

Exhibit No.:
Issue: Eureka Acquisition
Witness: Sean M. Flower
Exhibit Type: Direct
Sponsoring Party: Missouri American Water Company
Case No.: WA-2021-0376
Date: November 5, 2021

MISSOURI PUBLIC SERVICE COMMISSION

CASE NO. WA-2021-0376

DIRECT TESTIMONY

OF

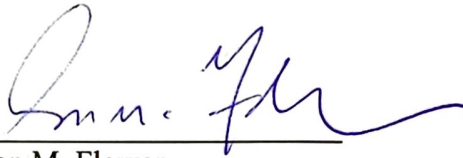
SEAN M. FLOWER

ON BEHALF OF

MISSOURI AMERICAN WATER COMPANY

AFFIDAVIT

I, Sean M. Flower, under penalty of perjury, and pursuant to Section 509.030, RSMo, state that I am the Mayor of the City of Eureka, Missouri, that the accompanying testimony has been prepared by me or under my direction and supervision; that if inquiries were made as to the facts in said testimony, I would respond as therein set forth; and that the aforesaid testimony is true and correct to the best of my knowledge and belief.



Sean M. Flower

Dated: November 1, 2021

**DIRECT TESTIMONY
SEAN M. FLOWER
MISSOURI AMERICAN WATER COMPANY
CASE NO.: WA-2021-0376**

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DIRECT TESTIMONY

SEAN M. FLOWER

I. INTRODUCTION

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Q. Please state your name and business address.

A. Sean M. Flower. My business address is: City of Eureka; 100 City Hall Drive; P.O. Box 125; Eureka, Missouri 63025.

Q. Do you hold a position with the City of Eureka?

A. Yes. I am the Mayor of the City of Eureka.

Q. Are you providing testimony on behalf of a party to this case?

A. Yes. I am providing testimony on behalf of Missouri American Water Company (“Missouri American” or the “Company”) and I am supporting MAWC’s Application for a Certificate of Convenience and necessity to install, own, acquire, construct, operate, control, manage and maintain a water and waste water system in and around the City of Eureka, Missouri.

II. CITY OF EUREKA

Q. Please describe the City of Eureka.

A. Eureka is a Fourth Class City located in St. Louis County. The City of Eureka has a 2020 Census population of 11,646.

Q. Does Eureka currently own and operate water and wastewater systems?

A. Yes. Eureka serves approximately 4,100 water customers and 4,100 wastewater accounts. It has owned and operated those systems since 1958.

1 **III. EUREKA SYSTEM**

2 **Q. Does Eureka desire to sell its water and wastewater systems?**

3 A. Yes.

4 **Q. Why?**

5 A. Eureka has provided high quality water and sanitary sewer services for its residents since
6 1958. Eureka’s goal in providing these services was to consolidate the many smaller
7 private water and sewer facilities that existed at the time, and to provide higher quality,
8 lower cost, and more environmentally friendly water and sewer services to Eureka
9 residents. Eureka was the only entity capable of providing these services as there were no
10 other feasible regional utility providers in our geographic area. Eureka views this sale as
11 the next natural progression in this process.

12 **Q. What has been Eureka’s recent experience with providing these services?**

13 A. As Eureka has grown, the expertise and staffing required to run the systems has greatly
14 increased. In addition, Federal and state regulations and requirements for these systems
15 has greatly increased in complexity and cost. It has become increasingly difficult to find
16 staffing and expertise for a system of this size, and to comply with greater regulation.
17 Eureka believes that by joining Missouri American Water’s regional utility system it will
18 improve the quality of Eureka’s utility system by providing the top experts in the area to
19 run our system, ensure compliance with all laws and regulations and allow the City to share
20 in the efficiency of scale provided by joining a large utility provider.

21 **Q. Are there other benefits for Eureka?**

22 A. Yes. Eureka will be able to redeploy the proceeds of the sale of its water and sewer assets

1 into road, storm water, park, and other capital improvement projects that will greatly
2 enhance the city. In sum, Eureka would be joining a larger system which will allow us to
3 improve the quality of our system, provide the top expertise to manage our system, ensure
4 compliance with all laws and regulations and allow us to redeploy our capital into other
5 areas of the City. Residents understand it will cost them more, but they see the value in
6 being a part of this larger system as demonstrated by their overwhelming approval of the
7 sale.

