

## CITY COUNCIL PROCEEDINGS

November 13, 2019

The City Council of the City of David City, Nebraska, met in open public session in the meeting room of the City Office, 557 North 4<sup>th</sup> Street, David City, Nebraska. The Public had been advised of the meeting by publication of notice in The Banner Press on November 7<sup>th</sup>, and an affidavit of the publisher is on file in the office of the City Clerk. The Mayor and members of the City Council acknowledged advance notice of the meeting by signing the Agendas which are a part of these minutes. The advance notice to the Public, Mayor, and Council members conveyed the availability of the agendas, which were kept continuously current in the office of the City Clerk and were available for public inspection during regular office hours. No new items were added to the agendas during the twenty-four hours immediately prior to the opening of the Council meeting.

Present for the meeting were: Mayor Alan Zavodny, Council members Kevin Hotovy, Bruce Meysenburg, Tom Kobus, John Vandenberg, Pat Meysenburg, and Dana Trowbridge, City Attorney Jim Egr, and City Clerk Joan Kovar.

Also present for the meeting were: Eric Johnson of Kirkham Michael, Jared Storm of Hershey Flying Service, Al Hottovy of Leo A. Daly, Craig Reinsch of Olsson, Tim Shaw of Eriksen Construction, Colten Venteicher of Bacon & Vinton LLC Attorneys at Law, Cody Wickham of D.A. Davidson, Ryan Ruth of Agency One Ins., Clayton Keller, Sheriff Tom Dion, Scott Steager, Interim Water Supervisor Aaron Gustin, and Wendy Ferguson of Aqua-Aerobic Systems.

The meeting opened with the Pledge of Allegiance.

Mayor Alan Zavodny informed the public of the "Open Meetings Act" posted on the east wall of the meeting room asked those present to please silence their cell phones.

Mayor Zavodny asked that Agenda items #29, #30, and #31 be moved up after Agenda Item #10. Therefore, Council member Kobus made a motion to advance Agenda Items #29, #30, and #31 after Agenda Item #10. Council member Bruce Meysenburg seconded the motion. Voting AYE: Council members Hotovy, Kobus, Trowbridge, Bruce Meysenburg, Pat Meysenburg, and Vandenberg. Voting NAY: None. The motion carried.

The minutes of the October 23, 2019 meeting of the Mayor and City Council were approved upon a motion by Council member Trowbridge and seconded by Council member Pat Meysenburg. Voting AYE: Council members Hotovy, Bruce Meysenburg, Trowbridge, Pat Meysenburg, Vandenberg, and Kobus. Voting NAY: None. The motion carried.

Mayor Zavodny asked for consideration of claims. Council member Hotovy made a motion to authorize the payment of claims and Council member Vandenberg seconded the motion. Voting AYE: Council members Bruce Meysenburg, Pat Meysenburg, Vandenberg, Trowbridge, Kobus, and Hotovy. Voting NAY: None. The motion carried.

Mayor Zavodny asked for any comments or questions concerning the Committee and Officer Reports.

Mayor Zavodny stated: "I would like to take a moment to introduce a guest we have with us this evening. Clayton, you want to introduce yourself?"

Clayton Keller stated: "I am Clayton Keller, originally from Ohio, going to school at UNO in Omaha right now, doing my Masters in Public Administration."

Mayor Zavodny stated: "Ok, I will take care of it from here. We hope to, in the next day or two, have a very exciting announcement that Clayton will be joining us as the next city administrator for the City of David City, so welcome and happy to have you here and we look forward to working with you moving forward. Thanks to the Council who made efforts to meet with Clayton, and special thanks to you, Clayton, for making a really big effort to get around town."

City Clerk Kovar stated: We received our NPPD payment of \$24,660.00 on November 8<sup>th</sup> since we got the Power Plant up and running. None of the electric department guys are here but a big "Thank You" to them for all the work they put in to get it operational again."

Mayor Zavodny stated: "That's good news. They did do a lot of work to do that and we're really excited about that. The only other thing I would add is we also, the work in the City Office to get the Timpte money through the Department of Economic Development we got that grant all satisfied and then got Timpte their check so we got that handled so that's progress on that front too."

Council member Kobus made a motion to accept the Committee and Officers Reports as presented. Council member Hotovy seconded the motion. Voting AYE: Council members Trowbridge, Pat Meysenburg, Bruce Meysenburg, Hotovy, Vandenberg, and Kobus. Voting NAY: None. The motion carried.

Al Hottovy of Leo A. Daly was present to discuss the Downtown Renovation Project. Al stated: "I want to first of all apologize as there was a little bit of miscommunication between the City and us on that last pay estimate, and it should not have been said that it was the last pay estimate. So, we have come back into the City and re-looked at the "punch list" that was done in June. There are about 210 items on that punch list, and about 1½ - 2 weeks ago we were here and that "punch list" has been brought down to 77 items that he has not done yet, and we have placed value on each one of those items that he has to do when the weather straightens out. It summarizes every place there is something, and we have a picture of it, and he has got to do that. Right now, we are estimating that the value of the work he needs to do is \$103,306.00. Agenda item #27 is pay estimate #22 to Constructors, Inc., and we adjusted this pay request from \$505,901.49 down to \$317,912.83; we are still retaining \$187,988.66 which he doesn't get until those 77 "punch list" items are fixed. If somebody brings up something, we are in the warranty period, and that will be added to the "punch list". It may be August or September of next year before we are totally done.

Mayor Zavodny stated: "Do you have any indication from him, getting him back here will not be a problem?"

Al Hottovy stated: "There's a little punching going on there, but he will come back for this \$187,988.66 yes.

Mayor Zavodny stated: "I'd be happier if we had a little more teeth in that."

Al Hottovy stated: "There's enough money in there, almost twice as much, even if you had to bring another contractor in to do it, but then the Bond Company will step in."

David City Improvements - Punch List (Revised 10.22.2019)						
Item No.	Item	Photo No.	Location	Proposed Remedy	Status	Associated Cost
1	Clean Project Site	-	Entire project site	Remove excess dirt, sand, gravel, brick and concrete from site, use either a street sweeper or wash with fire hydrant (coordinate with City staff)	Not Completed	\$ 6,000.00
2	Falling paint stripping	-	Existing paint stripping	Restripe crosswalks and parking areas, including the south Butler County Parking lot (according to plans) previously painted as part of the project	Not Completed	\$ 12,000.00
3	Ensure proper function of valves and boxes	-	Entire project site	Open and clean all valves and boxes	Unknown	\$ 2,000.00
5	Damaged Sidewalk - Southeast Corner	-	4th / Iowa St.	Replace damaged sidewalk ramp and sod surrounding area - PAY ITEM	Not Completed - Replace Sod	\$ 100.00
8	Cracked Panel	1	4th / Butler County Welding	Remove and replace parking area panel	Not Completed	\$ 1,422.00
13	Cracked Parking Panel	6	4th / Butler County Welding	Remove and replace parking area panel	Not Completed	\$ 1,422.00
19	Cracked Sidewalk Panel	12	4th / RB's	Remove and replace	Routed and Sealed in lieu of replaced	\$ -
20	Cracked Sidewalk Panel	13	4th / RB's	Remove and replace	Routed and Sealed in lieu of replaced	\$ -
21	Cracked Sidewalk Panel	14	4th / RB's	Remove and replace	Routed and Sealed in lieu of replaced	\$ -
28	Curb Inlet With Form Braces	-	4th / Subway	Remove forms from inlet	Not Completed	\$ 500.00
29	East valley gutter inlet is full of debris	-	4th / Subway	Remove debris from inlet box, ensure proper drainage	Not Completed	\$ 1,000.00
41	Cracked Gutter	28	4th / Northwest Corner of E St.	Seal crack with tar	Not Completed	\$ 500.00
45	Damage from construction methods	32	4th / Moravec	Remove and replace 9" Concrete panel	Routed and Sealed in lieu of replaced	\$ -
47	Joint against building	34	4th / Christian Building	Remove and replace joint sealant	Not Completed	\$ 500.00
49	Unfinished concrete flume	36	4th / Christian Building	Remove excess concrete, continue concrete flume to inlet, install concrete from back of sidewalk and slope to area inlet, adjust inlet lid as needed.	Not Completed	\$ 1,500.00
50	Unconnected drain pipe	37	4th / Downtown Fitness	Install Wye at end of new drain pipe connect to existing downspout and drainage pipe to west, cover with 4" concrete	Completed by Business Owner	\$ -
51	4 Cracked Sidewalk Panels	38	4th / Downtown Fitness	Remove and replace sidewalk panels	Sidewalk Panels replaced - Still needs to be sealed against building	\$ 500.00
53	Sidewalk Damage	40	4th / Ace	Remove and replace sidewalk panel	Check Photo - Verify location	\$ 540.00
57	Leaves seceded in to Sidewalk	43	4th / Kobza Motors, Inc.	Remove and replace all sidewalk panels with imprint	Not Completed	\$ 5,400.00
80	Sand missing between bricks	-	5th / D St.	Fill brick joints with sand as needed	Not Completed	\$ 6,000.00
104	Ponding next to Crosswalk in gutter	92	5th / Courthouse	Clean valley gutter, ensure proper drainage	Not Completed	\$ 600.00
106	Concrete lip exceeds 0.5"	94	5th / Courthouse	Remove and replace brick as needed to ensure concrete lip does not exceed 0.25" along center parking area	Not Completed	\$ 12,000.00
108	Parking Area panel is cracked	96	5th / Courthouse	Remove and replace parking area panel - Center Parking Area	Not Completed	\$ 1,422.00
137	Damage to northeast Curb	-	6th / Iowa St.	Remove and replace curb full depth - PAY ITEM	Not Completed	\$ 500.00
138	Northeast Corner grass damaged	-	6th / Iowa St.	Sod damaged areas - PAY ITEM	Not Completed	\$ 100.00
140	Northwest Corner grass damaged	-	6th / Iowa St.	Sod damaged areas - PAY ITEM	Not Completed	\$ 100.00
141	Damage to northwest Curb	-	6th / A St.	Remove and replace curb full depth - PAY ITEM	Not Completed	\$ 500.00
142	Northwest Corner grass damaged	-	6th / A St.	Sod damaged areas - PAY ITEM	Not Completed	\$ 1,500.00
160	Crack in Drive	140	5th / RB's North Drive	Remove and replace drive lane panel	Not Completed	\$ 500.00
168	Crack in Sidewalk / Parking area	148	5th / Senior Center	Remove and replace parking area panel, rout and seal sidewalk panel with polyurethane sealant	Completed - Sealed Only	\$ -
169	Footprints in 2 sidewalk panels	149	5th / Senior Center	Remove and replace sidewalk panels (paid item)	Completed - Ground Down	\$ -

170	Cracks in concrete at 8th / E St.	150, 151, 152, 153	E St. / 6th Street	Remove and replace all cracked panels within the intersection, street, and curb (approx. 35-40 panels)	Not Completed - 10 Panels in the Intersection, 6 Panels in E St. South of Kobza, 3 Panels in E St. South of Sue's	\$ 28,500.00
171	Excess concrete from brooming	154	E St. / Dentist	Clean Excess Concrete	Not Completed	\$ 1,500.00
172	Shoe Prints in 1 panel	155	E St. / State Farm	Sand/Grind down	Not Completed	\$ 1,000.00
178	1 Cracked Sidewalk Panel	163	E St. 537 Heritage Apts.	Clean and seal crack with polyurethane sealant	Not Completed	\$ 600.00
184	1 alley panel cracked	169	E St. / Alley West of Christian Prop.	Saw out, remove and replace alley partial panel	Not Completed	\$ 600.00
189	2 cracked sidewalk panels	174	E St. / USDA	Clean and seal cracks with polyurethane sealant	Not Completed	\$ 600.00
191	Cracked Curb by inlet	176	E St. / USDA	Route and seal with tar	Not Completed	\$ 600.00
192	Crack in Valley Gutter	177	E St. / USDA	Saw out new joint	Not Completed	\$ 400.00
193	Ponding in Valley Gutter	178, 179	E St. / Empty Lot	Clean valley gutter, ensure positive drainage to inlet	Not Completed	\$ 400.00
197	Crack parking lane corner	183	E St. / Old Library	Clean and seal with tar	Not Completed	\$ 400.00
198	2 cracked corners center parking	184	E St. / Old Library	Clean and seal with tar	Not Completed	\$ 400.00
200	2 cracks in valley gutter	186	E St. / Subway	Route and seal with tar	Not Completed	\$ 400.00
203	Non-continuous joint in sidewalk	188	E St. / US Bank	Saw out joints in sidewalk	Not Completed	\$ 500.00
				Subtotal		\$ 92,906.00
*	The City reserves the right to have any concrete panel, whether sidewalk or street, which is routed and/or sealed as part of this punch list removed and replaced during the 1 year warranty period.					
Additional Items						
Item No.	Item	Photo No.	Location	Proposed Remedy	Status	Associated Cost
209	Cracked sidewalk panel		West side of 4th St. / North of S of RR Tracks	Replace sidewalk panel	Not Completed	\$ 1,000.00
210	Failed curb		4th St. / C St. - South of Butler-Walding	Remove and replace failed curb section	Not Completed	\$ 1,000.00
211	Scaling Parking Area		East side of 4th St. / West of Sheriff's Office	Monitor during Warranty period	Not Completed	\$ 1,000.00
212	Sidewalk Form		Back of sidewalk South of Downtown Fitness	Remove Form	Not Completed	\$ 500.00
213	Sagging Sidewalk panel		In front of Post Office	Monitor during Warranty period	Not Completed	\$ 1,000.00
214	Scaling in Sidewalk		E Street - Southeast of Kobza	Monitor during Warranty period	Not Completed	\$ 1,000.00
215	Falling Paint		Arrows on 4th Street	Repaint - Monitor during Warranty period	Not Completed	\$ 2,000.00
216	Falling Paint		5th St. / D St. Crosswalk	Repaint - Monitor during Warranty period	Not Completed	\$ 2,000.00
217	Light Pole Base		North of Courthouse	Seal Light Pole base	Not Completed	\$ 500.00
218	Cracked Stoop		E Street - Main Attraction Salon	Seal crack in stoop	Not Completed	\$ 400.00
				Subtotal		\$ 10,400.00
				Total		\$ 103,306.00

<b>CONTRACTOR'S PROGRESS ESTIMATE</b>		<b>NO. 22</b>
Project: City of David City Improvements David City, Nebraska	Date: November 12, 2019	
Owner: City of David City David City, Nebraska	Engineer: LEO A DALY	
Contractor: Constructors, Inc. P. O. Box 80268 Lincoln, Nebraska 68501	Contract for: Entire Work	
	Contract Date: April 12, 2017	
Original Contract Sum . . . . .	\$	9,304,432.44
	ADDITIONS	DEDUCTIONS
Change Orders Previously Approved . . . . .	\$94,903.55	\$0.00
Change Orders Approved This Period . . . . .	\$0.00	\$0.00
Total Amount of Contract To-Date . . . . .	\$	9,399,335.99
<b>Current Pay Period</b>		
Current Contractor Estimate . . . . .	\$ 42,774.04	
Retainage (5%) . . . . .	\$ -	
Current Total . . . . .	\$ 42,774.04	
<b>Stockpiled Materials</b>		
Van Kirk . . . . .	\$ (4,705.50)	
IES . . . . .	\$ -	
Adjustments (Retainage Release) . . . . .	\$ 279,844.29	
Total Amount Current Pay Period . . . . .	\$ 317,912.83	
<b>Previous Pay Periods</b>		
Estimate Amount Previously Submitted . . . . .	\$	9,399,335.99
Previous Retainage (Corrected) . . . . .	\$	(467,832.95)
Previous Total . . . . .	\$	8,931,503.04
<b>Previous Stockpiled Materials</b>		
Van Kirk . . . . .	\$	5,695.00
IES . . . . .	\$	-
<b>Totals To-Date</b>		
Total Estimated To-Date . . . . .	\$	9,437,404.53
Total Retainage To-Date (2% Remaining) . . . . .	\$	(187,988.95)
Estimated Work Completed To-Date . . . . .	\$	9,249,415.87
Less Previous Payments . . . . .	\$	8,931,503.04
Balance Due by Estimate 22 . . . . .	\$	317,912.83
I have reviewed this estimate and it appears to be correct.		
<b>LEO A DALY</b>		
By: AL HOTTOVY	Date: November 12, 2019	
Approved: _____	Date: _____	
Owner		



Eric Johnson of Kirkham Michael stated: "On October 25<sup>th</sup>, Jared Storm and I met with the Aeronautics Commission and they awarded the grant for the taxiway. The next step in the process of the project is to have an engineering agreement; it is a requirement of the grant."

**From:** Chin, Kai  
**Sent:** Wednesday, October 30, 2019 10:51 AM  
**To:** ckroesing@davidcityne.com  
**Subject:** David City SA-06 (Pave Connecting Taxiway) - State Grant

Good afternoon Alan and Chris,

This is Kai from NDOT Aeronautics Division.

Congratulations! During the Oct 2019 Nebraska Aeronautics Commission Meeting, David City Municipal Airport's request for State Aid Project of 90% up to a max of \$87,300 has been approved. This State Grant is to help the airport to Pave Connecting Taxiway for operations to hangar during wet and winter conditions.

To receive the State Grant, your next step is to coordinate with the your Consultant and prepare a draft Engineering Agreement.

If you have any questions, please let me know. Thank you.

Best regards,

**Kai Yueh Chin**

*Project Engineer I*  
*Aeronautics Division*  
Nebraska Department of Transportation  
OFFICE 402-471-7930  
[Kai.Chin@nebraska.gov](mailto:Kai.Chin@nebraska.gov)  
[dot.nebraska.gov](http://dot.nebraska.gov) | [Twitter](#)

### TAXI-WAY AGREEMENT

This Taxi-Way Agreement, hereinafter referenced as "Agreement", is made and entered into between the CITY OF DAVID CITY, NEBRASKA, a Nebraska Municipal Corporation, hereinafter referenced as "City", and HERSHEY FLYING SERVICE, INC. (dba Storm Aeronautics), a Nebraska Corporation.

