A NATURAL GAS FRANCHISE AND THE AUTHORITY TO CONSTRUCT, OPERATE, MAINTAIN, AND EXTEND A NATURAL GAS DISTRIBUTION PLANT AND SYSTEM, AND GRANTING THE RIGHT TO USE THE STREETS, ALLEYS, AND OTHER PUBLIC PLACES WITHIN THE PRESENT OR FUTURE CORPORATE LIMITS OF THE VILLAGE OF BERTRAND, NEBRASKA.**

**BE IT ORDAINED BY THE GOVERNING BODY OF THE VILLAGE OF BERTRAND, NEBRASKA, AS FOLLOWS:**  
**FRANCHISE GRANTED**

The Village of Bertrand, Nebraska (hereinafter referred to as "Grantor"), hereby grants a non-exclusive franchise to Black Hills Nebraska Gas, LLC d/b/a Black Hills Energy, a Delaware limited liability corporation (hereinafter called "Grantee"), its lessees, successors, and assigns. Grantee is hereby granted the right, privilege, franchise, permission, and authority to lay, construct, install, maintain, operate, and extend in, along, over, or across the present and future streets, alleys, avenues, bridges, public rights-of-way, and public easements as are now within the present or future limits of said Grantor, a natural gas distribution system and all facilities necessary for the purpose of supplying natural gas or processed gas and other operations connected therewith or incident thereto for all purposes to the inhabitants of said Grantor and consumers in the vicinity thereof, and for the distribution of natural gas from or through said Grantor to points beyond the limits thereof. Such facilities shall include, but not be limited to, all mains, services, pipes, conduits, and all other apparatus and appliances necessary or convenient for transporting, distributing, and supplying natural gas for all purposes for which it may be used, and to do all other things necessary and proper in providing natural gas service to the inhabitants of Grantor and in carrying on such business.

**TERM**

The rights and privileges granted hereunder shall remain in effect for a period of twenty-five (25) years from the effective date of this Ordinance.

**GOVERNING RULES AND REGULATIONS**

The franchise granted hereunder is subject to all conditions, limitations, and immunities now provided for, or as hereunder amended, and applicable to the operations of public utility, by state or federal law. The rates to be charged by Grantee for service within the present or future corporate limits of Grantor and the rules and regulations regarding the character, quality, and standards of service to be furnished by Grantee, shall be under the jurisdiction and control of such regulatory body or bodies as may, from time to time, be vested by law with authority and jurisdiction over the rates, regulations, and quality and standards of service to be supplied by Grantee. Provided however, should any judicial, regulatory, or legislative body having proper jurisdiction take any action that precludes Grantee from recovering from its customers any cost associated with services provided hereunder, then Grantee and Grantor shall renegotiate the terms of this Ordinance in accordance with the action taken. In determining the rights and duties of the Grantee, the terms of this Ordinance shall take precedence over any conflicting terms or requirements contained in any other ordinance enacted by the Grantor.

**PROVISION FOR INADEQUATE ENERGY SUPPLIES**

If an energy supplier is unable to furnish an adequate supply of energy due to an emergency, an order or decision of a public regulatory body, or other acts beyond the control of the Grantee, then the Grantee shall have the right and authority to adopt reasonable rules and regulations limiting, curtailing, or allocating the extensions of service or supply of energy to any customers or prospective customers, and withholding the supply of energy to new customers, provided that such rules and regulations shall be uniform as applied to each class of customers or prospective customers, and shall be non-discriminatory as between communities receiving service from the Grantee.

**CONSTRUCTION AND MAINTENANCE OF GRANTEE'S FACILITIES**

Any pavements, sidewalks, or curbing taken up and any and all excavations made shall be done in such a manner as to cause only such inconvenience to the inhabitants of Grantor and the general public as is reasonably necessary, and repairs and replacements shall be made promptly by Grantee, leaving such properties in as good as condition as existed immediately prior to excavation.

Grantee agrees that for the term of this franchise, it will use its best efforts to maintain its facilities and equipment in a condition sufficient to meet the current and future energy requirements of Grantor, its inhabitants, and industries. While maintaining its facilities and equipment, Grantee shall obtain permits

as required by ordinance and will fix its excavations within a commercially reasonable time period, except that in emergency situations Grantee shall take such immediate unilateral actions as it determines are necessary to protect the public health, safety, and welfare; in which case, Grantee shall notify Grantor as soon as reasonably possible. Within a reasonable time thereafter, Grantee shall request and Grantor shall issue any permits or authorizations required by Grantor for the actions conducted by Grantee during the emergency situation.