8 **Q. When did Eureka begin to explore the sale of its systems?**

9 A. Eureka has been considering the sale of its utilities for several years. The City began
10 internal conversations and analysis in 2018.

11 **Q. What steps did Eureka take regarding the possible sale?**

12 A. Eureka held several town halls regarding its utilities, and a range of options have been
13 discussed in special meetings and normal Board meetings. The Eureka Board also
14 discussed other options regarding sale or merger, in addition to analyzing upcoming costs
15 and management required to continue City ownership of the systems in the future. During
16 the course of this analysis, City staff and I researched other sales of systems to Missouri
17 American water in the area. I reached out to Missouri American Water regarding a
18 potential sale in 2019, and thereafter began this process.

19 **Q. Did Eureka have the benefit of an appraisal of its systems?**

20 A. Yes.

21 **Q. How did that come about?**

22 A. Eureka and Missouri American Water entered into a letter of intent wherein both parties
23 agreed to have Eureka's water and sewer system appraised. Eureka chose an appraiser,

1 Missouri American chose an appraiser, and a third appraiser selected by the other
2 appraisers was also engaged. A copy of the Letter of Intent is attached as **Schedule SMF-**

3 **1.**

4 **Q. Was the appraisal important to this process?**

5 A. Yes. The appraisal was one of the most important parts of this process.

6 **Q. Why?**

7 A. The Board of Alderman and I have a legal duty and obligation to ensure that any and all
8 Eureka assets are sold at fair market value. Eureka staff worked extensively with the
9 appraisers and engineers to provide detailed information regarding our system. The Board,
10 myself, our legal team, and our consultants reviewed this appraisal information carefully
11 before voting to put the sale to a vote of the residents. Without a fair market value sale
12 price based on an appraisal being included in the ballot language, I do not believe there
13 would have been enough information for the residents to approve the sale.

14 **Q. Did Eureka ultimately pass an ordinance to call for a vote on the sale of the water
15 and wastewater systems?**

16 A. Yes. On May 19, 2020, the Eureka Board of Aldermen passed Bill No. 2657 and
17 designated it to be Ordinance No. 2543, An Ordinance Submitting to the Qualified Voters
18 of the City of Eureka a Question Concerning the Sale of City Water and Waste Water
19 Utilities (" Ordinance"). A copy of the Ordinance and the Board of Aldermen Minutes for
20 May 19, 2020 are attached hereto as **Schedule SMF-2.** The Ordinance provided notice of
21 an election to be held on August 4, 2020, to vote on (Proposition S), whether the water and
22 waste water utility owned by the City of Eureka should be sold. The question on the ballot
23 was as follows:

1 SHALL THE CITY OF EUREKA, MISSOURI BE AUTHORIZED TO
2 SELL ITS WATER AND WASTE WATER (SEWER) UTILITIES TO
3 MISSOURI AMERICAN WATER COMPANY FOR THE SUM OF
4 \$28,000,000.00 (TWENTY-EIGHT MILLION DOLLARS)?

5 **Q. Were there public meetings in Eureka to discuss the potential sale?**

6 A. Yes. There were three (3) virtual Town Hall Meetings to discuss the proposed sale. The
7 Town Hall Meetings were held on July 16, 2020, July 23, 2020, and July 30, 2020. MAWC
8 representatives attended the virtual Town Hall Meetings and were available to answer any
9 questions. Additionally, there were in-person meetings at the Community Center, which
10 were also live-streamed, providing opportunities for in-person questions.

11 **Q. Did you attend those meetings?**

12 A. Yes.

13 **Q. Did Eureka ultimately conduct an election?**

14 A. Yes. The election was held on August 4, 2020, and a majority of votes cast were in favor
15 of Proposition S. Proposition S garnered 2,289 "Yes" votes (67 percent) to 1,127 "No"
16 votes (33 percent).

17 **Q. Did Eureka subsequently negotiate a Purchase Agreement with MAWC?**

18 A. Yes. A Purchase Agreement was fully executed on November 17, 2020.

19 **IV. PUBLIC INTEREST**

20 **Q. Do you believe that a sale of the Eureka water and wastewater systems to MAWC is
21 in the public interest?**

22 A. Yes. This sale will ensure that the Eureka area sanitary sewer and water system is owned,
23 managed, and operated by the best qualified operator and personnel in the area, and it
24 brings in approximately 4,100 new water and 4,100 new sewer customers who can also

1 share the cost of maintenance, improvements, and overhead with the existing customers in
2 the system.