WHEREAS, the City has a Municipal Airport and Hershey Flying Service, Inc. has a manufacturing plant that needs to have a paved taxi-way; and,

WHEREAS, there is a grant available for the construction of the necessary taxi-way to benefit Hershey Flying Service, Inc. that if granted would be a cost share of TEN PERCENT (10%) to the City and NINETY PERCENT (90%) funded by the grant; and,

WHEREAS, the initial beneficiary of the said grant would be Hershey Flying Service, Inc. because of the location of the taxi-way.

Now, therefore in consideration of the terms and conditions of this Agreement, which the parties hereto agree to be valuable consideration, the City and Hershey Flying Service, Inc. agree as follows:

- (1) The City and Hershey Flying Service, Inc. will agree to cooperate in the grant process to obtain the necessary grant for the taxi-way to benefit Hershey Flying Service, Inc.
- (2) Hershey Flying Service, Inc. would be solely responsible for any and all costs associated with the grant application process, including attorney fees and so forth and the TEN PERCENT (10%) cost share for the possible construction of the taxi-way should the City be awarded the grant.
- (3) Should the City be awarded the grant and the taxi-way be constructed and completed, Hershey Flying Service, Inc. will be solely responsible for all maintenance, clearing the snow, all such related costs for the taxi-way until such day when others who would utilize the taxi-way and upon such event such responsibility would pass to the City.
- (4) This Agreement shall be binding on the heirs, successors, assigns and personal representatives of the parties hereto.

CITY:

HERSHEY FLYING SERVICE,  
INC.:

by *Alan Zavodny* 9-17-2019  
ALAN ZAVODNY, Mayor Date

by *Jared Storm* 9/12/19  
JARED STORM, President Date

Attest:

*Joan Kovar* 9/17/2019  
JOAN KOVAR, City Clerk, Date

State of Nebraska )  
                                  ) ss.  
County of Butler )

The foregoing instrument was acknowledged before me on Sept 12, 2019, 2019 by JARED STORM, President of HERSHEY FLYING SERVICE, INC. (dba STORM AERONAUTICS), a Nebraska Corporation, on behalf of the Corporation.



*Tami L. Comte*  
Notary Public

State of Nebraska )  
                                  ) ss.  
County of Butler )

The foregoing instrument was acknowledged before me on September 17, 2019 by Alan Zavodny, Mayor, and Joan Kovar, City Clerk, of the City of David City Nebraska, a Nebraska Municipal Corporation, on behalf of the City.



*Tami L. Comte*  
Notary Public

Council member Hotovy made a motion to approve the proposed engineering agreement concerning the Airport Taxiway, and authorized Mayor Zavodny to sign said agreement. Council member Kobus seconded the motion. Voting AYE: Council members Pat Meysenburg, Bruce Meysenburg, Hotovy, Vandenburg, Trowbridge, and Kobus. Voting NAY: None. The motion carried.

**Airport Improvement Program (AIP) Project No. SA-06 93Y  
David City Municipal Airport  
David City, Nebraska**

THIS CONTRACT is made and entered into by and between the consulting firm of Kirkham, Michael & Associates, Inc. of Omaha, Nebraska, hereinafter called the "Consultant", and the City of David City, Nebraska, hereinafter called the "Sponsor".

For and in consideration of the mutual agreements hereinafter contained, the parties hereto agree as follows:

**SECTION 1: GENERAL**

The Sponsor agrees to employ the Consultant to provide the services described in Sections 3 through 6 for the following project.

**1. Construct approximately 922 square yards of 6" PCC taxiway.**

Rob Garber, P.E., will represent the Consultant as Project Engineer and Eric Johnson will represent the Consultant as Project Manager in the performance of this agreement. No one else will be assigned to act in this capacity without the Sponsor's prior written approval. The Project Manager shall be responsible for directing and coordinating all the activities necessary to complete this project.

The Consultant will provide all equipment and personnel necessary to do the tasks listed herein, except as otherwise provided. The Consultant shall be responsible for the quality, accuracy, and coordination of the design, drawings, reports, surveys, and other items furnished as part of this agreement.

**SECTION 2: PRELIMINARY PHASE**

"THIS PHASE NOT USED."

**SECTION 3: DESIGN PHASE**

Under this phase, the Consultant agrees to prepare the necessary construction plans and contract documents that will include special and general conditions, construction specifications, contract forms, labor provisions, notice to bidders, and proposal forms for the airport improvements listed in Section 1.

The Consultant will affix the seal of a registered Professional Engineer licensed to practice in the State of Nebraska to the construction plans and specification/contract bound volume. The Consultant agrees to provide the following services:

- a. Confer with the Sponsor and the Nebraska Department of Transportation Division of Aeronautics (NDOT). The Consultant shall prepare a summary of the conference that highlights critical project issues.
- b. Prepare detailed plans, specifications, and contract documents. Specifications for concrete will follow NDOT requirements. The detailed plans, specifications, and contract documents will be submitted to the NDOT (1 copy) and Sponsor for review within 35 days of the date of this agreement.
- c. Provide a limited Construction Safety and Phasing Plan (CSPP) site specific.
- d. Conduct a plan-in-hand on-site visit at the Airport to review preliminary project plans, specifications, and Engineer's Report prior to submittal. This meeting will include the City staff, Airport Manager, and NDOT, if able to attend, to verify all improvements are completed and shown on the plans.

- e. Revise and submit plans, specifications, contract documents and Engineer's Design Report within 15 days of receipt of comments from the NDOT per Item b submittals above.

The original documents, such as tracings, plans, specifications, maps, basic survey notes and sketches, charts, computations, and other data prepared or obtained under the terms of this contract are instruments of service and shall remain the Consultant's property. Reproducible copies of drawings and copies of other pertinent data will be made available to the sponsor upon request. Copies of disks containing all drawings will be furnished to the sponsor for their use. The Consultant will provide, without cost to the Sponsor and approving agencies, the necessary number of copies for review and approval.

This phase will be complete upon completion of all items listed above.

#### **SECTION 4: BIDDING PHASE**

Under this phase of the contract, the Consultant will assist the Sponsor in advertising and securing bids. The Consultant agrees to provide the following services.

- a. Provide sufficient copies (ten (10) budgeted) of the approved plans and specifications to permit advertising and bidding. Copies of the documents may be furnished to prospective bidders at a cost fixed by the Consultant.
- b. Email/mail notices to potential bidders and plan rooms, and contact contractors as needed to promote general interest.
- c. Consultant will maintain a plan holder list.
- d. Answer questions raised during the bidding process. Issue addenda as required.
- e. Attend the bid opening to be held at Kirkham Michael's office in Lincoln, tabulate and analyze bid results, evaluate bidders, and furnish recommendations on the award of contracts.
- f. Assist the Sponsor with the submission of documents necessary to obtain construction contract approval.
- g. After appropriate approval, prepare all executed contract documents necessary for the project including bonds, insurance, contracts, drawings, etc. Bind the executed contract documents with the specifications and provide one bound set each to NDOT and the Sponsor.

This phase will be considered complete when the executed contracts have been approved by the Sponsor and NDOT. Re-advertising, if necessary, will be negotiated under a supplemental agreement to this contract.

#### **SECTION 5: CONSTRUCTION PHASE**

(INCLUDES OBSERVATION)

Based on estimated 25 Working Days (Estimated Construction Contract Time)

Under this phase the Consultant agrees to perform the following services.

- a. Provide consultation and advice to the Sponsor during all construction phases. This includes brief weekly phone call updates about the project status.
- b. Assign a Project Engineer to the project that will periodically observe work in progress, review test reports, and provide weekly working day, construction progress, and testing reports to the Sponsor and NDOT. The Consultant will provide written confirmation that all performance tests required by the specifications were conducted and met or exceeded the specifications.

- c. Participate in preconstruction conference. Submit a formal report of the conference discussions.
- d. Provide field and/or construction surveys and staking, as required under the FAA standard specification General Provision 50-06, including horizontal and vertical control, spot checks during construction, as-built checks after construction, and final cross sections for establishing pay quantities and as-built plans.
- e. Upon receipt of NDOT authorization to issue Notice-to-Proceed, the Consultant will issue, for the Sponsor, the Notice-to-Proceed to the Contractor. NDOT authorization will not be issued until all conditions are met in accordance with project requirements.
- f. Provide part time on-site construction observation.
- g. Review and approve shop and erection drawings and all materials data submitted by construction contractors for compliance with design concepts.
- h. Prepare and negotiate contract modifications, change orders, and supplemental agreements. This includes creating up to 3 change orders on the project.
- i. Determine amounts owed to construction contractors and process financial documents.
- j. Arrange and conduct final inspections. Submit a summary of test results and a quality control report complete with checklists, performance test results, pay factor adjustments, etc.

#### **SECTION 6: SPECIAL SERVICES**

Under this phase, the Consultant will provide the following services. Services not listed in Sections 3 through 6 can only be added by supplemental agreement to this contract.

- a. Laboratory tests, soil investigations and reports will be provided by Mid-State Engineering and Testing, Inc. of Kearney, Nebraska. Existing information will be utilized from current data from the recent taxiway t-hangar project within proximity of the proposed taxiway improvements. Consultant will provide a copy of the testing reports and results to the Airport Sponsor and NDOT Aeronautics Division.

#### **SECTION 7: FEES AND CHARGES**

The Sponsor shall pay the Consultant for the services described in this agreement as follows:

Section 2: Preliminary Phase. "THIS PHASE NOT USED.

Section 3: Design Phase. Payment for the items included in Section 3 Design Phase shall be made based on direct salary, overhead costs, and reimbursable expenses incurred plus a fixed payment of \$1,255.83 and sub-contract costs. The schedule of charges and reimbursable expenses is Exhibit A attached and made a part hereto. Labor and general administration overhead percentage shall be supported by a statement of overhead expenses certified by the consultant's auditor or a governmental auditor.

The total charges for Section 3 will not be greater than the "Not-to-Exceed" (NTE) amount of \$11,721.07. If the scope of services is increased, then the "Not-to-Exceed" amount may be increased by a supplemental agreement to this contract. No payment above the Not-to-Exceed limit shall be made without prior approval of an amendment supported by proper justification.

Payment shall be due monthly for incurred charges and expenses based on detailed invoices. Invoices

shall include a pro rata portion of the fixed fee with the final invoice adjusted to include the remaining unpaid balance of the fixed fee. Payment shall be due according to the following payment schedule:

A 25% retainage of the total payment will be withheld until after plans and specifications are approved.

Section 4: Bidding Phase. Payment for the items included in Section 4 Bidding Phase shall be made based on direct salary, overhead costs, and reimbursable expenses incurred plus a fixed payment of \$342.94 and subcontract costs. The schedule of charges and reimbursable expenses is Exhibit B attached and made a part hereto. Labor and general administration overhead percentage shall be supported by a statement of overhead expenses certified by the consultant's auditor or a governmental auditor.

The total charges for Section 4 will not be greater than the "Not-to-Exceed" (NTE) amount of \$3,200.82. If the scope of services is increased, then the "Not-to-Exceed" amount may be increased by a supplemental agreement to this contract. No payment above the Not-to-Exceed limit shall be made without prior approval of an amendment supported by proper justification.

Payment shall be due monthly for incurred charges and expenses based on detailed invoices. Invoices shall include a pro rata portion of the fixed fee with the final invoice adjusted to include the remaining unpaid balance of the fixed fee.

85% when bids received;  
15% when item e in Section 4: Bidding Phase is completed.

Section 5: Construction Phase. Payment for the items included in Section 5 Construction Phase shall be made based on direct salary, overhead costs, and reimbursable expenses incurred plus a fixed payment of \$1,090.52 and subcontract costs. The schedule of charges and reimbursable expenses is Exhibit C attached and made a part hereto. Labor and general administration overhead percentage shall be supported by a statement of overhead expenses certified by the consultant's auditor or a governmental auditor.

The total charges for Section 5 will not be greater than the "Not-to-Exceed" (NTE) amount of \$12,178.22 if 1) the construction work is completed within the construction contract aggregate time allowance; and 2) the scope of work as set forth in Section 1 is not exceeded. If construction contract time is exceeded or the scope of services is increased, then the "Not-to-Exceed" amount may be increased by a supplemental agreement to this contract. No payment above the Not-to-Exceed limit shall be made without prior approval of an amendment supported by proper justification.

Payment shall be due monthly for incurred charges and expenses based on detailed invoices. Invoices shall include a pro rata portion of the fixed fee with the final invoice adjusted to include the remaining unpaid balance of the fixed fee.

Section 6: Special Services. Testing laboratory services are estimated to be \$2,000.00 for soils and concrete testing services during construction. The estimated amount may be increased with 1) prior notification from the Consultant and approval from the Sponsor and NDOT; and 2) execution of a supplemental agreement to this contract. If the testing fees come close to the limit and it becomes apparent that the project cannot be completed within the limit, the Consultant shall notify the Sponsor and NDOT. The notification shall include a brief justification for the overrun referencing applicable tests required by the specifications and a revising the new schedule of charges.

Payment shall be due monthly for incurred charges and expenses based on detailed invoices. Invoices shall include a pro rata portion of the fixed fee with the final invoice adjusted to include the remaining unpaid balance of the fixed fee.

If Special Services are added during the course of this contract, a supplemental agreement will be executed to cover any added fees when the services are authorized. All supplemental agreements are subject

to the same approvals as this agreement.

Section 7: Payment Provisions and Adjustments. All payments shall be made based on the lump sum amounts or unit charges and fixed fees, as provided. If the scope of consultant services changes, causing an increase or decrease to the Consultant's costs, this contract shall be adjusted to cover the increase or decrease in costs. If circumstances beyond the control of the Consultant require more than 18 months from the date of this agreement to complete the work specified herein, this contract may be adjusted to cover any increase in the Consultant's costs yet to be incurred. All adjustments shall be negotiated in the same manner as this contract and shall be executed as a Supplemental Agreement to the original contract. The Sponsor will not reduce the Consultant's final payment for any part of the project designed but not actually constructed.

**Kirkham Michael**

**Exhibit A  
 Design Phase  
 David City Municipal Airport, David City, NE  
 2019 Taxiway Improvements  
 SA-06**

**Item No. 1 - Direct Salary Costs**

Title	Hours	Direct Salary Rate/Hour	Costs
Principal		\$88.95	\$ -
Sr. Project Engineer		\$88.95	\$ -
Project Manager	4	\$55.29	\$ 221.16
Project Engineer	30	\$44.48	\$ 1,334.40
CADD Tech.	35	\$32.50	\$ 1,137.50
Survey Manager		\$59.38	\$ -
Asst. Engineer	20	\$33.75	\$ 675.00
Party Chief	8	\$33.75	\$ 270.00
Survey Assistant		\$25.75	\$ -
Clerical		\$24.30	\$ -
<b>Total Direct Salary</b>			<b>\$ 3,638.06</b>

**Item No. 2 - Labor and General & Administrative Overhead**

Percentage of Direct Salary Costs	187.66%	\$ 6,827.18
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**Item No 3 - Subtotal of Items 1 & 2** \$ 10,465.24

**Item No. 4 - Fixed Fee: 12% of Item 3** \$ 1,255.83

**Item No. 5 - Direct Non-Salary Expenses**

Travel	\$0.58	\$ -
Meals	\$12.00	\$ -
Hotel	\$100.00	\$ -
Printing	\$1,500.00	\$ -
<b>Total Non-Salary Expenses</b>		<b>\$ -</b>

**Item No. 6 - Subconsultants**

Total Subs \$ -

**Item No. 7 - hourly not to exceed 3, 4, 5 & 6** \$ 11,721.07

**Kirkham Michael**

**Exhibit B**

**Bid Phase**

**David City Municipal Airport, David City, NE**

**2019 Taxiway Improvements**

**SA-06**

**Item No. 1 - Direct Salary Costs**

Title	Hours	Direct Salary Rate/Hour	Costs
Principal		\$88.95	\$ -
Sr. Project Engineer		\$88.95	\$ -
Project Manager	1	\$55.29	\$ 55.29
Project Engineer	20	\$44.48	\$ 889.60
CADD Tech.		\$32.50	\$ -
Survey Manager		\$59.38	\$ -
Asst. Engineer		\$26.93	\$ -
Party Chief		\$33.75	\$ -
Survey Assistant		\$25.75	\$ -
Clerical	2	\$24.30	\$ 48.60
<b>Total Direct Salary</b>			<b>\$ 993.49</b>

**Item No. 2 - Labor and General & Administrative Overhead**

Percentage of Direct Salary Costs	187.66%	\$ 1,864.38
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**Item No 3 - Subtotal of Items 1 & 2** \$ 2,857.87

**Item No. 4 - Fixed Fee: 12% of Item 3** \$ 342.94

**Item No. 5 - Direct Non-Salary Expenses**

Travel	\$0.57	\$ -
Meals	\$10.00	\$ -
Hotel	\$100.00	\$ -
<b>Total Non-Salary Expenses</b>		<b>\$ -</b>

**Item No. 6 - Subconsultants**

Total Subs	\$ -
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**Item No. 7 - Hourly Not to exceed 3, 4, 5 & 6** \$ 3,200.82

## Kirkham Michael

**Exhibit C**  
**Construction Phase - 25 working days**  
**David City Municipal Airport, David City, NE**  
**2019 Taxiway Improvements**  
**SA-06**

**Item No. 1 - Direct Salary Costs**

Title	Hours	Direct Salary Rate/Hour	Costs
Principal		\$88.95	\$ -
Sr. Project Engineer		\$88.95	\$ -
Project Manager	2	\$55.29	\$ 110.58
Project Engineer	20	\$44.48	\$ 889.60
CADD Tech.	25	\$32.50	\$ 812.50
Survey Manager		\$59.38	\$ -
Observer	50	\$26.93	\$ 1,346.50
Party Chief		\$33.75	\$ -
Survey Assistant		\$25.75	\$ -
Clerical		\$24.30	\$ -
<b>Total Direct Salary</b>			<b>\$ 3,159.18</b>

**Item No. 2 - Labor and General & Administrative Overhead**

Percentage of Direct Salary Costs	187.66%	\$ 5,928.52
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**Item No 3 - Subtotal of Items 1 & 2** **\$ 9,087.70**

**Item No. 4 - Fixed Fee: 12% of Item 3** **\$ 1,090.52**

**Item No. 5 - Direct Non-Salary Expenses**

Travel	\$0.58	\$ -
Meals	\$10.00	\$ -
Hotel	\$100.00	\$ -
<b>Total Non-Salary Expenses</b>		<b>\$ -</b>

**Item No. 6 - Subconsultants**

Mid-State Engineering - geotechnical	\$ 2,000.00
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Total Subs	\$ 2,000.00
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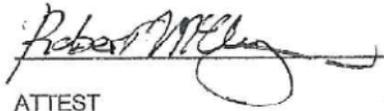
**Item No. 7 - Total Not-To-Exceed 3, 4, 5 & 6** **\$ 12,178.22**

APPROVALS

It is understood and agreed that this contract and any subcontracts or supplemental agreements are subject to approval by the Nebraska Department of Transportation before any state funds are obligated.