Grantor will give Grantee reasonable notice of plans for street improvements where paving or resurfacing of a permanent nature is involved that affects Grantee's facilities. The notice shall contain the nature and character of the improvements, the rights-of-way upon which the improvements are to be made, the extent of the improvements, and the time when the Grantor will start the work, and, if more than one right-of-way is involved, the order in which the work is to proceed. The notice shall be given by the Grantee as soon as practical in advance of the actual commencement of the work, considering reasonable working conditions, to permit the Grantee to make any additions, alterations, or repairs to its facilities.

#### **EXTENSION OF GRANTEE'S FACILITIES**

Upon receipt and acceptance of a valid application for service, Grantee shall, subject to its own economic feasibility criteria as approved by the Nebraska Public Service Commission make reasonable extensions of its distribution facilities to serve customers located within the current or future corporate limits of Grantor.

#### **RELOCATION OF GRANTEE'S FACILITIES**

If Grantor elects to change the grade of or otherwise alter any street, alley, avenue, bridge, public right-of-way, or public place for a public purpose, unless otherwise reimbursed by federal, state, or local legislative act or governmental agency, Grantee, upon reasonable notice from Grantor, shall remove and relocate its facilities or equipment situated in the public rights-of-way, at the cost and expense of Grantee, if such removal is necessary to prevent interference with Grantor's facilities.

If Grantor orders or requests Grantee to relocate its facilities or equipment for the primary benefit of a commercial or private project, or as a result of the initial request of a commercial or private developer or other non-public entity, and such removal is necessary to prevent interference with such project, Grantee shall receive payment for the cost of such relocation as a precondition to relocating its facilities or equipment.

Grantor shall consider reasonable alternatives to designing its public works projects and exercising its authority under this section so as not to arbitrarily cause Grantee unreasonable additional expense. If alternative public right-of-way space is available, Grantor shall also provide a reasonable alternative location for Grantee's facilities. Grantor shall give Grantee written notice of an order or request to vacate a public right-of-way; provided, however, that its receipt of such notice shall not deprive the Grantee of its right to operate and maintain its existing facilities in such public right-of-way until (a) if applicable, receives the reasonable cost of relocating the same and (b) obtains a reasonable public right-of-way, dedicated utility easement, or private easement alternative location for such facilities.

#### **CONFIDENTIAL INFORMATION**

Grantor acknowledges that certain information it might request from Grantee pursuant to this Ordinance may be of a proprietary and confidential nature, and that such requests may be subject to the Homeland Security Act or other confidentiality protections under state or federal law. If Grantee request that any information provided by Grantee to Grantor be kept confidential due to its proprietary or commercial value, Grantor and its employees, agents, and representatives shall maintain the confidentiality of such information, to the extent allowed by law. If Grantor is request or required by legal or administrative process to disclose any such proprietary or confidential information, Grantor shall promptly notify Grantee of such request or requirement so that Grantee may seek an appropriate protective order or other relief.

#### **FORCE MAJEURE**

It shall not be a breach or default under this Ordinance if either party fails to perform its obligation hereunder due to force majeure. Force majeure shall include, but not be limited to the following: 1) physical events such as acts of God, landslides, lightning, earthquakes, fires, freezing, storms, floods, washouts, explosions, breakage or accident or necessity of repairs to machinery, equipment or distribution or transmission lines; 2) acts of others such as strikes, work-force stoppages, riots, sabotage, insurrections or wars; 3) governmental action such as necessity for compliance with any court order, law, statute, ordinance, executive order, or regulation promulgated by governmental authority having jurisdiction; and 4) any other causes, whether of the kind herein enumerated or otherwise not reasonably within the control of the affected party to prevent or overcome. Each party shall make reasonable efforts to avoid force majeure and to resolve such event as promptly as reasonably possible

once it occurs in order to resume performance of its obligation hereunder; provided, however, that this provision shall not obligate a party to settle any labor strike.

**HOLD HARMLESS**

Grantee, during the term of this Ordinance, agrees to save harmless Grantor from and against all claims, demands, losses and expenses arising directly out of the negligence of Grantee, its employees or agents, in constructing, operating, and maintaining its distribution and transmission facilities or equipment; provided, however, that Grantee need not save Grantor harmless from claims, demands, losses and expenses arising out of the negligence of Grantor, its employees or agents.

**SUCCESSORS AND ASSIGNS**

All rights, privileges and authority granted to Grantee hereunder shall inure to the benefit of Grantee's lessees, successors and assigns, subject to the terms, provisions and conditions herein contained, and all obligations imposed upon Grantee hereunder shall be binding upon Grantee's lessees, successors and assigns.