3 **Q. Are there benefits to the citizens of Eureka?**

4 A. Yes. Eureka residents will receive improved water and sewer services, reduce the cost of
5 their city government, and enjoy improved streets and other infrastructure as Eureka invests
6 the sale proceeds into other needed public improvements. The Eureka system will have
7 increased resources, staff and expertise available to maintain and operate the systems and
8 keep them in compliance with environmental and other regulatory requirements. Over
9 time, I believe water quality will also be improved. The City will reduce its overhead (less
10 staff required), which will lower the operating cost of the City on residents, and allow the
11 City to invest in needed public improvements.

12 **Q. What do you ask the Missouri Public Service Commission to do in this case?**

13 A. Approve Missouri American's Application.

14 **Q. Does this conclude your direct testimony?**

15 A. Yes.



Deborah Dewey P 314-996-2363
Missouri American Water Inc. F 314-432-7824
727 Craig Road
St Louis, MO 63141

July 29, 2019

City of Eureka, Missouri
100 City Hall Drive
Eureka, MO 63025

Attention: Mayor Sean Flower

In re: **Non-Binding Agreement to Conduct an Appraisal of
Eureka's Water and Wastewater Systems**

Dear Mayor Flower,

The purpose of this letter is to confirm our discussions concerning the valuation of certain assets of the City of Eureka, Missouri (Eureka) by Missouri-American Water Company (MAWC).

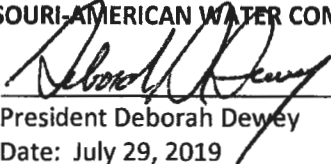
1. **Discussions/Potential Price.** The parties would like to explore the potential acquisition by MAWC of the all the water and wastewater assets of Eureka (as defined below). MAWC will review the records of Eureka to assess the value of the systems. Depending on the records, MAWC may propose utilizing the "appraisal method" under Missouri law to determine the value of the systems. The procedure is set forth under Missouri Revised Statutes Section 393.320. Any future purchase approved by Eureka voters would be in accordance with the terms of a Definitive Agreement (as defined below).
2. **Definitive Agreement.** Any future acquisition of the Assets by MAWC would be in accordance with the terms of a written definitive agreement that would be the subject of negotiations and executed by the parties (the "Definitive Agreement"). It would contain terms and conditions mutually satisfactory to MAWC and Eureka, and would be conditioned upon, among other things, each party having obtained any required approvals, receipt of all applicable regulatory approvals, and MAWC's satisfactory completion of its due diligence review and investigations. MAWC is prepared to immediately commence due diligence and the negotiation and preparation of the Definitive Agreement.
3. **Expenses.** Each of the parties hereto will bear its own costs and expenses (including legal fees and expenses) incurred in connection with the negotiation of a Definitive Agreement and any transactions that may be contemplated therein.
4. **Access.** Eureka agrees to provide MAWC, its representatives and advisors with full and complete access, during normal business hours and upon reasonable notice, to Eureka's books, records, documents, facilities, and to its key personnel, attorneys, accountants and other representatives to fully discuss the business and financial condition of Eureka as may be reasonably requested by MAWC.