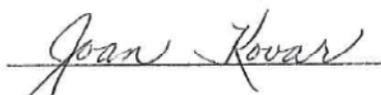
IN TESTIMONY WHEREOF, the parties hereto have caused this contract to be executed by their duly authorized representatives on this 13<sup>th</sup> day of November, 2019, with copies to be filed with the Nebraska Department of Transportation.

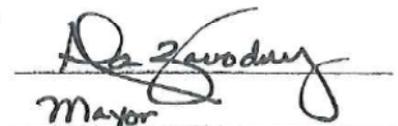
CONSULTING FIRM  
Kirkham, Michael & Associates, Inc.  
5621 NW 1<sup>st</sup> St. Suite 400  
Lincoln, NE 68521

  
ATTEST

  
Eric W. Johnson  
Vice President

AIRPORT SPONSOR  
City of David City, Nebraska  
P.O. BOX 191  
David City, Nebraska 68632-0191

  
ATTEST

  
Mayor  
Title



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Council member Trowbridge made a motion to approve the letter agreement for Professional Services with Olsson concerning the Class "A" Street Superintendent for January through December 31, 2020. Council member Kobus seconded the motion. Voting AYE: Council member Vandenberg, Hotovy, Trowbridge, Pat Meysenburg, Kobus, and Bruce Meysenburg. Voting NAY: None. The motion carried.



October 23, 2019

Mayor and City Council  
City of David City  
P O Box 191  
David City, NE 68632-0191

Re: Renewal of Agreement  
for Street Superintendent and Engineering Services

Dear Mayor and City Council:

Thank you for allowing Olsson to be your Street Superintendent and/or Engineer-on-Call for your community. We have enjoyed working with you and would like to continue providing our experience and expertise to you.

As your Class "A" Street Superintendent, Olsson administers street budgeting, planning, expenditures, and revenue reporting, completes all required reporting to the State of Nebraska, and oversees and certifies compliance of maintenance and construction for street-related projects. The Highway Allocation funds provided to your City include incentive payments to help pay for these services (and appointing a Street Superintendent helps ensure that your City will continue to receive its Highway Allocation funds).

The signed contract in-place expires on December 31, 2019; therefore, we have enclosed an Agreement which will extend our services to your community through December 31, 2020. You can choose to discontinue our services anytime during the course of the Agreement.

We are requesting you have the attached Agreement reviewed for approval at your November Board meeting. If questions or concerns arise from that meeting, please let us know and we can attend your next meeting. If approved, please sign both copies of the Agreement, return one to us and keep a copy for your records.

Olsson has been providing engineering services for Nebraska municipalities for more than 50 years. We take great pride in our superior reputation for client service and quality work, and we offer the most comprehensive list of professional engineering, testing, and survey services in the state.

Sincerely,

Dave Ziska, PE  
Olsson

Attachments



## LETTER AGREEMENT FOR PROFESSIONAL SERVICES

October 23, 2019

Mayor and City Council  
City of David City  
P O Box 191  
David City, NE 68632-0191

Re: **AGREEMENT FOR PROFESSIONAL SERVICES**  
Consulting Services Agreement – 2020 (the "Project")  
David City, Nebraska

Dear Mayor and City Council:

It is our understanding that the City of David City, Nebraska ("Client") requests Olsson, Inc. ("Olsson") to perform the services described herein pursuant to the terms of this Letter Agreement for Professional Services, Olsson's General Provisions and any exhibits attached hereto (all documents constitute and are referred to herein as the "Agreement") for the Project.

Olsson has acquainted itself with the information provided by Client relative to the Project and based upon such information offers to provide the services described below for the Project. Client warrants that it is either the legal owner of the property to be improved by this Project or that Client is acting as the duly authorized agent of the legal owner of such property. Client acknowledges that it has reviewed the General Provisions and any exhibits attached hereto, which are expressly made a part of and incorporated into the Agreement by this reference. In the event of any conflict or inconsistency between this Letter Agreement, and the General Provisions regarding the services to be performed by Olsson, the terms of the General Provisions shall take precedence.

Olsson shall provide the following services to Client ("Scope of Services") for the Project:

### **STREET SUPERINTENDENT SERVICES**

Olsson will provide assistance to the City in preparation and submittal of the 2020 updates of Street Superintendent reports to the Nebraska Board of Public Roads Classifications and Standards (NBCS) and miscellaneous consultations with City representatives regarding the City street system.

- Meet with the City Council to review the current one and six year street plans and update the plans for submittal to the NBCS.
- Assist the City in gathering lane mile changes for reporting to NDOT.
- Consult with and provide professional opinions to the City trustees, clerk or attorney on miscellaneous issues regarding the City street system.
- Street Superintendent reports per NBCS submittal requirements.

- Miscellaneous consultations and professional opinions as mutually agreeable.

### **CONSULTING SERVICES**

- As requested by the City Council or its authorized representatives, Olsson will consult with City representatives and provide professional engineering services regarding issues which are of interest or impact to the City. Such services are anticipated to include brief studies and reports; designs for minor facility installations; surveys; construction observation of minor facility installations; and professional opinions and recommendations.
- Schedule(s) for miscellaneous Consulting Services work assignments will be provided as mutually agreeable.

Should Client request work in addition to the Scope of Services (Optional Additional Services), Olsson shall invoice Client for such services at the standard hourly billing labor rate charged for those employees actually performing the work, plus reimbursable expenses if any. Olsson shall not commence work on Optional Additional Services without Client's prior written approval

Olsson agrees to provide all of its services in a timely, competent and professional manner, in accordance with applicable standards of care, for projects of similar geographic location, quality and scope.

### **SCHEDULE FOR OLSSON'S SERVICES**

Unless otherwise agreed, Olsson expects to perform its services under the Agreement as follows:

Anticipated Start Date: January 1, 2020  
Anticipated Completion Date: December 31, 2020

Olsson will endeavor to start its services on the Anticipated Start Date and to complete its services on the Anticipated Completion Date. However, the Anticipated Start Date, the Anticipated Completion Date, and any milestone dates are approximate only, and Olsson reserves the right to adjust its schedule and any or all of those dates at its sole discretion, for any reason, including, but not limited to, delays caused by Client or delays caused by third parties.

### **COMPENSATION**

Client shall pay to Olsson for the performance of the Scope of Services, the actual hourly labor rates of personnel performing such services on the Project times a factor of 3.085 and all actual reimbursable expenses in accordance with Reimbursable Expense Schedule attached to this Agreement. Olsson shall submit invoices on a monthly basis and payment is due within 30 calendar days of invoice date.

- Olsson's Scope of Services will be provided as follows:
  - Street Superintendent Services: \$4,000 Fixed Fee
  - Consulting Services Projects: \$5,000 Time & Expenses, Not to Exceed
- Olsson will provide for the performance of miscellaneous services as City Engineer. Individual service items performed are not expected to require services which result in fee

billings in excess of \$5,000 per project. A separate Exhibit will be prepared for any work assignment for which the fees are anticipated at the outset to exceed \$5,000.

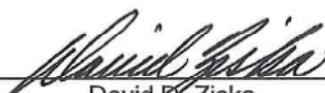
**TERMS AND CONDITIONS OF SERVICE**

We have discussed with you the risks, rewards and benefits of the Project, the Scope of Services, and our fees for such services and the Agreement represents the entire understanding between Client and Olsson with respect to the Project. The Agreement may only be modified in writing signed by both parties.

Client's designated Project Representative shall be Joan Kovar.

If this Agreement satisfactorily sets forth your understanding of our agreement, please sign in the space provided below. Retain one original for your files and return an executed original to Olsson. This proposal will be open for acceptance for a period of 30 days from the date set forth above, unless changed by us in writing.

**OLSSON, INC.**

By   
David B. Ziska

By   
Jeff R. Paik

By signing below, you acknowledge that you have full authority to bind Client to the terms of the Agreement. If you accept the terms set forth herein, please sign:

**CITY OF DAVID CITY, NEBRASKA**

By \_\_\_\_\_  
Signature

Print Name Alan Zavodny

Title Mayor

Dated November 13, 2019

Attachments

- General Provisions
- Standard Labor Rate Schedule
- Reimbursable Expense Schedule

Craig Reinsch of Olsson stated: "Tim Shaw of Eriksen Construction is also present to help answer any questions that the Council may have. I was here last month to present Change Order #2 for the project, and we discussed the need for Change Order #3 to address some other items that have occurred on the sight since April, 2019. I have been requesting this information of the contractor since April, and finally received it this week. So, it is not in your packets because it is hot off the presses so to speak. I did meet with the Mayor and Council member Trowbridge earlier to discuss how we wanted to move with this, because this is more of an update, and so this will be an item that is actually put to a vote at the December 11<sup>th</sup> meeting but wanted to let you know what would be considered in the change order. A Change Order, as you are aware, can adjust cost and schedule. The substantial completion date for the project is November 18<sup>th</sup>, which is in five (5) days, which is why I wanted to meet tonight to make sure that everyone was on the same page as we go over that date. So, the Contractor has requested an adjustment of the schedule of 90 days, of an increase of substantial completion, that would move the date from November 18, 2019 to February 16, 2020. They have also asked for 180 days of final completion which would extend from December 27, 2019 to June 24, 2020. Now for definition purposes, substantial completion is defined as in "it is ready to be used" which means we can start with the start-up process; moving water, using the controls, doing all of that. Final completion is effectively, all the seeding is done, all the grading is done, and all of the fence work is complete; and so obviously it's hard to grow things when it is cold, so shifting it, typically we recommend May 1<sup>st</sup> as a date, that gives a couple months to get seeding and grading completed. They have also asked for some other costs and those costs will be identified in the Change Order that comes in December. The biggest, a little over 50% of the cost, is adjustments to the site needed for the Northern Natural Gas issue that came up as we started construction. There are some other site and other clean up items that have already been completed as well; so that total is around \$54,000 and it is tied to the additional time request that they have made. Shifting their time, you know our budget for construction, administration, and observation, we will need to adjust; ours will go pretty close to, through the end of this year, so we would need to adjust that as well. However, with all of the costs that the project has incurred, as well as the additional engineering that we are anticipating, ironically that is right around the same amount that was saved on the sewer project. And so, the almost \$221,000 that was saved on the sewer project, again the funding is through USDA, they are considering both of these projects as one funding source, we had talked about moving some of those funds over to cover that one and this will cover the majority of the costs. So, if you're looking for a silver lining, that's the best I can do today. One of the things to consider then is, there is an updated schedule that the Contractor has provided, and a majority of the large items are on site now, the cover is almost 50% blacked out and those materials are on site, so it's really just time to get everything connected and then we'll be ready to move forward. By shifting the substantial completion date to mid-February there are still provisions in the contract for liquidated damages, if the City would choose to utilize those, so after that February 16<sup>th</sup> date the City could utilize those to cover any damages for additional engineering, or additional interest, or other costs that they have incurred as well."

Much discussion followed.

Council member Trowbridge made a motion to approve Pay Estimate #13 to Eriksen Construction Co., in the amount of \$190,992.69 for the Wastewater Treatment Plant Project. Council member Pat Meysenburg seconded the motion. Voting AYE: Council members Bruce Meysenburg, Vandenberg, Kobus, Hotovy, Trowbridge, and Pat Meysenburg. Voting NAY: None. The motion carried.

Council member Kobus made a motion to approve Change Order #2 to Midlands Contracting, Inc. in the amount of \$15,397.00 for the Sanitary Sewer Rehabilitation. Council member Bruce Meysenburg seconded the motion. Voting AYE: Council members Vandenberg, Pat Meysenburg, Trowbridge, Hotovy, Kobus, and Bruce Meysenburg. Voting NAY: None. The motion carried.

Council member Trowbridge made a motion to approve Pay Estimate #5 to Midlands Contracting, Inc. in the amount of \$116,175.43 for the sanitary sewer rehabilitation project. Council member Kobus seconded the motion. Voting AYE: Council members Bruce Meysenburg, Hotovy, Pat Meysenburg, Vandenberg, Kobus, and Trowbridge. Voting NAY: None. The motion carried.

Mayor Zavodny asked for a motion for a temporary recess as the City Council and calling to order as the David City Community Development Agency.

Council member Hotovy made a motion for a temporary recess as the City Council and to call to order as the David City Community Development Agency of the City of David City, Nebraska. Council member Kobus seconded the motion. Voting AYE: Council members Pat Meysenburg, Hotovy, Trowbridge, Vandenberg, Kobus, and Bruce Meysenburg. Voting NAY: None. The motion carried.

Chair Alan Zavodny called the meeting of the David City Community Development Agency to order at 7:32 p.m. and asked for roll call.

Present for the meeting were: Chair Alan Zavodny, David City Community Development Agency members: Pat Meysenburg, Kevin Hotovy, Dana Trowbridge, John Vandenberg, Tom Kobus, and Bruce Meysenburg. City Attorney Jim Egr and Secretary Joan Kovar were also present.

Chair Alan Zavodny again informed the public of the "Open Meetings Act" posted on the east wall between the two doors of the meeting room, and asked those present to please silence their cell phones. Chair Alan Zavodny asked for consideration of the recommendation regarding the Redevelopment Plan for the David City Industrial Park Expansion and Infrastructure Upgrade, for the real estate described and consideration of the Cost Benefit Analysis of the Redevelopment Plan:

**Phase One:**

A tract of land located in the North Half of the Northeast Quarter of the Southwest Quarter (N1/2NE1/4SW1/4) of Section Eighteen (18), Township Fifteen (15) North, Range Three (3) East of the 6<sup>th</sup> P.M., Butler County, Nebraska described as follows:  
Commencing at the Southeast corner of said North Half (N1/2); thence Westerly, 341.60 feet, on the South Line of said North Half (N1/2), to the Point of Beginning, said Point being the Southwest corner of a parcel of land conveyed in Microfilm Book 81, Page 521; thence continuing Westerly, 977.83 feet, on the last described line, to the Southwest Corner of said North Half (N1/2); thence Northerly, 658.98 feet, to the Northwest Corner of said North Half (N1/2); thence Easterly, 979.92 feet, on the North line of said North Half (N1/2); thence Southerly 657.35 feet, to the Point of Beginning. (Assessor # 120008573); and  
A tract of land in the North One Half of the Northeast Quarter of the Southwest Quarter (N1/2NE1/4SW1/4) Section Eighteen (18), Township Fifteen (15) North, Range Three (3) East of the Sixth Principal Meridian Butler County, Nebraska, more particularly described as follows: Commencing at a point on the south line of said North One Half of the Southeast Quarter, Southwest Quarter, said point being 42.6 feet west of the Southeast Corner thereof; thence northerly on the westerly line of State Highway No. 15 right of way a distance of 256.0 feet; thence westerly deflection angle 90°23'50" left a distance of 299.0 feet; thence southerly deflection angle 89°36'10" left a distance of 256.0 feet, to a point on the south line of said North One Half; thence easterly on said south line a distance of 299.0 feet to the place of beginning. (Assessor # 120008579); and

The adjacent public right of way in Industrial Drive from S Street south to West O Street and west on West O street to the railroad right of way.

**Phase Two:**

A parcel of land in Section 18, Twp. 15, Range 3 East of the 6<sup>th</sup> PM in Butler County, Nebraska described as follows:

Beginning 236 feet West of the NE corner of said Section; thence West 236 feet; thence south 1941 feet; thence west 732 feet; thence south 701 feet; thence east 932 feet, thence north 701 feet, thence east 236 feet, thence north 1716 feet; thence west 236 feet; thence North to the point of beginning. (Part of Assessor # 120008569)

Attorney Colten Venteicher stated: "I am Colten Venteicher, an attorney out of Gothenburg, I am partners with Mike Bacon. I am here today to talk to you about this T.I.F. (Tax Increment Financing) Project. The first piece is the procedural component of this, so right now you guys are sitting as the CDA (Community Development Agency). You have been recommended from the Planning Commission to approve this project. You have the resolution in front of you to consider the Redevelopment Plan and the Cost Benefit Analysis tied to the Redevelopment Plan. If you approve that resolution, it will be a recommendation for approval to the City Council. Then you will recess as the CDA, and then the City Council will hold a public hearing. Then, as the City Council, you can once again consider if you would like to approve the Redevelopment Plan as well as approving the Redevelopment Contract that is included in that resolution as well. If you get to that point, you recess again, and you reconvene as the CDA where you consider approval of the Redevelopment Contract and the issuance of the Tax Increment Financing levying note that's in front of you as well as the resolution that's tied to that. On the Redevelopment Plan, this is tied to the fourteen million-dollar (\$14,000,000.00) expansion and construction project that Timpte is preparing to undergo. What T.I.F. does, is it gives us the ability, if we meet certain requirements, to look at a piece of real estate, and if we redevelop that real estate and we meet those requirements, then over a course of fifteen years (15 yrs.) we can capture the taxes off of the increased value in the redevelopment on that real estate. For example, say you have a piece of real estate that's assessed at currently \$4,000,000 like you do here, but after the \$14,000,000 investment in that property, it's going to be assessed at \$10,000,000 so you have a \$6,000,000 difference; and so what we can do is take the taxes off that \$6,000,000 difference and flow it back into the project for certain items; we can't just use it for anything. The way I describe is "you can build out, but you can't build up" unless it's housing and then that's a different discussion. So, what this redevelopment plan does is it provides for expanding the infrastructure for this new development as it relates to sanitary and potable, sewer and water lines, and also improves the electrical lines out to this new facility. That is phase one of the project that we'll deal with in the redevelopment contract here, but there is a phase two part of the project if a subsequent contract is approved down the road that would provide for acquisition of real estate for further expansion, not just for Timpte but for further commercial and industrial expansion. I will jump ahead here, so I don't have to come up here again, but the T.I.F. note that I talked about that will go towards financing these infrastructure costs will be in the amount of \$797,000.00 and I believe the plan is to issue some bonds to ultimately purchase that note and then have it paid off with those tax revenues as they come in."