**NO THIRD PARTY BENEFICIARIES**

This Ordinance constitutes a franchise agreement between the Grantor and Grantee. No provision of this Ordinance shall inure to the benefit of any third person, including the public at large, so as to constitute any such person as a third party beneficiary of the agreement or of any one or more of the terms hereof, or otherwise give rise to any cause of action for any person not a party hereto.

**SEVERABILITY**

If any clause, sentence or section of this Ordinance is deemed invalid by any judicial, regulatory or legislative body having proper jurisdiction, the remaining provisions shall not be affected.

**NON WAIVER**

Any waiver of any obligation or default under this Ordinance shall not be construed as a waiver of any future defaults, whether of like or different character.

**REPEAL CONFLICTING ORDINANCES**

This Ordinance, when accepted by Grantee as provided below, shall constitute the entire agreement between the Grantor and the Grantee relating to the franchise granted by Grantor hereunder, and the same shall supersede all prior ordinances relating thereto, and any terms and conditions of such prior ordinances or parts of ordinances in conflict herewith are hereby repealed. Ordinance No. 529 of the Village of Bertrand, Nebraska, is hereby repealed as of the effective date hereof.

**EFFECT AND INTERPRETATION OF ORDINANCE**

The captions that precede each section of this Ordinance are for convenience and/or reference only and shall not be taken into consideration in the interpretation of any of the provisions of this Ordinance.

**EFFECTIVE DATE AND ACCEPTANCE**

This Ordinance shall become effective and be a binding contract between the Grantor and Grantee upon its final passage and approval by Grantor, in accordance with applicable laws and regulations, and upon Grantee's acceptance by written instrument, within sixty (60) days of passage by the Village Board, and filing with the Clerk of the Village of Bertrand, Nebraska. The Clerk of the Village of Bertrand, Nebraska shall sign and affix the community seal to acknowledge receipt of such acceptance, and return one copy to Grantee. If Grantee does not, within sixty (60) days following passage of this Ordinance, either express in writing its objections to any terms or provisions contained therein, or reject this Ordinance in its entirety, Grantee shall be deemed to have accepted this Ordinance and all of its terms and conditions.

**PASSED AND APPROVED THIS 12<sup>TH</sup> DAY OF SEPTEMBER 2023.**

Wilcox introduced Ordinance No. 773 regarding the franchise fees on Energy Providers operating in the Village of Bertrand. On a motion by McNierney, seconded by Schroeder, the statutory rule requiring an ordinance to be fully and distinctly read on three different days was waived. Voting Aye, McNierney, Schroeder, Wilcox. Dahlgren and Evans absent. The motion to suspend the rule was adopted by three-fourths of the members elected to the Board and the statutory rule was suspended for consideration of said Ordinance. Thereupon said Ordinance No. 773 was then read by title and Trustee Schroeder moved for its final passage, which motion was seconded by McNierney. Voting Aye, Schroeder, McNierney, Wilcox. Dahlgren and Evans absent. Said Ordinance reads as follows:

**ORDINANCE NO. 773**

**of the**

**VILLAGE OF BERTRAND, NEBRASKA**

**AN ORDINANCE ESTABLISHING A FRANCHISE FEE ON ENERGY PROVIDERS OPERATION IN THE VILLAGE OF BERTRAND, NEBRASKA.**

**BE IT ORDAINED BY THE VILLAGE OF BERTRAND, NEBRASKA AS FOLLOWS:**

**Section 1.** The Village of Bertrand, Nebraska (hereinafter referred to as the “Municipality”) hereby established a franchise fee on every natural gas company and every other person, firm or corporation, their successors and assigns, owning, operating, controlling, leasing or managing a natural gas plant or system and/or generating, manufacturing, selling, distributing or transporting natural gas (hereinafter referred to, collectively, and “Energy Providers, each, individually, an “Energy Provider”). Energy Providers shall collect from their customers located within the corporate limits of the Municipality as depicted on the Map (as defined below) and pay to the Municipality an amount equal to \$0.0065 per therm for natural gas delivered to customers by the Energy Providers within the present or future limits of the Municipality.

**Section 2.** The amount paid by the Energy Providers shall be in lieu of, and Energy Providers shall be exempt from, all other fees, charges, taxes or assessments which the Municipality may impose for the privilege of doing business within the Municipality, including, without limitation, excise taxes, occupation taxes, licensing fees, or right-of-way permit fees, and in the event the Municipality imposes any such fee, charge, tax or assessment, the payment to be made by Energy Providers in accordance with this Ordinance shall be reduced in an amount equal to any such fee, charge, tax or assessment imposed upon the Energy Providers. Ad valorem property taxes imposed generally upon all real and personal property within the Municipality shall not be deemed to affect Energy Providers obligation under this Ordinance.