5. **Exclusivity.** In consideration of the time and expense MAWC will incur in the course of its due diligence and review of Eureka's business, neither Eureka nor any of its, elected officials, appointed officials, employees, advisors or consultants will solicit, encourage, accept or consider any offer for, or engage in any negotiations, meetings or other communications with, any third party, or enter into agreements with respect to, any sale of the water and wastewater assets of Eureka, during the period required for MAWC to complete its appraisal, but no longer than six (6) months from the date of the completion of the appraisal. Normal Board of Aldermen meetings and meetings with residents shall not be considered a meeting in violation of this paragraph.
6. **Cost of Appraisal.** In exchange for the binding covenants and obligations of the Eureka under Paragraph 5, MAWC shall pay for the cost of the appraisal of the assets of the water and wastewater systems, up to a maximum of Twenty-Five Thousand Dollars (\$25,000.00). Except as provided in the foregoing sentence, each party shall be responsible for and bear its own respective costs and expenses, including without limitation, expenses of legal counsel, accountants and representatives incurred at any time in connection with investigating the Proposed Transaction as provided herein. If Eureka elects not to enter into an Agreement to sell its water and wastewater systems by June 30, 2020, Eureka shall reimburse MAWC for one half of the total cost paid for the appraisal, but in no event shall Eureka be liable to MAWC for more than \$12,500.00. In the event Eureka sells all or part of its water and wastewater systems to any party other than MAWC within three (3) years of receiving a written offer from MAWC, Eureka shall reimburse the actual cost paid by MAWC for the appraisal within thirty (30) days after closing the sale of the water and wastewater systems to that party, but in no event shall Eureka be liable to MAWC for more than \$25,000.00.
7. **No Prior Dealing.** Eureka represents and warrants that neither it nor any of its agents or representatives has entered into any agreement with any third party for the appraisal or the sale of the Assets or other disposition of Eureka which could result in MAWC having any liability to such third party because of executing this letter or pursuing the potential transactions referenced herein.
8. **Legal Effect.** This letter is not an offer. Other than paragraphs 4, 5, 6, 7 and this paragraph 8, which shall be legally binding on the parties upon the execution of this letter by Eureka, this letter does not create any other legal obligation upon the parties or any person and has no other legal effect whatsoever. Should MAWC determine at any time and for any reason not to pursue the acquisition of Eureka water and wastewater systems, which it may do in its discretion, it will notify Eureka of that fact, whereupon this letter and all obligations hereunder, including any then current exclusivity under paragraph 5, will terminate. Should Eureka determine at any time and for any reason not to pursue the sale of Eureka's water and wastewater systems, which it may do in its discretion, it will notify MAWC of that fact, whereupon this letter and all obligations hereunder, including any then current exclusivity under paragraph 5, will terminate. Eureka shall reimburse the actual cost paid by MAWC for the appraisal within thirty (30) days of providing its notice to MAWC, but in no event shall Eureka be liable to MAWC for more than \$25,000.00.
9. **Miscellaneous.** Each party to this Agreement acknowledges that the definitive agreement contemplated herein by the parties may include both water and wastewater systems, or it may include only the water system or only the wastewater system. In the event a definitive agreement is entered into for both systems or either system, the City is not obligated to make any reimbursement to MAWC for the cost of the appraisal, except as provided by paragraph 6.

If this letter correctly expresses our mutual intent to conduct an appraisal of the water and wastewater systems, please so indicate by executing a copy where indicated below and returning it to the undersigned.

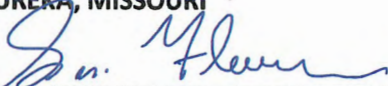
Sincerely,

MISSOURI-AMERICAN WATER COMPANY

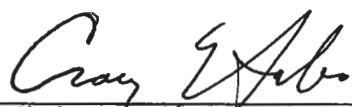
By: 
President Deborah Dewey
Date: July 29, 2019

Acknowledged and agreed by:

CITY OF EUREKA, MISSOURI

By: 
Mayor Sean Flower
Date: August 6, 2019

ATTEST:

By: 
City Clerk CRAIG E. SABO
Date: 8-6-19

BILL NO. 2657

ORDINANCE NO. 2543

AN ORDINANCE SUBMITTING TO THE QUALIFIED VOTERS OF THE CITY OF EUREKA A QUESTION CONCERNING THE SALE OF CITY WATER AND WASTE WATER UTILITIES

WHEREAS, the Board of Aldermen believes it is in the best interest of residents that it submit to the qualified voters of the City of Eureka on August 4, 2020 a Question to consider the sale of City water and waste water utilities to Missouri American Water Company.

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF EUREKA, ST. LOUIS COUNTY, MISSOURI, AS FOLLOWS:

SECTION 1:

There shall be submitted to the qualified voters of the City of Eureka, Missouri, for their approval at the election to be held on August 4, 2020 a ballot submission, which shall contain substantially the following language:

QUESTION

SHALL THE CITY OF EUREKA, MISSOURI BE AUTHORIZED TO SELL ITS WATER AND WASTE WATER (SEWER) UTILITIES TO MISSOURI AMERICAN WATER COMPANY FOR THE SUM OF \$28,000,000.00 (TWENTY-EIGHT MILLION DOLLARS)?

Yes No

SECTION 2:

The City Clerk is hereby directed to submit a certified copy of this Ordinance to the Board of Election Commissioners of St. Louis County providing notification that the City is calling for such Question to be submitted to qualified voters on August 4, 2020, specifying the purpose of the election, the date of the election, the legal notice to be published, and the sample ballot language as set forth in Section 1 of this Ordinance.