CDA member Dana Trowbridge stated: "One slight correction might be that phase 2 will be more slanted towards Industrial than Commercial because we have another commercial entity on the south end of town that I don't think we want to run up against by providing more commercial north. We'd like to kind of keep them separate that way."

Community Development Agency member Hotovy introduced Resolution No. 2-2019 CDA, recommending the Redevelopment Plan and adoption of the Cost Benefit Analysis for the Redevelopment Plan for the David City Industrial Park Expansion and Infrastructure upgrade and moved for its passage and adoption. Community Development Agency member Bruce

Meysenburg seconded the motion. Voting AYE: Community Development Agency members Pat Meysenburg, Trowbridge, Vandenberg, Kobus, Bruce Meysenburg, and Hotovy. Voting NAY: None. The motion carried and Resolution No. 2-2019 CDA was passed and adopted as follows:

**RESOLUTION NO. 2 – 2019 CDA**

**RESOLUTION RECOMMENDING APPROVAL OF A REDEVELOPMENT PLAN OF THE CITY OF DAVID CITY, NEBRASKA; APPROVAL OF A REDEVELOPMENT PROJECT OF THE CITY OF DAVID CITY, NEBRASKA; AND APPROVAL OF RELATED ACTIONS**

**BE IT RESOLVED BY THE COMMUNITY DEVELOPMENT AGENCY OF THE CITY OF DAVID CITY, NEBRASKA:**

**Recitals:**

a. The Mayor and Council of the City of David City, Nebraska (the "City"), upon the recommendation of the City Planning Commission (the "Planning Commission"), and in compliance with all public notice requirements imposed by the Community Development Law, Chapter 18, Article 21, Reissue Revised Statutes of Nebraska, as amended (the "Act"), has previously declared an area, including an area legally described on the attached Exhibit A (the "Redevelopment Area"), to be blighted and substandard and in need of redevelopment; and

b. Pursuant to and in furtherance of the Act, a Redevelopment Plan (the "Redevelopment Plan"), has been prepared by the Agency, in the form of the attached Exhibit B, for the purpose of redeveloping the Redevelopment Area; and

c. Pursuant to the Redevelopment Plan, the Agency would agree to incur indebtedness and make a grant for the project specified in the Redevelopment Plan (the "Project"), in accordance with and as permitted by the Act; and

d. Pursuant to Section 18-2113 of the Act, the Agency has conducted a cost benefit analysis of the Project (the "Cost Benefit Analysis"), which is included as a part of the Redevelopment Plan; and

e. The Agency has made certain findings and has determined that it is in the best interests of the Agency and the City to approve the Redevelopment Plan, approve the Redevelopment Project, and approve the transactions contemplated by the Redevelopment Plan.

**Resolved that:**

1. The Agency determines that the proposed land uses and building requirements in the Redevelopment Plan for the Redevelopment Area are designed with the general purposes of accomplishing, and in conformance with the general plan of the City, a coordinated, adjusted, and harmonious development of the City and its environs which will, in accordance with present and future needs, promote health, safety, morals, order, convenience, prosperity, and the general welfare, as well as efficiency in economy in the process of development; including, among other things, adequate provision for traffic, vehicular parking, the promotion of safety from fire, panic, and other dangers, adequate provisions for light and air, the promotion of the healthful and convenient distribution of population, the provision of adequate transportation, water, sewerage, and other public utilities, schools, parks, recreational and community facilities, and other public requirements, the promotion of sound design and arrangement, the wise and efficient expenditure of public funds, and the prevention of the recurrence of unsanitary or unsafe dwelling

accommodations or conditions of blight.

2. In accordance with the Act, the Agency has conducted a Cost Benefit Analysis for the Project, which is incorporated into the Redevelopment Plan, and finds (i) the Redevelopment Plan uses funds authorized in section 18-2147 of the Act, (ii) the redevelopment project in the Redevelopment Plan would not be economically feasible without the use of tax-increment financing, (iii) the redevelopment project would not occur in the community redevelopment area without the use of tax-increment financing, and (iv) the costs and benefits of the redevelopment project, including costs and benefits to other affected political subdivisions, the economy of the community, and the demand for public and private services have been analyzed by the governing body and have been found to be in the long-term best interest of the community impacted by the redevelopment project. The Agency has documented that the Redevelopment Project is not economically feasible without the use of funds authorized in section 18-2147 of the Act in that the City of David City cannot fund the required infrastructure and related costs without the use of said funds.

3. In compliance with section 18-2114 of the Act, the Agency finds and determines as follows: a) the Redevelopment Area constituting the Redevelopment Project will not be acquired by the Agency and the Agency shall receive no proceeds from disposal to the Redeveloper; (b) the Redeveloper has acquired the Redevelopment Area; (c) the estimated cost of preparing the project site and related costs are set forth in the Redevelopment Plan (d) the method of acquisition of the real estate was by private contract by the Redeveloper and not by condemnation; (e) the method of financing the Redevelopment Project is set forth in the Redevelopment Plan; and (f) no families or businesses will be displaced as a result of the project.

4. The Agency recommends approval of the Redevelopment Plan, the Redevelopment Project, and the transactions contemplated in the Redevelopment Plan.

5. All prior resolutions of the Agency in conflict with the terms and provisions of this resolution are repealed to the extent of such conflicts.

6. This Resolution shall become effective immediately upon its adoption.

**PASSED AND APPROVED** on November 13, 2019

**COMMUNITY DEVELOPMENT AGENCY  
OF THE CITY OF DAVID CITY,  
NEBRASKA**

ATTEST:

\_\_\_\_\_  
Chair Alan Zavodny

\_\_\_\_\_  
Secretary Joan Kovar

## EXHIBIT A

### LEGAL DESCRIPTION OF REDEVELOPMENT AREA

#### Phase One:

A tract of land located in the North Half of the Northeast Quarter of the Southwest Quarter (N1/2NE1/4SW1/4) of Section Eighteen (18), Township Fifteen (15) North, Range Three (3) East of the 6<sup>th</sup> P.M., Butler County, Nebraska described as follows:

Commencing at the Southeast corner of said North Half (N1/2); thence Westerly, 341.60 feet, on the South Line of said North Half (N1/2), to the Point of Beginning, said Point being the Southwest corner of a parcel of land conveyed in Microfilm Book 81, Page 521; thence continuing Westerly, 977.83 feet, on the last described line, to the Southwest Corner of said North Half (N1/2); thence Northerly, 658.98 feet, to the Northwest Corner of said North Half (N1/2); thence Easterly, 979.92 feet, on the North line of said North Half (N1/2); thence Southerly 657.35 feet, to the Point of Beginning.(Assessor # 120008573); and

A tract of land in the North One Half of the Northeast Quarter of the Southwest Quarter (N1/2NE1/4SW1/4) Section Eighteen (18), Township Fifteen (15) North, Range Three (3) East of the Sixth Principal Meridian Butler County, Nebraska, more particularly described as follows: Commencing at a point on the south line of said North One Half of the Southeast Quarter, Southwest Quarter, said point being 42.6 feet west of the Southeast Corner thereof; thence northerly on the westerly line of State Highway No. 15 right of way a distance of 256.0 feet; thence westerly deflection angle 90°23'50" left a distance of 299.0 feet; thence southerly deflection angle 89°36'10" left a distance of 256.0 feet, to a point on the south line of said North One Half; thence easterly on said south line a distance of 299.0 feet to the place of beginning .(Assessor # 120008579); and

The adjacent public right of way in Industrial Drive from S Street south to West O Street and west on West O street to the railroad right of way.

#### Phase Two:

A parcel of land in Section 18, Twp. 15, Range 3 East of the 6<sup>th</sup> PM in Butler County, Nebraska described as follows:

Beginning 236 feet West of the NE corner of said Section; thence West 236 feet; thence south 1941 feet; thence west 732 feet; thence south 701 feet; thence east 932 feet, thence north 701 feet, thence east 236 feet, thence north 1716 feet; thence west 236 feet; thence North to the point of beginning. (Part of Assessor # 120008569)

## EXHIBIT B

### REDEVELOPMENT PLAN

Community Development Agency member Trowbridge made a motion to temporarily recess as the CDA and CDA member Hotovy seconded the motion. Voting AYE: CDA members Vandenberg, Bruce Meysenburg, Kobus, Pat Meysenburg, Trowbridge, and Hotovy. Voting NAY: None. The motion carried.

Council member Hotovy made a motion to come back in session as the City Council. Council member Pat Meysenburg seconded the motion. Voting AYE: Council members Trowbridge, Hotovy, Kobus, Vandenberg, Bruce Meysenburg, and Pat Meysenburg. Voting NAY: None. The motion carried.

At 7:39 p.m. Mayor Zavodny opened the Public Hearing to receive public comment on the proposed Redevelopment Plan for the David City Industrial Park Expansion and Infrastructure Upgrade, legally described above.

Council member Trowbridge stated: "There aren't many communities of 3,000 people in the State of Nebraska, that in calendar year 2019 are going to do anything as big as this project, there are just really few. We are blessed; we are very fortunate. Timpte has been great to work with through this and the City has put a lot of effort in to making things as easy as they can, for the infrastructure that we're doing, and our people have done a good job with it."

Mayor Zavodny stated: "We are partnered with the right people; that was well said."

City Attorney Egr stated: "From day one, when Timpte first drove through David City, that's when it started, and they've been good partners ever since."

Mayor Zavodny stated: "I wish the newspaper was here to hear that."

Council member Trowbridge stated: "We might need to blow in his ear that it's a neat story from day one with Terry Novak."

Mayor Zavodny asked if anyone else cared to speak, and there being no further comments, Mayor Zavodny closed the Public Hearing at 7:41 p.m.

Council member Trowbridge introduced Resolution No. 28 - 2019 and moved for its passage and adoption. Council member Pat Meysenburg seconded the motion. Voting AYE: Council members Vandenberg, Kobus, Hotovy, Trowbridge, Pat Meysenburg, and Bruce Meysenburg. Voting NAY: None. The motion carried and Resolution No. 28 - 2019 was passed and approved as follows:

#### **RESOLUTION NO. 28 - 2019**

#### **RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF DAVID CITY, NEBRASKA, APPROVING A REDEVELOPMENT PLAN; APPROVING A REDEVELOPMENT PROJECT; AND APPROVING OF RELATED ACTIONS**

**BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF DAVID CITY, NEBRASKA:**

#### **Recitals:**

a. The City of David City, Nebraska, a municipal corporation (the "City"), has determined it to be desirable to undertake and carry out urban redevelopment projects in certain

areas of the City that are determined to be blighted and substandard and in need of redevelopment;

b. The Community Development Law, Chapter 18, Article 21, Reissue Revised Statutes of Nebraska, as amended (the "Act"), prescribes the requirements and procedures for the planning and implementation of redevelopment projects;

c. The City has previously declared an area, which includes an area legally described in Exhibit A (the "Redevelopment Area"), to be blighted and substandard and in need of redevelopment pursuant to the Act;

d. The Community Development Agency of the City of David City, Nebraska (the "Agency") has prepared a Redevelopment Plan (the "Redevelopment Plan") in the form attached as Exhibit B, for the redevelopment of the Redevelopment Area;

e. The Planning Commission of the City (the "Planning Commission") has reviewed the Redevelopment Plan, published and mailed notices of a public hearing regarding the Commission's recommendation on the Redevelopment Plan pursuant to the Act, held a public hearing on the Redevelopment Plan and recommended its approval by the Mayor and Council of the City;

f. The Agency has conducted a cost benefit analysis, pursuant to Section 18-2113 of the Act, of the project set forth in the Redevelopment Plan (the "Redevelopment Project"), reviewed the Redevelopment Plan, and recommended approval of the Redevelopment Plan by the Mayor and Council of the City;

g. The City published and mailed notices of a public hearing regarding the consideration of the approval of the Redevelopment Plan pursuant to the Act, and has on the date of this Resolution held a public hearing on the proposal to approve the Redevelopment Plan; and

h. The City has reviewed the Redevelopment Plan and determined that the proposed land uses and building requirements described in it are designed with the general purpose of accomplishing a coordinated, adjusted, and harmonious development of the City and its environs which will, in accordance with present and future needs, promote health, safety, morals, order, convenience, prosperity, and the general welfare, as well as efficiency in economy in the process of development; including, among other things, adequate provision for traffic, vehicular parking, the promotion of safety from fire, panic, and other dangers, adequate provisions for light and air, the promotion of the healthful and convenient distribution of population, the provision of adequate transportation, water, sewerage, and other public utilities, schools, parks, recreational and community facilities, and other public requirements, the promotion of sound design and arrangement, the wise and efficient expenditure of public funds, and the prevention of the recurrence of unsanitary or unsafe dwelling accommodations, or conditions of blight.

**Resolved that:**

1. The Redevelopment Plan is determined to be feasible and in conformity with the general plan for the development of the City as a whole, and the Redevelopment Plan is in conformity with the legislative declarations and determinations set forth in the Act. The City hereby documents that the Redevelopment Project is consistent with the general plan for the City as it is in an area specifically zoned for the multiuse function contemplated in the Redevelopment Plan and has not been improved since it was first annexed. It is found and determined, based on the analysis conducted by the Agency, that (a) the redevelopment project described in the

Redevelopment Plan would not be economically feasible without the use of funds described in Section 18-2147 of the Act, (b) the Redevelopment Project would not occur without the use of tax-increment financing, and (c) the costs and benefits of the redevelopment project, including costs and benefits to other affected political subdivisions, the economy of the community, and the demand for public and private services have been analyzed by the City and have been found to be in the long-term best interest of the community impacted by the redevelopment project. The City acknowledges receipt of the recommendations of the Agency and the Planning Commission with respect to the Redevelopment Plan. The Agency and the City have documented, in writing, that the Redevelopment Project is not financially feasible without the use of funds mentioned in Section 18-2147 of the Act as the City is without funds to complete the Project without the use of funds provided pursuant to section 18-2147 of the Act.

2. The Redevelopment Plan is approved in substantially the form attached as Exhibit B.

3. In accordance with Section 18-2147 of the Act, the City provides that any ad valorem tax on real property in the City of David City, Nebraska, more fully described on Exhibit A, attached hereto, for the benefit of any public body be divided for a period of 15 years after the effective date as provided in Section 18-2147 of the Act, which effective date shall be determined in the bond resolution issuing debt related to the Redevelopment Project or a Redevelopment Contract or Redevelopment Contract amendment entered into between a Redeveloper and the Agency. Said tax shall be divided as follows:

(a) That proportion of the ad valorem tax which is produced by levy at the rate fixed each year by or for each public body upon the Redevelopment Project Valuation (as defined in the Act) shall be paid into the funds of each such public body in the same proportion as all other taxes collected by or for the bodies; and

(b) That proportion of the ad valorem tax on real property in the Project Area in excess of such amount (the Redevelopment Project Valuation), if any, shall be allocated to, is pledged to, and, when collected, shall be paid into a special fund of the Agency to pay the principal of, the interest on, and any premiums due in connection with the bonds, loans, notes, or advances of money to, or indebtedness incurred by, whether funded, refunded, assumed, or otherwise, such Agency for financing or refinancing, in whole or in part, the Redevelopment Project. When such bonds, loans, notes, advances of money, or indebtedness, including interest and premium due have been paid, the Agency shall so notify the County Assessor and County Treasurer and all ad valorem taxes upon real property in the Redevelopment Project Area shall be paid into the funds of the respective public bodies.

4. The Mayor and Clerk are authorized and directed to execute such documents and take such further actions as are necessary to carry out the purposes and intent of this Resolution and the Redevelopment Plan.

5. This Resolution shall become effective immediately upon its adoption.

**PASSED and APPROVED** on November 13, 2019.

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Mayor Alan Zavodny

ATTEST:

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City Clerk Joan Kovar

## EXHIBIT A

### LEGAL DESCRIPTION OF REDEVELOPMENT PROJECT AREA

#### Phase One:

A tract of land located in the North Half of the Northeast Quarter of the Southwest Quarter (N1/2NE1/4SW1/4) of Section Eighteen (18), Township Fifteen (15) North, Range Three (3) East of the 6<sup>th</sup> P.M., Butler County, Nebraska described as follows:

Commencing at the Southeast corner of said North Half (N1/2); thence Westerly, 341.60 feet, on the South Line of said North Half (N1/2), to the Point of Beginning, said Point being the Southwest corner of a parcel of land conveyed in Microfilm Book 81, Page 521; thence continuing Westerly, 977.83 feet, on the last described line, to the Southwest Corner of said North Half (N1/2); thence Northerly, 658.98 feet, to the Northwest Corner of said North Half (N1/2); thence Easterly, 979.92 feet, on the North line of said North Half (N1/2); thence Southerly 657.35 feet, to the Point of Beginning.(Assessor # 120008573); and

A tract of land in the North One Half of the Northeast Quarter of the Southwest Quarter (N1/2NE1/4SW1/4) Section Eighteen (18), Township Fifteen (15) North, Range Three (3) East of the Sixth Principal Meridian Butler County, Nebraska, more particularly described as follows:

Commencing at a point on the south line of said North One Half of the Southeast Quarter, Southwest Quarter, said point being 42.6 feet west of the Southeast Corner thereof; thence northerly on the westerly line of State Highway No. 15 right of way a distance of 256.0 feet; thence westerly deflection angle 90°23'50" left a distance of 299.0 feet; thence southerly deflection angle 89°36'10" left a distance of 256.0 feet, to a point on the south line of said North One Half; thence easterly on said south line a distance of 299.0 feet to the place of beginning .(Assessor # 120008579); and

The adjacent public right of way in Industrial Drive from S Street south to West O Street and west on West O street to the railroad right of way.