**Section 3.** Energy Providers shall report and pay any amount payable under this Ordinance on a calendar basis. Such payment shall be made no more than thirty (30) days following the close of the period for which payment is due. Initial and final payments shall be prorated for the portions of the periods at the beginning and end of any franchise granted by the Village of Bertrand, Nebraska, to an Energy Provider.

**Section 4.** Energy Providers shall list the franchise fee collected from customers as a separate item on bills for utility service issued to their customers. If at any time the Public Service Commission or other authority having proper jurisdiction prohibits such recovery, Energy Providers will no longer be obligated to collect and pay the franchise fee until an alternate lawful franchise fee can be negotiated and implemented. In addition, with prior approval of the Village of Bertrand, Nebraska, Energy Providers may reduce the franchise fee payable for natural gas delivered to a specific customer when such reduction is required to attract or retain the business of that customer.

**Section 5.** Within ten (10) days of the date of this Ordinance, the Municipality shall provide the Energy Providers with a map of its corporate limits (the “Map”). The Map along with Grantee’s Geographic Information System (“GIS”) mapping information shall be sufficient detail to assist Energy Providers in determining whether their customers reside within the Municipality’s corporate limits. The Map shall serve as the sole basis for determining Energy Provider’s obligation hereunder to collect and pay the franchise fee from customers; provided, however, that if the Municipality’s corporate limits are changed by annexation or otherwise, it shall be the Municipality’s sole responsibility to (a) update the Map so that such changes are included therein, and (b) provide the updated Map to the Energy Providers. An Energy Provider’s obligation to collect and pay the franchise fee from customers within an annexed area shall not commence until the later: (a) of sixty (60) days after such Energy Provider’s receipt from the Municipality of an updated Map including such annexed area, or (b) such time after such Energy Provider’s receipt from the Municipality of an updated Map including such annexed area as is reasonably necessary for such Energy Provider to identify the customers in the annexed area obligated to pay the franchise fee.

**Section 6.** The Village shall provide copies of annexation ordinances to Energy Providers on a timely basis to ensure appropriate Franchise fee collection from customers within the corporate limits of the Village as set forth in Section 4 above.

**Section 7.** To the extent permitted by the laws of Nebraska, Municipality shall indemnify Energy Providers from claims of any nature, including attorney fees, arising out of or related to the imposition and collection of the franchise fee. In addition, Energy Providers shall not be liable for paying franchise fees from or to any customer originally or subsequently identified, or incorrectly identified, by Municipality or by Energy Providers, as being subject to the franchise fee or being subject of a different level of franchise fees or being exempt from the imposition of franchise fees.

**Section 8.** The Municipality shall have access to and the right to examine, during normal business hours, Energy Provider’s books, receipts, files, records and documents as is reasonably necessary to verify the accuracy of payments due hereunder; provided, that the Municipality shall not exercise such right more than twice per calendar year. If it is determined that a mistake was made in the payment of any franchise fee required hereunder, such mistake shall be corrected promptly upon discovery such that any under-payment by an Energy Provider shall be paid within thirty (30) days or recalculation of the



amount due, and any over-payment by an Energy Provider shall be deducted from the next payment of such franchise fee due by such Energy Provider to the Municipality; provided, that neither party shall have the obligation to correct a mistake that is discovered more than one (1) year after the occurrence thereof.

**Section 9.** Any and all Ordinances or portions thereof which are in conflict herewith are hereby repealed, specifically Ordinance No. 529.

**Section 10.** This Ordinance shall take effect and be in force from and after its passage and publication according to law.

**Section 11.** Passed and approved by the Village Board of the Village of Bertrand, Nebraska, on this 12<sup>th</sup> day of September, 2023.

On a motion by Schroeder, seconded by McNierney, the Demo Permit request from Robert Dahlgren to demolish a house at 605 Mason was approved. Voting Aye, Schroeder, McNierney, Wilcox. Dahlgren and Evans absent. On a motion by Schroeder, seconded by McNierney, the Demo Permit request from Hi-Line Ag to demolish a house at 506 Mason was approved. Voting Aye, Schroeder, McNierney, Wilcox. Dahlgren and Evans absent.

James Nelson, Ordinance Officer, gave his report to the Board. He reported that he is working on the stray cat issue. He also reported that a dog that attacked a resident previously in the month has been relocated out of town.

Matt Gregg, Utilities Superintendent, was absent.

Lori Vinzant, Village Clerk/Treasurer, had nothing additional to report.

No Trustee Committee reports.

The meeting adjourned at 7:24 PM.

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Lori Vinzant, Village Clerk/Treasurer

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TJ Wilcox, Chairman of the Board