SECTION 3:

The Board of Election Commissioners of St. Louis County shall conduct such election according to law and certify the results thereof. Said Board of Election Commissioners shall designate such polling places as shall be required for such election and shall appoint such necessary election officials as may be required for the conduct thereof. Said Board of Election Commissioners shall also publish notice(s) of said election as shall be required by law and shall do and perform such other necessary acts as may be required to conduct such election in accordance with the Statutes of the State of Missouri and the Ordinances and Municipal Code of the City of Eureka.

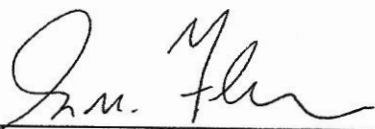
SECTION 4:

All ordinances or parts of ordinances of the City of Eureka in conflict with any provisions of this ordinance are hereby repealed.

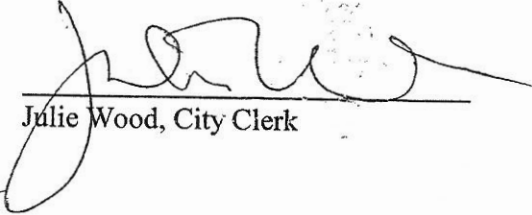
SECTION 5:

This Ordinance shall be in full force and effect from and after the date of its passage and approval.

PASSED AND APPROVED THIS 19TH DAY OF MAY, 2020.


Sean M. Flower, Mayor

ATTEST:


Julie Wood, City Clerk

BOARD OF ALDERMEN MINUTES P.1

MAY 19, 2020

1. CALL TO ORDER

The City of Eureka Board of Aldermen met in regular session at 7:00 p.m. The meeting was opened with the Pledge of Allegiance.

Present at roll call were: Mayor Flower, Aldermen Berry, Kiefer, Ascrizzi, Sir, Holloway and Murray.

Also in attendance were City Administrator Craig Sabo, City Attorney Kathy Butler and City Clerk Julie Wood.

2. MINUTES

On motion by Alderman Berry, seconded by Alderman Kiefer and unanimously passed, the Minutes of May 5, 2020 were unanimously approved.

3. GUEST

Derick Pratt, of 403 Williams Drive, stated that he believes that the election regarding the possible sale of the water and waste water utilities should be in November, not August, to increase voter turnout. He said that by delaying the election it will also allow residents more time to become educated on the topic. Mr. Pratt stated that he felt no particular way toward the vote, but wanted everyone to have sufficient time to make such an important decision.

4. PLANNING AND ZONING RECOMMENDATIONS FROM MAY 13, 2020

A. The Commission recommended approval of a petition from Michael McCusker, representing Modern Tech Equipment, LLC, for a Special Use Permit for the outdoor display and sales of commercial and industrial equipment at 18601 U.S. Highway 66.

On motion by Alderman Berry, seconded by Alderman Murray and unanimously passed, the Special Use Permit was approved.

B. The Commission recommended approval of a petition from Blake Hutchcraft, representing Scoreboard Automotive Sales and Leasing, for a Special Use Permit for motor vehicle sales display lot at 1375 West Fifth Street.

On motion by Alderman Berry, seconded by Alderman Holloway and unanimously passed, the Special Use Permit was approved.

C. The Commission granted approval of a petition from Ed Gershenson for site plan approval at 2 Truitt Drive (no Board action required).

5. BILL NO. 2657 RE: AUTHORIZING CONSIDERATION OF THE SALE OF WATER AND WASTE WATER UTILITIES

Mayor Flower requested that each Alderman state their opinion regarding placing the sale of the water and waste water utilities on the August ballot.

Alderman Sir related that he did not have any issue with putting it on the ballot in August.

Alderman Ascrizzi stated that she believed an August election is best, as the sale will be the focus rather than lost among the vast amount of issues on the ballot in a presidential election.

Alderman Kiefer said that he was comfortable with moving forward with August.

Alderman Murray stated that she was opposed to putting it on the August ballot. She reported that residents have communicated to her concerns over voting absentee by mail. She said she believes that the vote should occur in November.

Alderman Holloway related that he has been in Eureka for seventeen (17) years and all he has heard about is the poor water quality. He said that he feels like there have been plenty of opportunities to become educated and thinks now is the time to act to improve the City's water.