#### Phase Two:

A parcel of land in Section 18, Twp. 15, Range 3 East of the 6<sup>th</sup> PM in Butler County, Nebraska described as follows:

Beginning 236 feet West of the NE corner of said Section; thence West 236 feet; thence south 1941 feet; thence west 732 feet; thence south 701 feet; thence east 932 feet, thence north 701 feet, thence east 236 feet, thence north 1716 feet; thence west 236 feet; thence North to the point of beginning. (Part of Assessor # 120008569)

**EXHIBIT B**

**FORM OF REDEVELOPMENT PLAN**

Council member Bruce Meysenburg made a motion to call a temporary recess as the City Council and reconvene as the Community Development Agency of the City of David City. Council member Trowbridge seconded the motion. Voting AYE: Council members Vandenberg, Hotovy, Kobus, Bruce Meysenburg, Pat Meysenburg, and Trowbridge. Voting NAY: None. The motion carried.

Chair Alan Zavodny stated: "We have reconvened as the Community Development Agency of the City of David City to consider the Redevelopment Contract, and to consider Resolution No. 3-2019 CDA providing for the issuance of a Tax Increment Revenue Bond for the David City Industrial Park Expansion and Infrastructure Upgrade Project, and authorizing execution of a Redevelopment Contract and other matters.

Community Development Agency member Hotovy introduced Resolution No. 3 - 2019 CDA, and moved for its passage and adoption. Community Development Agency member Pat Meysenburg seconded the motion. Voting AYE: Community Development Agency members Bruce Meysenburg, Trowbridge, Vandenberg, Kobus, Hotovy, and Pat Meysenburg. Voting NAY: None. The motion carried and Resolution No. 3-2019 CDA was passed and adopted as follows:

**COMMUNITY DEVELOPMENT AGENCY OF  
THE CITY OF DAVID CITY, NEBRASKA**

**RESOLUTION NO. 3 – 2019 CDA**

**A RESOLUTION AUTHORIZING AND PROVIDING FOR THE ISSUANCE OF A COMMUNITY DEVELOPMENT AGENCY OF THE CITY OF DAVID CITY, NEBRASKA, TAX INCREMENT DEVELOPMENT REVENUE NOTE OR OTHER OBLIGATION, IN A PRINCIPAL AMOUNT NOT TO EXCEED \$796,000 FOR THE PURPOSE OF (1) PAYING THE COSTS OF ACQUIRING, DEMOLISHING, CONSTRUCTING, RECONSTRUCTING, IMPROVING, EXTENDING, REHABILITATING, INSTALLING, EQUIPPING, FURNISHING AND COMPLETING CERTAIN IMPROVEMENTS WITHIN THE AGENCY'S , REDEVELOPMENT PROJECT AREA, SPECIFICALLY INCLUDING SITE PURCHASE, PREPARATION, DEMOLITION, REHABILITATION, UTILITY EXTENSION AND (2) PAYING THE COSTS OF ISSUANCE THEREOF; PRESCRIBING THE FORM AND CERTAIN DETAILS OF THE NOTE OR OTHER OBLIGATION; PLEDGING CERTAIN TAX REVENUE AND OTHER REVENUE TO THE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON THE NOTE OR OTHER OBLIGATION AS THE SAME BECOME DUE; LIMITING PAYMENT OF THE NOTE OR OTHER OBLIGATION TO SUCH TAX REVENUES; CREATING AND ESTABLISHING FUNDS AND ACCOUNTS;**

**DELEGATING, AUTHORIZING AND DIRECTING THE FINANCE DIRECTOR TO EXERCISE HIS OR HER INDEPENDENT DISCRETION AND JUDGMENT IN DETERMINING AND FINALIZING CERTAIN TERMS AND PROVISIONS OF THE NOTE OR OTHER OBLIGATION NOT SPECIFIED HEREIN; APPROVING A REDEVELOPMENT CONTRACT AND REDEVELOPMENT PLAN; TAKING OTHER ACTIONS AND MAKING OTHER COVENANTS AND AGREEMENTS IN CONNECTION WITH THE FOREGOING; AND RELATED MATTERS.**

**BE IT RESOLVED BY THE MEMBERS OF THE COMMUNITY DEVELOPMENT AGENCY OF THE CITY OF DAVID CITY, NEBRASKA:**

## **ARTICLE I**

### **FINDINGS AND DETERMINATIONS**

**Section 1.1. Findings and Determinations.** The Members of the Community Development Agency of the City of David City, Nebraska (the “**Agency**”) hereby find and determine as follows:

(a) The City of David City, Nebraska (the “**City**”), pursuant to the Plan Resolution (hereinafter defined), approved the City of David City Redevelopment Plan for the David City Industrial Park Expansion and Infrastructure Upgrade Redevelopment Project (the “**Redevelopment Plan**”) under and pursuant to which the Agency shall undertake from time to time to redevelop and rehabilitate the Redevelopment Area (hereinafter defined).

(b) Pursuant to the Redevelopment Plan, the Agency has previously obligated itself and/or will hereafter obligate itself to provide a portion of the financing to acquire, construct, reconstruct, improve, extend, rehabilitate, install, equip, furnish and complete, at the cost and expense of the City of David City, a portion of the improvements (as defined in the Redevelopment Contract hereinafter identified) in the Redevelopment Area (the “**Project Costs**”), including, without limitation) the cost of acquiring, constructing, reconstructing, improving, extending, rehabilitating, installing certain utilities and engineering and legal costs as more fully described in the Redevelopment Contract (hereinafter defined).

(c) The Agency is authorized by the Redevelopment Law (hereinafter defined) to issue tax allocation notes for the purpose of paying the costs and expenses of the Project, the principal of which is payable from certain tax revenues as set forth in the Redevelopment Law.

(d) In order to provide funds to pay a portion of the costs of the Project, it is necessary, desirable, advisable, and in the best interest of the Agency for the Agency to issue a Tax Increment Development Revenue Note or other obligation in a principal amount not to exceed \$796,000 (the “**Note**”).

(e) All conditions, acts and things required to exist or to be done precedent to the issuance of the Note do exist and have been done as required by law.

## **ARTICLE II**

**CERTAIN DEFINITIONS; COMPUTATIONS;  
CERTIFICATES AND OPINIONS; ORDERS AND DIRECTIONS**

**Section 2.1. Definitions of Special Terms.** Unless the context clearly indicates some other meaning or may otherwise require, and in addition to those terms defined elsewhere herein, the terms defined in this **Section 2.1** shall, for all purposes of this Resolution, any Resolution or other instrument amendatory hereof or supplemental hereto, instrument or document herein or therein mentioned, have the meanings specified herein, with the following definitions to be equally applicable to both the singular and plural forms of any terms defined herein:

**“Agency”** means the Community Development Agency of the City of David City, Nebraska.

**“City”** means the City of David City, Nebraska.

**“Project Costs”** means the redevelopment project costs (as defined in the Redevelopment Contract) in the Redevelopment Area, the costs of which are eligible to be paid from the proceeds of the Note.

**“Assessor”** means the Assessor of Butler County, Nebraska.

**“Note”** means the Industrial Park Expansion and Infrastructure Upgrade, Redevelopment Project Tax Increment Development Revenue Note of the Agency, in a principal amount not to exceed \$796,000, issued pursuant to this Resolution, and shall include any note, including refunding note, interim certificate, debenture, or other obligation issued pursuant to the Redevelopment Law. At the option of the Owner of the Note, the titular designation of such Note may be revised to state note, interim certificate, debenture, obligation, or such other designation as is appropriate.

**“Secretary”** means the Secretary of the Agency.

**“Cumulative Outstanding Principal Amount”** means the aggregate principal amount of the Note issued and Outstanding from time to time in accordance with the provisions of this Resolution, as reflected in the records maintained by the Registrar as provided in this Resolution.

**“Date of Original Issue”** means the date the Note is initially issued, which shall be the date of the first allocation of principal on the Note as further described in **Section 3.2**.

**“Debt Service”** means, as of any particular date of computation, and with respect to any period, the amount to be paid or set aside as of such date or such period for the payment of the principal on the Note.

**“Escrow Obligations”** means (a) Government Obligations, (b) certificates of deposit issued by a bank or trust company which are (1) fully insured by the Federal Deposit Insurance Corporation or similar corporation chartered by the United States or (2) secured by a pledge of any Government Obligations having an aggregate market value, exclusive of accrued interest, equal at least to the principal amount of the certificates so secured, which security is held in a custody account by a custodian satisfactory to the Registrar, or (c)(1) evidences of a direct ownership in future interest or principal on Government Obligations, which Government Obligations are held in a custody account by a custodian satisfactory to the Registrar pursuant to the terms of a custody agreement in form and substance acceptable to the Registrar and (2) obligations issued by any state of the United States or any political subdivision, public instrumentality or public Agency of any state, which obligations are fully secured by and payable solely from Government Obligations, which Government Obligations are held pursuant to an agreement in form and substance acceptable to the Registrar and, in any such case, maturing as

to principal and interest in such amounts and at such times as will insure the availability of sufficient money to make the payment secured thereby.

**“Finance Director”** means the Treasurer/Finance Director or Acting Treasurer/Finance Director, as the case may be, of the City.

**“Fiscal Year”** means the twelve-month period established by the City or provided by law from time to time as its fiscal year.

**“Government Obligations”** means direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the United States of America.

**“Improvements”** means the improvements to be constructed, reconstructed, acquired, improved, extended, rehabilitated, installed, equipped, furnished and completed in the Project Area by the City in accordance with the Redevelopment Contract.

**“Payment Date”** means June 1 and December 1 of each year any Note is outstanding, commencing on the first Payment Date following the Date of Original Issue.

**“Chairman”** means the Chairman of the Agency.

**“Outstanding”** means when used with reference to any Note, as of a particular date, all Notes theretofore authenticated and delivered under this Resolution except:

(a) Notes theretofore canceled by the Registrar or delivered to the Registrar for cancellation;

(b) Notes which are deemed to have been paid in accordance with **Section 10.1** hereof;

(c) Notes alleged to have been mutilated, destroyed, lost or stolen which have been paid as provided in **Section 3.9** hereof; and

(d) Notes in exchange for or in lieu of which other Notes have been authenticated and delivered pursuant to this Resolution.

**“Owner”** means the person(s) identified as the owner(s) of the Note from time to time, as indicated on the books of registry maintained by the Registrar.

**“Plan Resolution”** means, Resolution No. 28 - 2019 of the City, together with any other resolution providing for an amendment to the Redevelopment Plan.

**“Project Area”** means the area identified and referred to as the Project Site in the Redevelopment Contract.

**“Record Date”** means, for each Payment Date, the 15<sup>th</sup> day immediately preceding such Payment Date.

**“Redeveloper”** means the City of David City, Nebraska, defined in the Redevelopment Contract responsible for constructing, reconstructing, acquiring, improving, extending, rehabilitating, installing, equipping, furnishing and completing the Project.

**“Redevelopment Contract”** means the Community Development Agency of the City of David City Redevelopment Contract for the David City Industrial Park Expansion and Infrastructure Upgrade, Redevelopment Project, dated the date of its execution, between the City and the Agency relating to the Project.

**“Redevelopment Area”** means the community redevelopment area described, defined or otherwise identified or referred to in the Redevelopment Plan.

**“Redevelopment Law”** means Article VIII, Section 12 of the Constitution of the State and Chapter 18, Article 21, Reissue Revised Statutes of Nebraska, as amended.

**“Redevelopment Plan”** means the “City of David City Redevelopment Plan for the David City Industrial Park Expansion and Infrastructure Upgrade Redevelopment Project” passed, adopted and approved by the City pursuant to the Plan Resolution, and shall include any amendment of such Redevelopment Plan heretofore or hereafter made by the City pursuant to law.

**“Refunding Notes”** means the notes authorized to be issued pursuant to **Article V**.

**“Registrar”** means the Treasurer of the City of David City, Nebraska, in its capacity as registrar and paying agent for the Note.

**“Resolution”** means this Resolution as from time to time amended or supplemented.

**“Revenue”** means the Tax Revenue.

**“Special Fund”** means the fund by that name created in **Section 7.1**.

**“State”** means the State of Nebraska.

**“Tax Revenue”** means, with respect to the Project Area, (a) those tax revenues referred to (1) in the last sentence of the first paragraph of Article VIII, Section 12 of the Constitution of the State and (2) in Section 18-2147, Reissue Revised Statutes of Nebraska, as amended, and (b) all payments made in lieu thereof.

**“Treasurer”** means the Treasurer of Butler County, Nebraska.

**Section 2.2. Definitions of General Terms.** Unless the context clearly indicates otherwise or may otherwise require, in this Resolution words importing persons include firms, partnerships, associations, limited liability companies (public and private), public bodies and natural persons, and also include executors, administrators, trustees, receivers or other representatives.

Unless the context clearly indicates otherwise or may otherwise require, in this Resolution the terms “herein,” “hereunder,” “hereby,” “hereto,” “hereof” and any similar terms refer to this Resolution as a whole and not to any particular section or subdivision thereof.

Unless the context clearly indicates otherwise or may otherwise require, in this Resolution: (a) references to Articles, Sections and other subdivisions, whether by number or letter or otherwise, are to the respective or corresponding Articles, Sections or subdivisions of this Resolution as such Articles, Sections, or subdivisions may be amended or supplemented from time to time; and (b) the word “heretofore” means before the time of passage of this Resolution, and the word “hereafter” means after the time of passage of this Resolution.

**Section 2.3. Computations.** Unless the facts shall then be otherwise, all computations required for the purposes of this Resolution shall be made on the assumption that the principal on the Note shall be paid as and when the same become due.

**Section 2.4. Certificates, Opinions and Reports.** Except as otherwise specifically provided in this Resolution, each certificate, opinion or report with respect to compliance with a condition or covenant provided for in this Resolution shall include: (a) a statement that the person making such certificate, opinion or report has read the pertinent provisions of this Resolution to which such covenant or condition relates; (b) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate, opinion or report are based; (c) a statement that, in the opinion of such person, he has made such examination and investigation as is necessary to enable him to express an informed opinion as to whether or not such covenant or condition has been complied with; (d) a statement as to whether or not, in the opinion of such person, such condition or covenant has been complied with; and (e) an identification of any certificates, opinions or reports or other sources or assumptions relied on in such certificate, opinion or report.

**Section 2.5. Evidence of Action by the Agency.** Except as otherwise specifically provided in this Resolution, any request, direction, command, order, notice, certificate or other instrument of, by or from the City or the Agency shall be effective and binding upon the Agency, respectively, for the purposes of this Resolution if signed by the Chairman, the Vice Chairman, the Secretary, the Treasurer, the Finance Director or by any other person or persons authorized to execute the same by statute, or by a resolution of the City or the Agency, respectively.

### ARTICLE III

#### AUTHORIZATION AND ISSUANCE OF THE NOTE; GENERAL TERMS AND PROVISIONS

**Section 3.1. Authorization of Note.** Pursuant to and in full compliance with the Redevelopment Law and this Resolution, and for the purpose of providing funds to pay (a) the cost of acquiring, constructing, reconstructing, improving, extending, rehabilitating, installing, equipping, furnishing, and completing the Project, and (b) the costs of issuing the Note, the Agency shall issue the Note in a principal amount not to exceed \$796,000. The Note shall be designated as "Community Development Agency of the City of David City, Nebraska, David City Industrial Park Expansion and Infrastructure Upgrade Redevelopment Project (Industrial Park Expansion and Infrastructure Upgrade, Redevelopment Project) Tax Increment Development Revenue Note," shall have an appropriate series designation as determined by the Finance Director, shall be dated the Date of Original Issue, shall mature, subject to right of prior redemption, not later than the December 31, 2036, and shall bear interest at an annual rate of 6.00%. The Note shall be issued as a single Note as further described in **Section 3.2.**

The Note is a special, limited obligation of the Agency payable solely from the Revenue and the amounts on deposit in the funds and accounts established by this Resolution. The Note shall not in any event be a debt of the Agency (except to the extent of the Revenue and other money pledged under this Resolution), the State, nor any of its political subdivisions, and neither the Agency (except to the extent of the Revenue and other money pledged under this Resolution), the City, the State nor any of its political subdivisions is liable in respect thereof, nor in any event shall the principal of or interest on the Note be payable from any source other than the Revenue and other money pledged under this Resolution. The Note does not constitute a debt within the

meaning of any constitutional, statutory, or charter limitation upon the creation of general obligation indebtedness of the Agency and does not impose any general liability upon the Agency. Neither any official of the Agency nor any person executing the Note shall be liable personally on the Note by reason of its issuance. The validity of the Note is not and shall not be dependent upon the completion of the Project or upon the performance of any obligation relative to the Project.

The Revenue and the amounts on deposit in the funds and accounts established by this Resolution are hereby pledged and assigned for the payment of the Note, and shall be used for no other purpose than to pay the principal of or interest on the Note, except as may be otherwise expressly authorized in this Resolution. The Note shall not constitute a debt of the Agency or the City within the meaning of any constitutional, statutory, or charter limitation upon the creation of general obligation indebtedness of the Agency, and neither the Agency nor the City shall not be liable for the payment thereof out of any money of the Agency or the City other than the Tax Revenue and the other funds referred to herein.

Nothing in this Resolution shall preclude the payment of the Note from (a) the proceeds of future notes issued pursuant to law or (b) any other legally available funds. Nothing in this Resolution shall prevent the City or the Agency from making advances of its own funds howsoever derived to any of the uses and purposes mentioned in this Resolution.

### **Section 3.2. Details of Note; Agency of Finance Director.**

(a) The Note shall be dated the Date of Original Issue and shall be issued to the purchaser thereof, as the Owner, in installments. The Note shall be delivered on the earlier of allocation of the maximum principal amount of the Note or upon the issuance of a certificate of occupancy of the building constituting the Project. The Note shall be issued as a single Note.

(b) Proceeds of the Note may be advanced and disbursed in the manner set forth below:

(1) There shall be submitted to the Finance Director a disbursement request in a form acceptable to the Finance Director (the “**Disbursement Request**”), executed by the City’s City Clerk and the Mayor of the City, (A) certifying that a portion of the Project has been substantially completed and (B) certifying the actual costs incurred by the City in the completion of such portion of the Project.

(2) The Finance Director shall evidence such allocation in writing and inform the Owner of the Note of any amounts allocated to the Note.

(3) Such amounts shall be deemed proceeds of the Note and the Finance Director shall inform the Registrar in writing of the date and amount of such allocation. The Registrar shall keep and maintain a record of the amounts allocated to the note pursuant to the terms of this Resolution as “Principal Amount Advanced” and shall enter the aggregate principal amount then Outstanding as the “Cumulative Outstanding Principal Amount” on the Note and its records maintained for the Note. The aggregate amount endorsed as the Principal amount Advanced on the Note shall not exceed \$796,000.

The Agency shall have no obligation to pay any Disbursement Request unless such request has been properly approved as described above, and proceeds of the Note have been deposited by the Owner of the Note (if other than the Redeveloper) into the Project Fund.

The records maintained by the Registrar as to principal amount advanced and principal amounts paid on the Note shall be the official records of the Cumulative Outstanding Principal Amount for all purposes.

(c) The Note shall be dated the Date of Original Issue, which shall be the initial date of an allocation of the Note.

(d) As of the Date of Original Issue of the Note, there shall be delivered to the Registrar the following:

(1) A signed investor's letter in a form acceptable to the Finance Director and Note Counsel; and

(2) Such additional certificates and other documents as the special counsel for the Agency may require.

(e) The note shall bear six percent interest on the Cumulative Outstanding Principal Amount of the Note from the Date of Original Issue.

(f) The principal of the Note shall be payable in any coin or currency of the United States of America from all funds held by the which on the respective dates of payment thereof is legal tender for the payment of public and private debts. Payments on the Note due prior to maturity or earlier redemption and payment of any principal upon redemption price to maturity shall be made by check mailed by the Registrar on each Interest Payment Date to the Owners, at the Owners' address as it appears on the books of registry maintained by the Registrar on the Record Date. The principal of the Note due at maturity or upon earlier redemption shall be payable upon presentation and surrender of the Note to the Registrar. When any portion of the Note shall have been duly called for redemption and payment thereof duly made or provided for, interest thereon shall cease on the principal amount of such Note so redeemed from and after the date of redemption thereof.

(g) The Note shall be executed by the manual signatures of the Chairman and Secretary of the Agency. In case any officer whose signature shall appear on any Note shall cease to be such officer before the delivery of such Note, such signature shall nevertheless be valid and sufficient for all purposes, the same as if s/he had remained in office until such delivery, and the Note may be signed by such persons as at the actual time of the execution of such Note shall be the proper officers to sign such Note although at the date of such Note such persons may not have been such officers.

(h) The Finance Director is hereby authorized to hereafter, from time to time, specify, set, designate, determine, establish and appoint, as the case may be, and in each case in accordance with and subject to the provisions of this Resolution, (1) the Date of Original Issue, the principal amount of the Note in accordance with **Section 3.2(a)**, (2) the maturity date of the Note, which shall be not later than December 31, 2036, (3) the initial Payment Date and (4) any other term of the Note not otherwise specifically fixed by the provisions of this Resolution.

(i) Any Note issued upon transfer or exchange of any other Note shall be dated as of the Date of Original Issue.

(j) The Note shall be issued to such Owner as shall be mutually agreed between the City and the Finance Director for a price equal to 100% of the principal amount thereof. No Note shall be delivered to any Owner unless the Agency shall have received from the Owner thereof such documents as may be required by the Finance Director to demonstrate compliance with all applicable laws, including without limitation compliance with **Section 3.6** hereof. The Agency may impose such restrictions on the transfer of any Note as may be required to ensure compliance with all requirements relating to any such transfer.

**Section 3.3. Form of Note Generally.** The Note shall be in a form to be registered with the registrar. The Note shall be in substantially the form set forth in **Article IX**, with such appropriate variations, omissions and insertions as are permitted or required by this Resolution and with such additional changes as the Finance Director may deem necessary or appropriate. The Note may have endorsed thereon such legends or text as may be necessary or appropriate to conform to any applicable rules and regulations of any governmental Agency or any usage or requirement of law with respect thereto.

**Section 3.4. Appointment of Registrar.** The Finance Director is hereby appointed the registrar and paying agent for the Note. The Registrar shall specify its acceptance of the duties, obligations and trusts imposed upon it by the provisions of this Resolution by a written instrument deposited with the Agency prior to the Date of Original Issue of the initial Note. The Agency reserves the right to remove the Registrar upon 30 days' notice and upon the appointment of a successor Registrar, in which event the predecessor Registrar shall deliver all cash and the Note in its possession to the successor Registrar and shall deliver the note register to the successor Registrar. The Registrar shall have only such duties and obligations as are expressly stated in this Resolution and no other duties or obligations shall be required of the Registrar.

**Section 3.5. Exchange of Note.** Any Note, upon surrender thereof at the principal office of the Registrar, together with an assignment duly executed by the Owner or its attorney or legal representative in such form as shall be satisfactory to the Registrar, may, at the option of the Owner thereof, be exchanged for another Note in a principal amount equal to the principal amount of the Note surrendered or exchanged, of the same series and maturity and bearing interest at the same rate. The Agency shall make provision for the exchange of the Note at the principal office of the Registrar.

**Section 3.6. Negotiability, Registration and Transfer of Note.** The Registrar shall keep books for the registration and registration of transfer of the Note as provided in this Resolution. The transfer of the Note may be registered only upon the books kept for the registration and registration of transfer of the Note upon (a) surrender thereof to the Registrar, together with an assignment duly executed by the Owner or its attorney or legal representative in such form as shall be satisfactory to the Registrar and (b) evidence acceptable to the Agency that the assignee is a bank or a qualified institutional buyer as defined in Rule 144A promulgated by the Securities and Exchange Commission. Prior to any transfer and assignment, the Owner will obtain and provide to the Agency, an investor's letter in form and substance satisfactory to the Agency evidencing compliance with the provisions of all federal and state securities laws, and will deposit with the Agency an amount to cover all reasonable costs incurred by the Agency, including legal fees, of accomplishing such transfer. Upon any such registration of transfer the Agency shall execute and deliver in exchange for such Note a new Note, registered in the name

of the transferee, in a principal amount equal to the principal amount of the Note surrendered or exchanged, of the same series and maturity and bearing interest at the same rate.

In all cases in which any Note shall be exchanged or a transfer of a Note shall be registered hereunder, the Agency shall execute at the earliest practicable time execute and deliver a Note in accordance with the provisions of this Resolution. The Note surrendered in any such exchange or registration of transfer shall forthwith be canceled by the Registrar. Neither the Agency nor the Registrar shall make a charge for the first such exchange or registration of transfer of any Note by any Owner. The Agency or the Registrar, or both, may make a charge for shipping, printing and out-of-pocket costs for every subsequent exchange or registration of transfer of such Note sufficient to reimburse it or them for any and all costs required to be paid with respect to such exchange or registration of transfer. Neither the Agency nor the Registrar shall be required to make any such exchange or registration of transfer of any Note during the period between a Record Date and the corresponding Interest Payment Date.

**Section 3.7. Ownership of Note.** As to any Note, the person in whose name the same shall be registered shall be deemed and regarded as the absolute owner thereof for all purposes, and payment of or on account of the principal of or interest on such Note shall be made only to or upon the order of the Owner thereof or his legal representative. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Note, including the interest thereon, to the extent of the sum or sums so paid.

**Section 3.8. Disposition and Destruction of Note.** The Note, upon surrender to the Registrar for final payment, whether at maturity or upon earlier redemption, shall be canceled upon such payment by the Registrar and, upon written request of the Finance Director, be destroyed.

**Section 3.9. Mutilated, Lost, Stolen or Destroyed Note.** If any Note becomes mutilated or is lost, stolen or destroyed, the Agency shall execute and deliver a new Note of like date and tenor as the Note mutilated, lost, stolen or destroyed; provided that, in the case of any mutilated Note, such mutilated Note shall first be surrendered to the Agency. In the case of any lost, stolen or destroyed Note, there first shall be furnished to the Agency evidence of such loss, theft or destruction satisfactory to the Agency, together with indemnity to the Agency satisfactory to the Agency. If any such Note has matured, is about to mature or has been called for redemption, instead of delivering a substitute Note, the Agency may pay the same without surrender thereof. Upon the issuance of any substitute Note, the Agency may require the payment of an amount by the Owner sufficient to reimburse the Agency for any tax or other governmental charge that may be imposed in relation thereto and any other reasonable fees and expenses incurred in connection therewith.

**Section 3.10. Non-presentation of Note.** If any Note is not presented for payment when the principal thereof becomes due and payable as therein and herein provided, whether at the stated maturity thereof or call for optional or mandatory redemption or otherwise, if funds sufficient to pay such Note have been made available to the Registrar all liability of the Agency to the Owner thereof for the payment of such Note shall forthwith cease, determine and be completely discharged, and thereupon it shall be the duty of the Registrar to hold such funds, without liability for interest thereon, for the benefit of the Owner of such Note, who shall thereafter be restricted exclusively to such funds for any claim of whatever nature on their part under this Resolution or on, or with respect to, said Note. If any Note is not presented for payment within five years following the date when such Note becomes due, the Registrar shall repay to the Agency the funds theretofore held by it for payment of such Note, and such Note

shall, subject to the defense of any applicable statute of limitation, thereafter be an unsecured obligation of the Agency, and the Registered Owner thereof shall be entitled to look only to the Agency for payment, and then only to the extent of the amount so repaid to it by the Registrar, and the Agency shall not be liable for any interest thereon and shall not be regarded as a trustee of such money.

## ARTICLE IV

### REDEMPTION OF NOTE

**Section 4.1. Redemption of Note.** The Note is subject to redemption at the option of the Agency prior to the maturity thereof at any time as a whole or in part from time to time in such principal amount as the Agency shall determine, at a redemption price equal to 100% of the principal amount then being redeemed plus accrued interest thereon to the date fixed for redemption.

**Section 4.2. Redemption Procedures.** The Finance Director is hereby authorized, without further action of the Council, to call all or any portion of the principal of the Note for payment and redemption prior to maturity on such date as the Finance Director shall determine, and shall deposit sufficient funds in the Debt Service Account from the Surplus Account to pay the principal being redeemed plus the accrued interest thereon to the date fixed for redemption. The Finance Director may effect partial redemptions of any Note without notice to the Owner and without presentation and surrender of such Note, but total redemption of any Note may only be effected with notice to the Owner and upon presentation and surrender of such Note to the Registrar. Notice of a total redemption of any Note shall be sent by the Registrar by first-class mail not less than five days prior to the date fixed for redemption to the Owner's address appearing on the books of registry maintained by the Registrar and indicate (a) the title and designation of the Note, (b) the redemption date, and (c) a recitation that the entire principal balance of such Note plus all accrued interest thereon is being called for redemption on the applicable redemption date.

**Section 4.3. Determination of Outstanding Principal Amount of Note.** Notwithstanding the amount indicated on the face of any Note, the principal amount of such Note actually Outstanding from time to time shall be determined and maintained by the Registrar. The Registrar shall make a notation in the books of registry maintained for each Note indicating the original principal advance of such Note as determined in accordance with **Section 3.2** and make such additional notations as are required to reflect any additional principal advances or redemptions of such Note from time to time, including on the Table of Cumulative Outstanding Principal Amount attached to each Note if it is presented to the Registrar for that purpose. Any Owner may examine the books of registry maintained by the Registrar upon request, and the Registrar shall grant such request as soon as reasonably practicable. Any failure of the Registrar to record a principal advance or a redemption on the Table of Cumulative Outstanding Principal Amount shall not affect the Cumulative Outstanding Principal Amount shown on the records of the Registrar.

## ARTICLE V

### REFUNDING NOTES

**Section 5.1. Refunding Notes.** Refunding Notes may be issued at any time at the direction of the Finance Director for the purpose of refunding (including by purchase) any Note or any portion thereof, including amounts to pay principal to the date of maturity or redemption (or purchase) and the expenses of issuing the Refunding Notes and of effecting such refunding; provided that the Debt Service on all notes to be outstanding after the issuance of the Refunding Notes shall not be greater in any Fiscal Year than would have been the Debt Service in such Fiscal Year were such refunding not to occur.

## ARTICLE VI

### EFFECTIVE DATE OF PROJECT; PLEDGE OF REVENUE

**Section 6.1. Effective Date of Project.** For purposes of Section 18-2147, Reissue Revised Statutes of Nebraska, as amended, the effective date of the Project shall be January 1, 2020. The City Clerk is hereby directed to notify the Assessor of the effective date of the Project on the form prescribed by the Property Tax Administrator.

**Section 6.2. Collection of Revenue; Pledge of Revenue.** As provided for in the Redevelopment Plan, and pursuant to the provisions of the Redevelopment Law, for the period contemplated thereby, the Tax Revenue collected in the Project Area shall be allocated to and, when collected, paid into the Special Fund under the terms of this Resolution to pay the principal on the Note. When the Note has been paid in accordance with this Resolution, the Redevelopment Plan and the Redevelopment Contract, the Tax Revenue shall be applied as provided for in the Redevelopment Law.

The Revenue is hereby allocated and pledged in its entirety to the payment of the principal on the Note and to the payment of the Project Costs (including the Project), until the principal on the Note has been paid (or until money for that purpose has been irrevocably set aside), and the Revenue shall be applied solely to the payment of the principal on the Note. Such allocation and pledge is and shall be for the sole and exclusive benefit of the Owner and shall be irrevocable.

**Section 6.3. Potential Insufficiency of Revenue.** Neither the Agency nor the City makes any representations, covenants, or warranties to the Owner that the Revenue will be sufficient to pay the principal of or interest on the Note. Payment of the principal of and interest on the Note is limited solely and exclusively to the Revenue pledged under the terms of this Resolution, and is not payable from any other source whatsoever.

## ARTICLE VII

### CREATION OF FUNDS AND ACCOUNTS; PAYMENTS THEREFROM

**Section 7.1. Creation of Funds and Account.** There is hereby created and established by the Agency the following funds and accounts which funds shall be held by the Finance Director of the City separate and apart from all other funds and moneys of the Agency and the City under her control

a special trust fund called the "Industrial Park Expansion and Infrastructure Upgrade, Redevelopment Project Tax Increment Special Fund" (the "**Special Fund**").

So long as the Note remains unpaid, the money in the foregoing fund and accounts shall be used for no purpose other than those required or permitted by this Resolution, any Resolution supplemental to or amendatory of this Resolution and the Redevelopment Law.

**Section 7.2. Special Fund.** All of the Revenue shall be deposited into the Special Fund. The Revenue accumulated in the Special Fund shall be used and applied on the Business Day prior to each Payment Date (a) to make any payments to the Agency as may be required under the Redevelopment Contract and (b) to pay principal on the Note to the extent of any money then remaining the Special Fund on such Payment Date. Money in the Special Fund shall be used solely for the purposes described in this **Section 7.2**. All Revenues received through and including December 31, 2036 shall be used solely for the payments required by this **Section 7.2**.

## ARTICLE VIII

### COVENANTS OF THE AGENCY

So long as the Note is outstanding and unpaid, the Agency will (through its proper officers, agents or employees) faithfully perform and abide by all of the covenants, undertakings and provisions contained in this Resolution or in the Note, including the following covenants and agreements for the benefit of the Owner which are necessary, convenient and desirable to secure the Note and will tend to make them more marketable; provided, however, that such covenants do not require either the City or the Agency to expend any money other than the Revenue nor violate the provisions of State law with respect to tax revenue allocation.

**Section 8.1. No Priority.** The Agency covenants and agrees that it will not issue any obligations the principal of or interest on which is payable from the Revenue which have, or purport to have, any lien upon the Revenue prior or superior to or in parity with the lien of the Note; provided, however, that nothing in this Resolution shall prevent the Agency from issuing and selling notes or other obligations which have, or purport to have, any lien upon the Revenue which is junior to the Note and the Debt Service thereon, or from issuing and selling notes or other obligations which are payable in whole or in part from sources other than the Revenue.

**Section 8.2. To Pay Principal of the Note.** The Agency will duly and punctually pay or cause to be paid solely from the Revenue the principal of the Note on the dates and at the places and in the manner provided in the Note according to the true intent and meaning thereof and hereof, and will faithfully do and perform and fully observe and keep any and all covenants, undertakings, stipulations and provisions contained in the Note and in this Resolution.

**Section 8.4. Books of Account; Financial Statements.** The Agency covenants and agrees that it will at all times keep, or cause to be kept, proper and current books of account (separate from all other records and accounts) in which complete and accurate entries shall be made of all transactions relating to the Project, the Revenue and other funds relating to the Project.

**Section 8.5. Eminent Domain Proceeds.** The Agency covenants and agrees that should all or any part of the Project be taken by eminent domain or other proceedings authorized by law for any public or other use under which the property will be exempt from ad valorem taxation, the net proceeds realized by the Agency therefrom shall constitute Project Revenue and

shall be deposited into the Special Fund and used for the purposes and in the manner described in **Section 7.2**.