Alderman Berry stated that he believes August is a better time for residents to get out and vote as he feels they will be more focused on the Proposition.

Mayor Flower stated that regardless of how the Board of Aldermen feel about the election date, it is good that all the Aldermen agree that it is time to take it to a vote. He related that he believes August will increase activity at the polls due in part to the St. Louis County Executive race. He said that if the City waits until November, essentially the City is saying that maintenance and improvements would be minimal for six (6) months. He said he believes the majority of residents will strive to be informed for the betterment of the community and that he believes social media is creating more educated residents. He added that if the vote is delayed, employees in those departments will be in limbo having to wait another three (3) months to find out their destiny; along with the challenge it creates for the City to acquire and retain staff in the interim.

5. CONT'D.

Mayor Flower reported that Board of Aldermen meetings will be held at the Timbers until the election to allow more residents to attend meetings while still adhering to social distancing protocol. He said the City could also conduct video conferencing via Zoom to allow for questions. He stated that he do everything in his power to get as much information as possible into the public's hands prior to the election.

On motion by Alderman Berry, seconded by Alderman Ascrizzi and unanimously passed, Bill No. 2657 was read for the first time by short title.

BILL NO. 2657: AN ORDINANCE SUBMITTING TO THE QUALIFIED VOTERS OF THE CITY OF EUREKA A QUESTION CONCERNING THE SALE OF CITY WATER AND WASTE WATER UTILITIES

On motion by Alderman Murray, seconded by Alderman Berry and unanimously passed, Bill No. 2657 was read for the second time by short title.

On motion by Alderman Berry, seconded by Alderman Murray and unanimously passed, Bill No. 2657 was read for the third and final time.

Alderman Berry moved, THAT BILL NO. 2645 BE ADOPTED AS ORDINANCE BY ROLL CALL VOTE. The motion was seconded by Alderman Sir.

The roll call vote was as follows: Alderman Kiefer - YES; Berry - YES; Ascrizzi - YES; Sir - YES; Holloway - YES; Murray - NO.

The motion passed with five (5) "YES" votes and one (1) "NO" vote (cast by Alderman Murray).

Mayor Flower declared Bill No. 2657 passed and designated it to be Ordinance No. 2543.

6. PROPOSED PARK BOARD APPOINTMENT

Mayor Flower recommended the reappointment of Barb Rechten to the Park Board.

On motion by Alderman Berry, seconded by Alderman Sir and unanimously passed, Mayor Flower's recommendation was approved.

7. BILLS FOR PAYMENT

The list of bills was considered by the Board.

On a motion by Alderman Berry, seconded by Alderman Holloway and unanimously passed, the list of bills was approved for payment.

8. RECURRING BILLS FOR APPROVAL

The list of recurring bills was reviewed by the Board.

On a motion by Alderman Kiefer, seconded by Alderman Berry and unanimously passed, the list of recurring bills was approved and accepted for the record.

9. STATEMENT OF FINANCES

On motion by Alderman Kiefer, seconded by Alderman Berry and unanimously passed, the Board of Aldermen acknowledged receipt of the financial statements for the period ending 4-30-20.

10. MAYORAL, ALDERMANIC AND STAFF COMMENTS AND REPORTS

Alderman Sir reiterated the need for patching to be done at the intersections of 4th Street and Central Avenue and 5th Street and Central Avenue. He also again noted that the Railroad has not yet fixed the track crossing over Central Avenue.

City Administrator Sabo said that the City has complained to both entities multiple times, but will continue to do so until the issues are addressed.

Alderman Murray inquired about the Augustine Road project.

City Administrator Sabo said that the company will take necessary measures to commence the project within the next few weeks.

11. CALL FOR CLOSED SESSION

On motion by Alderman Berry, seconded by Alderman Murray and unanimously passed, a Closed Session was called for discussion of matters relating to attorney-client privilege, litigation, personnel and real estate matters.

12. CLOSED SESSION

13. OPEN SESSION RECONVENED

BOARD OF ALDERMEN MINUTES P.3

MAY 19, 2020

14.

There being no further matters for discussion, the meeting was adjourned at 7:51 p.m.

For a record of the Closed Session Minutes at Item No. 11, see Minutes this date in the Closed Session File.

Respectfully submitted,

(Original with signature on file)

Julie Wood, City Clerk