**Section 8.6. Protection of Security.** The Agency is duly authorized under all applicable laws to create and issue the Note and to adopt this Resolution and to pledge the Revenue in the manner and to the extent provided in this Resolution. The Revenue so pledged is and will be free and clear of any pledge, lien, charge, security interest or encumbrance thereon or with respect thereto prior to, or of equal rank with, the pledge created by this Resolution, except as otherwise expressly provided herein, and all corporate action on the part of the Agency to that end has been duly and validly taken. The Note is and will be a valid obligation of the Agency in accordance with its terms and the terms of this Resolution. The Agency shall at all times, to the extent permitted by law, defend, preserve and protect the pledge of and security interest granted with respect to the Revenue pledged under this Resolution and all the rights of the Owner under this Resolution against all claims and demands of all persons whomsoever.

ARTICLE IX

**FORM OF NOTE**

**Section 9.1. Form of Note.** The Note shall be in substantially the following form:

**(FORM OF NOTE)**

**THIS NOTE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR ANY STATE SECURITIES LAWS, AND THIS NOTE MAY NOT BE TRANSFERRED UNLESS THE PROPOSED ASSIGNEE IS A BANK OR A QUALIFIED INSTITUTIONAL BUYER AS DEFINED IN RULE 144A PROMULGATED BY THE SECURITIES AND EXCHANGE COMMISSION AND THE OWNER HAS OBTAINED AND PROVIDED TO THE AGENCY, PRIOR TO SUCH TRANSFER AND ASSIGNMENT, AN INVESTOR'S LETTER IN FORM AND SUBSTANCE SATISFACTORY TO THE AGENCY EVIDENCING THE COMPLIANCE WITH THE PROVISIONS OF ALL FEDERAL AND STATE SECURITIES LAWS AND CONTAINING SUCH OTHER REPRESENTATIONS AS THE AGENCY MAY REQUIRE.**

**THIS NOTE MAY BE TRANSFERRED ONLY IN THE MANNER AND ON THE TERMS AND CONDITIONS AND SUBJECT TO THE RESTRICTIONS STATED IN SECTION 3.6 OF RESOLUTION NO. 3 – 2019 CDA OF THE COMMUNITY DEVELOPMENT AGENCY OF THE CITY OF DAVID CITY, NEBRASKA.**

UNITED STATES OF AMERICA  
STATE OF NEBRASKA  
COUNTY OF BUTLER

COMMUNITY DEVELOPMENT AGENCY  
OF THE CITY OF DAVID CITY, NEBRASKA

DAVID CITY INDUSTRIAL PARK EXPANSION AND INFRASTRUCTURE UPGRADE,  
REDEVELOPMENT PROJECT  
TAX INCREMENT DEVELOPMENT REVENUE NOTE, SERIES 2019

(subject to reduction as described herein)

Date of  
Original Issue

Date of  
Maturity

Rate of  
Interest

December 31, 2036

6.00%

**REGISTERED OWNER: The City of David City, Nebraska**

**PRINCIPAL AMOUNT: SEE SCHEDULE 1 ATTACHED HERETO**

**REFERENCE IS HEREBY MADE TO THE FURTHER PROVISIONS OF THE NOTE SET FORTH ON THE FOLLOWING PAGES, WHICH FURTHER PROVISIONS SHALL FOR ALL PURPOSES HAVE THE SAME EFFECT AS IF SET FORTH AT THIS PLACE.**

**IN WITNESS WHEREOF, THE COMMUNITY DEVELOPMENT AGENCY OF THE CITY OF DAVID CITY, NEBRASKA** has caused this Note to be signed by the manual signature of the Chairman of the Agency, countersigned by the manual signature of the Secretary of the Agency.

**COMMUNITY DEVELOPMENT AGENCY OF  
THE CITY OF DAVID CITY, NEBRASKA**

[S E A L]

By: \_\_\_\_\_  
(manual signature)  
Chairman

By: \_\_\_\_\_  
(manual signature)  
Secretary

The **COMMUNITY DEVELOPMENT AGENCY OF THE CITY OF DAVID CITY, NEBRASKA** (the "**Agency**") acknowledges itself indebted to, and for value received hereby promises to pay, but solely from certain specified tax revenues to the Registered Owner named above, or registered assigns, on the Date of Maturity stated above (or earlier as hereinafter referred to), the Principal Amount on Schedule 1 attached hereto upon presentation and surrender hereof at the office of the registrar and paying agent herefor, the Treasurer of the City of David City, Nebraska (the "**Registrar**"), payable semiannually on June 1 and December 1 of each year until payment in full of such Principal Amount, beginning June 1, 2021, by check or draft mailed to the Registered Owner hereof as shown on the note registration books maintained by the Registrar on the 15th day of the month preceding the month in which the applicable payment date occurs, at such Owner's address as it appears on such note registration books. The principal of this Note is payable in any coin or currency which on the respective dates of payment thereof is legal tender for the payment of debts due the United States of America.

This Note is issued by the Agency under the Agency of and in full compliance with the Constitution and statutes of the State of Nebraska, including particularly Article VIII, Section 12 of the Nebraska Constitution, Sections 18-2101 to 18-2153, inclusive, Reissue Revised Statutes of Nebraska, as amended, and under and pursuant to Resolution No. 3 – 2019 CDA duly passed and adopted by the Agency on November 13, 2019, as from time to time amended and supplemented (the "**Resolution**").

**THE PRINCIPAL AMOUNT OF THIS NOTE IS SET FORTH IN SCHEDULE 1 ATTACHED HERETO. THE MAXIMUM PRINCIPAL AMOUNT OF THIS NOTE IS \$796,000.**

This Note has been issued by the Agency for the purpose of financing the costs of constructing, reconstructing, improving, extending, rehabilitating, installing, equipping, furnishing and completing certain improvements within the area identified and referred to as the City of David City Redevelopment Plan for David City Industrial Park Expansion and Infrastructure Upgrade Redevelopment Project, (Industrial Park Expansion and Infrastructure Upgrade, Project) which is more specifically described in the Resolution, and to carry out the Agency's corporate purposes and powers in connection therewith.

Reference is hereby made to the Resolution for the provisions, among others, with respect to the collection and disposition of certain tax and other revenues, the special funds charged with and pledged to the payment of the principal of and interest on this Note, the nature and extent of the security thereby created, the terms and conditions under which this Note has been issued, the rights and remedies of the Registered Owner of this Note, and the rights, duties, immunities and obligations of the City and the Agency. By the acceptance of this Note, the Registered Owner assents to all of the provisions of the Resolution.

This Note is a special limited obligation of the Agency payable as to principal solely from and is secured solely by the Tax Revenue (as defined in the Resolution) pledged under the Resolution, all on the terms and conditions set forth in the Resolution. The Tax Revenue represents that portion of ad valorem taxes levied by public bodies of the State of Nebraska, including the City, on real property in the Project Area (as defined in this Resolution) which is in excess of that portion of such ad valorem taxes produced by the levy at the rate fixed each year by or for each such public body upon the valuation of the Project Area as of a certain date and as has been certified by the County Assessor of Butler County, Nebraska to the City in accordance with law.

The principal hereon shall not be payable from the general funds of the City nor the Agency nor shall this Note constitute a legal or equitable pledge, charge, lien, security interest or encumbrance upon any of the property or upon any of the income, receipts, or money and securities of the City or the Agency or of any other party other than those specifically pledged under the Resolution. This Note is not a debt of the City or the Agency within the meaning of any constitutional, statutory or charter limitation upon the creation of general obligation indebtedness of the City or the Agency, and does not impose any general liability upon the City or the Agency and neither the City nor the Agency shall be liable for the payment hereof out of any funds of the City or the Agency other than the Tax Revenues and other funds pledged under the Resolution, which Tax Revenues and other funds have been and hereby are pledged to the punctual payment of the principal of and interest on this Note in accordance with the provisions of this Resolution.

The Registrar may from time to time enter the respective amounts advanced pursuant to the terms of the Resolution under the column headed "Principal Amount Advanced" on **Schedule 1** hereto (the "**Table**") and may enter the aggregate principal amount of this Note then outstanding under the column headed "Cumulative Outstanding Principal Amount" on the Table. On each date upon which a portion of the Cumulative Outstanding Principal Amount is paid to the Registered Owner pursuant to the redemption provisions of the Resolution, the Registered Owner may enter the principal amount paid on this Note under the column headed "Principal Amount Redeemed" on the Table and may enter the then outstanding principal amount of this Note under the column headed "Cumulative Outstanding Principal Amount" on the Table. Notwithstanding the foregoing, the records maintained by the Registrar as to the principal amount issued and

principal amounts paid on this Note shall be the official records of the Cumulative Outstanding Principal Amount of this Note for all purposes.

Reference is hereby made to the Resolution, a copy of which is on file in the office of the City Clerk, and to all of the provisions of which each Owner of this Note by its acceptance hereof hereby assents, for definitions of terms; the description of and the nature and extent of the security for this Note; the Tax Revenue pledged to the payment of the principal on this Note; the nature and extent and manner of enforcement of the pledge; the conditions upon which the Resolution may be amended or supplemented with or without the consent of the Owner of this Note; the rights, duties and obligations of the Agency and the Registrar thereunder; the terms and provisions upon which the liens, pledges, charges, trusts and covenants made therein may be discharged at or prior to the maturity or redemption of this Note, and this Note thereafter no longer be secured by the Resolution or be deemed to be outstanding thereunder, if money or certain specified securities shall have been deposited with the Registrar sufficient and held in trust solely for the payment hereof; and for the other terms and provisions thereof.

This Note is subject to redemption prior to maturity, at the option of the Agency, in whole or in part at any time at a redemption price equal to 100% of the principal amount being redeemed, plus accrued interest on such principal amount to the date fixed for redemption. Reference is hereby made to the Resolution for a description of the redemption procedures and the notice requirements pertaining thereto.

In the event this Note is called for prior redemption, notice of such redemption shall be given by first-class mail to the Registered Owner hereof at its address as shown on the registration books maintained by the Registrar not less than 10 days prior to the date fixed for redemption, unless waived by the Registered Owner hereof. If this Note, or any portion thereof, shall have been duly called for redemption and notice of such redemption duly given as provided, then upon such redemption date the portion of this Note so redeemed shall become due and payable and if money for the payment of the portion of the Note so redeemed shall be held for the purpose of such payment by the Registrar.

This Note is transferable by the Registered Owner hereof in person or by its attorney or legal representative duly authorized in writing at the principal office of the Registrar, but only in the manner, subject to the limitations and upon payment of the charges provided in the Resolution, and upon surrender and cancellation of this Note. Upon such transfer, a new Note of the same series and maturity and for the same principal amount will be issued to the transferee in exchange therefor. The Agency and the Registrar may deem and treat the Registered Owner hereof as the absolute owner hereof for the purpose of receiving payment of or on account of principal of and interest due hereon and for all other purposes.

This note shall be registered with the registrar and is being issued without coupons. This note is subject to exchange as provided in the Resolution.

It is hereby certified, recited and declared that all acts, conditions and things required to have happened, to exist and to have been performed precedent to and in the issuance of this Note have happened, do exist and have been performed in regular and due time, form and manner; that this Note does not exceed any constitutional, statutory or charter limitation on indebtedness; and that provision has been made for the payment of the principal of and interest on this Note as provided in this Resolution.

(FORM OF ASSIGNMENT)

**ASSIGNMENT**

**FOR VALUE RECEIVED**, the undersigned hereby sells, assigns and transfers unto

\_\_\_\_\_  
Print or Type Name, Address and Social Security Number  
or other Taxpayer Identification Number of Transferee

the within note and all rights thereunder, and hereby irrevocably constitutes and appoints  
\_\_\_\_\_ agent to transfer the within Note on the note register kept by the Registrar  
for the registration thereof, with full power of substitution in the premises.

Dated: \_\_\_\_\_

\_\_\_\_\_  
NOTICE: The signature to this Assignment must  
correspond with the name of the Registered Owner  
as it appears upon the face of the within note in  
every particular.

Signature Guaranteed By:

\_\_\_\_\_  
Name of Eligible Guarantor Institution as defined by  
SEC Rule 17 Ad-15 (17 CFR 240.17 Ad-15)

By: \_\_\_\_\_  
Title: \_\_\_\_\_

***[The remainder of this page intentionally left blank]***



(b) if the Note or portion thereof is not canceled or surrendered for cancellation or subject to cancellation or so purchased, when payment of the principal of the Note or any portion thereof, plus interest on such principal to the due date thereof, either (1) shall have been made or caused to be made in accordance with the terms thereof, or (2) shall have been provided by irrevocably depositing with the Registrar for the Note, in trust and irrevocably set aside exclusively for such payment, (A) money sufficient to make such payment or (B) Escrow Obligations maturing as to principal in such amount and at such times as will insure the availability of sufficient money to make such payment.

Provided that, with respect to any total redemption of any Note, notice of redemption shall have been duly given or provision satisfactory to the Registrar shall have been made therefor, or waiver of such notice, satisfactory in form, shall have been filed with the Registrar.

At such time as any Note or portion thereof shall no longer be outstanding hereunder, and, except for the purposes of any such payment from such money or such Escrow Obligations, such Note or portion thereof shall no longer be secured by or entitled to the benefits of this Resolution.

Any such money so deposited with the Registrar for any Note or portion thereof as provided in this **Section 10.1** may at the direction of the Finance Director also be invested and reinvested in Escrow Obligations, maturing in the amounts and times as hereinbefore set forth. All income from all Escrow Obligations in the hands of the Registrar which is not required for the payment of such Note or portion thereof with respect to which such money shall have been so deposited, shall be paid to the Agency and deposited in the Special Fund as and when realized and collected for use and application as is other money deposited in that fund.

Anything in this Resolution to the contrary notwithstanding, if money or Escrow Obligations have been deposited or set aside with the Registrar pursuant to this **Section 10.1** for the payment of any Note and such Note shall not have in fact been actually paid in full, no amendment to the provisions of this **Section 10.1** shall be valid as to or binding upon the Owner thereof without the consent of such Owner.

**Section 10.2. Certain Limitations After Due Date.** If sufficient money or Escrow Obligations shall have been deposited in accordance with the terms hereof with the Registrar in trust for the purpose of paying the Notes or any portion thereof when the same becomes due, whether at maturity or upon earlier redemption, all liability of the Agency for such payment shall forthwith cease, determine and be completely discharged, and thereupon it shall be the duty of the Registrar to hold such money or Escrow Obligations, without liability to the Owners, in trust for the benefit of the Owners, who thereafter shall be restricted exclusively to such money or Escrow Obligations for any claim for such payment of whatsoever nature on his part.

Notwithstanding the provisions of the preceding paragraph of this **Section 10.2**, money or Escrow Obligations held by the Registrar in trust for the payment and discharge of the principal of on any Note which remain unclaimed for five years after the date on which such payment shall have become due and payable, either because the Notes shall have reached their maturity date or because the entire principal balance of the Notes shall have been called for redemption, if such money was held by the Registrar or such paying agent at such date, or for five years after the date of deposit of such money, if deposited with the Registrar after the date when such Note became due and payable, shall, at the written request of the Agency be repaid by the Registrar to the Agency as the Agency's property and free from the trust created by this Resolution, and the

Registrar shall thereupon be released and discharged with respect thereto, and the Owner thereof shall look only to the Agency for the payment thereof.

## ARTICLE XI

### AMENDING AND SUPPLEMENTING OF RESOLUTION

**Section 11.1. Amending and Supplementing of Resolution Without Consent of Owner.** The Agency may at any time without the consent or concurrence of the Owner of the Note adopt a resolution amendatory hereof or supplemental hereto if the provisions of such supplemental Resolution do not materially adversely affect the rights of the Owner of the Note, for any one or more of the following purposes:

- (a) To make any changes or corrections in this Resolution as to which the Agency shall have been advised by counsel that the same are verbal corrections or changes or are required for the purpose of curing or correcting any ambiguity or defective or inconsistent provision or omission or mistake or manifest error contained in this Resolution, or to insert in this Resolution such provisions clarifying matters or questions arising under this Resolution as are necessary or desirable;
- (b) To add additional covenants and agreements of the Agency for the purpose of further securing payment of the Note;
- (c) To surrender any right, power or privilege reserved to or conferred upon the Agency by the terms of this Resolution;
- (d) To confirm as further assurance any lien, pledge or charge, or the subjection to any lien, pledge or charge, created or to be created by the provisions of this Resolution; and
- (e) To grant to or confer upon the Owner of the Note any additional rights, remedies, powers, Agency or security that lawfully may be granted to or conferred upon them.

The Agency shall not adopt any supplemental Resolution authorized by the foregoing provisions of this **Section 11.1** unless in the opinion of counsel the adoption of such supplemental Resolution is permitted by the foregoing provisions of this **Section 11.1** and the provisions of such supplemental Resolution do not materially and adversely affect the rights of the Owner of the Note.

**Section 11.2. Amending and Supplementing of Resolution with Consent of Owner.** With the consent of the Owners of the Note, the Agency from time to time and at any time may adopt a resolution amendatory hereof or supplemental hereto for the purpose of adding any provisions to, or changing in any manner or eliminating any of the provisions of, this Resolution, or modifying or amending the rights and obligations of the Agency under this Resolution, or modifying or amending in any manner the rights of the Owner of the Note; provided, however, that, without the specific consent of the Owner of the Note, no supplemental Resolution amending or supplementing the provisions hereof shall: (a) change the fixed maturity date for the payment or the terms of the redemption thereof, or reduce the principal amount of the Note or the rate of interest thereon or the Redemption Price payable upon the redemption or prepayment thereof; (b) authorize the creation of any pledge of the Tax Revenues and other money and securities pledged hereunder, prior, superior or equal to the pledge of and lien and charge thereon created herein for the payment of the Note except to the extent provided in **Articles III** and **V**; or (c) deprive the Owner of the Note in any material respect of the security

afforded by this Resolution. Nothing in this paragraph contained, however, shall be construed as making necessary the approval of the Owner\ of the Note of the adoption of any supplemental Resolution authorized by the provisions of **Section 11.1**.

It shall not be necessary that the consents of the Owner of the Note approve the particular form of wording of the proposed amendment or supplement or of the proposed supplemental Resolution effecting such amendment or supplement, but it shall be sufficient if such consents approve the substance of the proposed amendment or supplement. After the Owner of the Note shall have filed its consent to the amending or supplementing hereof pursuant to this Section, the Agency may adopt such supplemental Resolution.

**Section 11.3. Effectiveness of Supplemental Resolution.** Upon the adoption (pursuant to this **Article XI** and applicable law) by the Agency of any supplemental Resolution amending or supplementing the provisions of this Resolution or upon such later date as may be specified in such supplemental Resolution, (a) this Resolution and the Note shall be modified and amended in accordance with such supplemental Resolution, (b) the respective rights, limitations of rights, obligations, duties and immunities under this Resolution and the Owner of the Note shall thereafter be determined, exercised and enforced under this Resolution subject in all respects to such modifications and amendments, and (c) all of the terms and conditions of any such supplemental Resolution shall be a part of the terms and conditions of the Note and of this Resolution for any and all purposes.

## ARTICLE XII

### MISCELLANEOUS

**Section 12.1. General and Specific Authorizations; Ratification of Prior Actions.**

Without in any way limiting the power, Agency or discretion elsewhere herein granted or delegated, the Agency hereby (a) authorizes and directs the Chairman, Finance Director, Secretary, City Clerk and all other officers, officials, employees and agents of the City to carry out or cause to be carried out, and to perform such obligations of the Agency and such other actions as they, or any of them, in consultation with Special Counsel, the Owner and its counsel shall consider necessary, advisable, desirable or appropriate in connection with this Resolution, including without limitation the execution and delivery of all related documents, instruments, certifications and opinions, and (b) delegates, authorizes and directs the Finance Director the right, power and Agency to exercise his independent judgment and absolute discretion in (1) determining and finalizing all terms and provisions to be carried by the Note not specifically set forth in this Resolution and (2) the taking of all actions and the making of all arrangements necessary, proper, appropriate, advisable or desirable in order to effectuate the issuance, sale and delivery of the Note. The execution and delivery by the Finance Director or by any such other officers, officials, employees or agents of the City of any such documents, instruments, certifications and opinions, or the doing by them of any act in connection with any of the matters which are the subject of this Resolution, shall constitute conclusive evidence of both the Agency's and their approval of the terms, provisions and contents thereof and of all changes, modifications, amendments, revisions and alterations made therein and shall conclusively establish their absolute, unconditional and irrevocable Agency with respect thereto from the Agency and the authorization, approval and ratification by the Agency of the documents, instruments, certifications and opinions so executed and the actions so taken.

All actions heretofore taken by the Finance Director and all other officers, officials, employees and agents of the Agency, including without limitation the expenditure of funds and the selection, appointment and employment of Special Counsel and financial advisors and agents, in connection with issuance and sale of the Note, together with all other actions taken in connection with any of the matters which are the subject hereof, be and the same is hereby in all respects authorized, adopted, specified, accepted, ratified, approved and confirmed.

**Section 12.2. Proceedings Constitute Contract; Enforcement Thereof.** The provisions of this Resolution shall constitute a contract between the Agency and the Owner and the provisions thereof shall be enforceable by the Owner by mandamus, accounting, mandatory injunction or any other suit, action or proceeding at law or in equity that is presently or may hereafter be authorized under the laws of the State in any court of competent jurisdiction. Such contract is made under and is to be construed in accordance with the laws of the State.

After the issuance and delivery of any Note, this Resolution and any supplemental Resolution shall not be repealable, but shall be subject to modification or amendment to the extent and in the manner provided in this Resolution, but to no greater extent and in no other manner.

**Section 12.3. Benefits of Resolution Limited to the Agency and the Owner.** With the exception of rights or benefits herein expressly conferred, nothing expressed or mentioned in or to be implied from this Resolution or the Note is intended or should be construed to confer upon or give to any person other than the Agency and the Owner of the Note any legal or equitable right, remedy or claim under or by reason of or in respect to this Resolution or any covenant, condition, stipulation, promise, agreement or provision herein contained. The Resolution and all of the covenants, conditions, stipulations, promises, agreements and provisions hereof are intended to be and shall be for and inure to the sole and exclusive benefit of the City, the Agency and the Owner from time to time of the Note as herein and therein provided.

**Section 12.4. No Personal Liability.** No officer or employee of the Agency shall be individually or personally liable for the payment of the principal of or interest on the Note. Nothing herein contained shall, however, relieve any such officer or employee from the performance of any duty provided or required by law.

**Section 12.5. Effect of Saturdays, Sundays and Legal Holidays.** Whenever this Resolution requires any action to be taken on a Saturday, Sunday or legal holiday, such action shall be taken on the first business day occurring thereafter. Whenever in this Resolution the time within which any action is required to be taken or within which any right will lapse or expire shall terminate on a Saturday, Sunday or legal holiday, such time shall continue to run until midnight on the next succeeding business day.

**Section 12.6. Partial Invalidity.** If any one or more of the covenants or agreements or portions thereof provided in this Resolution on the part of the City, the Agency or the Registrar to be performed should be determined by a court of competent jurisdiction to be contrary to law, then such covenant or covenants, or such agreement or agreements, or such portions thereof, shall be deemed severable from the remaining covenants and agreements or portions thereof provided in this Resolution and the invalidity thereof shall in no way affect the validity of the other provisions of this Resolution or of the Note, but the Owner of the Note shall retain all the rights and benefits accorded to them hereunder and under any applicable provisions of law.

If any provisions of this Resolution shall be held or deemed to be or shall, in fact, be inoperative or unenforceable or invalid as applied in any particular case in any jurisdiction or

jurisdictions or in all jurisdictions, or in all cases because it conflicts with any constitution or statute or rule of public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable or invalid in any other case or circumstance, or of rendering any other provision or provisions herein contained inoperative or unenforceable or invalid to any extent whatever.

**Section 12.7. Law and Place of Enforcement of this Resolution.** The Resolution shall be construed and interpreted in accordance with the laws of the State. All suits and actions arising out of this Resolution shall be instituted in a court of competent jurisdiction in the State except to the extent necessary for enforcement, by any trustee or receiver appointed by or pursuant to the provisions of this Resolution, or remedies under this Resolution.

**Section 12.8. Effect of Article and Section Headings and Table of Contents.** The headings or titles of the several Articles and Sections hereof, and any table of contents appended hereto or to copies hereof, shall be solely for convenience of reference and shall not affect the meaning, construction, interpretation or effect of this Resolution.

**Section 12.9. Repeal of Inconsistent Resolution.** Any Resolution of the City, or the Agency and any part of any resolution, inconsistent with this Resolution is hereby repealed to the extent of such inconsistency.

**Section 12.10. Publication and Effectiveness of this Resolution.** This Resolution shall take effect and be in full force from and after its passage by the Community Development Agency of the City.

**Section 12.11 Agency to Execute Redevelopment Contract and Approve Plan.** The Chairman and Secretary are authorized and directed to execute the Redevelopment Contract, in the form presented with such changes as the Chairman, in his discretion deems proper. The Plan is approved and adopted.

**PASSED AND ADOPTED:** November 13, 2019.

**COMMUNITY DEVELOPMENT AGENCY OF  
THE CITY OF DAVID CITY, NEBRASKA**

(SEAL)

By: \_\_\_\_\_  
Chairman Alan Zavodny

ATTEST:

By: \_\_\_\_\_  
Secretary Joan Kovar

There being no further business to come before the Community Development Agency, CDA member Hotovy made a motion to adjourn. CDA member Trowbridge seconded the

motion. Voting AYE: CDA members Vandenberg, Kobus, Pat Meysenburg, Bruce Meysenburg, Trowbridge, and Hotovy. Voting NAY: None. The motion carried and Chair Alan Zavodny declared the Community Development Agency meeting adjourned at 7:43 p.m.

Council member Bruce Meysenburg made a motion to come back in session as the City Council at 7:44 p.m. Council member Pat Meysenburg seconded the motion. Voting AYE: Council members Hotovy, Trowbridge, Kobus, Pat Meysenburg, Vandenberg, and Bruce Meysenburg. The motion carried.

Council member Trowbridge introduced Resolution No. 30 - 2019 and moved for its passage and adoption. Council member Kobus seconded the motion. Voting AYE: Council members B. Meysenburg, Hotovy, P. Meysenburg, Vandenberg, Kobus, and Trowbridge. Voting NAY: None. The motion carried and Resolution No. 30 - 2019 was passed and approved as follows:

**RESOLUTION NO. 30 - 2019**

**RESOLUTION RATIFYING AND CONFIRMING THE HIRING OF CONSULTING ENGINEERS; APPROVAL OF THE PLANS, SPECIFICATIONS AND ESTIMATE OF COST PREPARED BY THE CONSULTING ENGINEERS FOR SANITARY SEWER DISTRICT NO. 2019 - 1; APPROVING AND PROPOSING RESOLUTION NO. 31-2019 PROVIDING FOR THE CREATION OF SANITARY SEWER DISTRICT NO. 2019 - 1.**

BE IT RESOLVED by the Mayor and City Council of the City of David City, Nebraska:

Section 1. By Action of the Mayor and City Council, a contract agreement was approved for the hiring of Olsson Associates, for the design and preparation of plans, specifications and estimate of cost for certain Sanitary system improvements;

Section 2. That the plans, specifications and estimate of construction cost of \$112,970.50 filed by the City's Engineers, Olsson Associates, in the office of the City Clerk for the construction of Sanitary Sewer improvements in Sanitary Sewer District No. 2019 - 1, have by the Mayor and City Council been heretofore approved, and the said plans specifications and cost estimate be and the same are hereby additionally approved;

Section 3. All actions of the Mayor and City Council and City Clerk, as set out in Sections 1 and 2, herein, are in all respects hereby approved, ratified and confirmed;

Section 4. That a Resolution of Necessity, designated Resolution No. 31-2019 creating Sanitary Sewer District No. 2019 - 1 of the City of David City be and it is hereby proposed.

PASSED AND APPROVED this 13<sup>th</sup> day of November, 2019.

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Mayor Alan Zavodny

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City Clerk Joan Kovar  
[SEAL]

Council member Kobus introduced and proposed Resolution No. 31 – 2019, which motion was seconded by Council member Bruce Meysenburg. The vote on the motion to be held over for final vote after a public hearing.

City Clerk Joan Kovar presented a proposed Resolution of Necessity for the creation of Sanitary Sewer District No. 2019-1. City Clerk Kovar again advised the Mayor and City Council it would be necessary to give notice of the proposed Resolution of Necessity and Notice of Hearing on the proposed resolution by publication two consecutive weeks prior to the hearing.

The following is the text of said **proposed** Resolution of Necessity:

**RESOLUTION NO. 31 - 2019**

**A RESOLUTION DECLARING THE NECESSITY OF CONSTRUCTING ADDITIONS AND IMPROVEMENTS TO THE CITY'S SANITARY SEWER SYSTEM; CREATING SANITARY SEWER DISTRICT NO. 2019-1 OF THE CITY; MAKING REFERENCE TO AND APPROVING PLANS AND SPECIFICATIONS; APPROVING THE ENGINEERS' ESTIMATE OF COSTS; PROVIDING FOR THE ISSUANCE OF BONDS, WARRANTS AND NOTES, DETERMINING IMPROVEMENTS TO BE GENERAL PUBLIC IMPROVEMENTS NOT OF SPECIAL BENEFIT TO PROPERTY WITHIN SAID DISTRICT AND PROVIDING FOR THE EFFECTIVENESS OF THIS RESOLUTION**

**BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF DAVID CITY, NEBRASKA, as follows:**

Section 1. The Mayor and City Council hereby find and determine that it is necessary and advisable to construct additions and improvements to the City's Sanitary sewer system consisting of the following:

***Construct an 8" sanitary sewer line to enable the development of the project site as defined in the legal description contained in this Resolution.***

Section 2. For purposes of constructing said additions and improvements, there is hereby ordered created Sanitary Sewer District No. 2019 - 1, which shall include certain property within the City fully described as follows:

***A tract of land located in part of the Southwest Quarter (SW1/4) of Section Eighteen (18), Township Fifteen (15) North, Range Three (3), East of the 6th P.M., City of David City, Butler County, Nebraska, and more particularly described as follows:***

***Commencing at the Northwest Intersection of the West Right of Way Line of Industrial Drive and the North Right of Way line of S Street and the point of beginning; thence on an assumed bearing of S02°11'22"E, along said West Right of Way Line of Industrial drive, a distance of 33.86 feet; thence S87°57'28"W a distance of 413.78 feet; thence N01°56'08"W a distance of 131.64 feet; thence S88°03'52"W a distance of 192.03 feet; thence N01°56'08"W a distance of 20.00 feet; thence N88°03'52"E a distance of 182.53 feet; thence N01°56'08"W a distance of 21.80 feet; thence S88°03'52"W a distance of 182.53 feet; thence N01°56'08"W a distance of 20.00 feet thence N88°03'52"E a distance of 227.53 feet; thence S01°56'08"E a distance of 148.36 feet; thence***

***N87°57'28"E a distance of 463 .20 feet; thence S01°59'20"E a distance of 11.14 feet to a point of the North right of way line of S Street; thence S87°57'28"W, along said North right of way line of S Street, a distance of 94.58 feet to the point of beginning. Said tract contains a calculated area of 33,838 square feet or 0.77 acres more or less.***

Section 3. Reference is hereby made to the plans and specifications (the "Plans") for said additions and improvements which have been prepared by Olsson Associates, engineers for the City, and which, together with the estimate of total cost for said additions and improvements have been filed with the City Clerk prior to the proposing of this resolution.

Section 4. The size, kind and location and terminal points of sanitary sewer pipe and other related improvements proposed to be constructed as a part of said additions and improvements are described as follows:

***The project consisted of installing approximately 910 l.f. of 8" pvc sanitary sewer pipe to serve the new Timplt Manufacturing office building, R&D building, and Branch Facility. The new 8" sanitary sewer pipe construction started at the existing manhole within the west right-of-way of Industrial Drive (east of the existing Timplt building). This new line continued north to a new manhole, then continued west to another new manhole, then proceeded north and terminated at a new manhole just southeast of the Timplt R&D building.***

Section 5. The engineer's estimate of total cost for the proposed Sanitary sewer system additions and improvements for said District is \$112,970.50, which amount includes interest cost, cost of issuance and other expenses of the City.

Section 6. It is hereby found and determined that such improvements are of general benefit to the City and that no special assessments shall be levied against the property in the District. Temporary financing may be provided through the issuance of bond anticipation notes as provided by Section 10-137, R.R.S. Neb. 2007. Said additions and improvements shall be financed on a permanent basis by the issuance of the City's general obligation storm sewer bonds issued pursuant to Section 17-925, R.R.S. Neb. 2012.

Section 7. This resolution of necessity shall be in force and effect from and after its adoption as provided by law.

PASSED AND APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
(following notice of public hearing)  
Mayor Alan Zavodny

\_\_\_\_\_  
(following notice of public hearing)  
City Clerk Joan Kovar

Council member Hotovy introduced Resolution No. 32 - 2019 and moved for its passage and adoption. Council member Pat Meysenburg seconded the motion. Voting AYE: Council members B. Meysenburg, Trowbridge, P. Meysenburg, Hotovy, Vandenberg, and Kobus. Voting NAY: None. The motion carried and Resolution No. 32 - 2019 was passed and approved as follows:

**RESOLUTION NO. 32 - 2019**

**RESOLUTION SETTING A HEARING DATE FOR FINAL CONSIDERATION OF RESOLUTION NO. 31-2019 CREATING SANITARY SEWER DISTRICT NO. 2019-1 AND DIRECTING THE CITY CLERK TO PUBLISH NOTICE OF SAID HEARING.**

**BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF DAVID CITY, NEBRASKA:**

Section 1. By Action of the Mayor and City Council Resolution No. 31-2019 has been proposed for the creation of Sanitary Sewer District No. 2019-1 and a hearing is required to be held prior to the passage of said Resolution of Creation

Section 2. That 7:00 o'clock p.m. on the 11<sup>th</sup> day of December, 2019, at the David City - City Office, 557 No. 4<sup>th</sup> Street, in David City, Nebraska, is hereby set as the time and place for the Mayor and City Council to conduct a hearing on the adoption of said resolution and to hear any objections to its passage, at which owners of real property located in said district may appear and make objections to such improvements, and the City Clerk is hereby instructed to provide notice of such hearing as required by law.

PASSED AND APPROVED this 13<sup>th</sup> day of November, 2019.

\_\_\_\_\_  
Mayor Alan Zavodny

\_\_\_\_\_  
City Clerk Joan Kovar

Council member Hotovy introduced Resolution No. 33 - 2019 and moved for its passage and adoption. Council member Vandenberg seconded the motion. Voting AYE: Council members P. Meysenburg, B. Meysenburg, Trowbridge, Hotovy, Kobus, and Vandenberg. Voting NAY: None. The motion carried and Resolution No. 33 - 2019 was passed and approved as follows:

**RESOLUTION NO. 33 - 2019**

**RESOLUTION RATIFYING AND CONFIRMING THE HIRING OF CONSULTING ENGINEERS; APPROVAL OF THE PLANS, SPECIFICATIONS AND ESTIMATE OF COST PREPARED BY THE CONSULTING ENGINEERS FOR STORM WATER SEWER DISTRICT NO. 2019-2; APPROVING AND PROPOSING RESOLUTION NO. 34-2019 PROVIDING FOR THE CREATION OF STORM WATER SEWER DISTRICT NO. 2019-2; AND, SETTING A HEARING DATE AND DATE FOR THE PASSAGE AND ADOPTION OF RESOLUTION OF NECESSITY NO. 34-2019.**

BE IT RESOLVED by the Mayor and City Council of the City of David City, Nebraska:

Section 1. By Acton of the Mayor and City Council, a contract agreement was approved for the hiring of Olsson Associates, for the design and preparation of plans, specifications and estimate of cost for certain storm water system improvements;

Section 2. That the plans, specifications and estimate of construction cost of \$88,370 filed by the City's Engineers, Olsson Associates, in the office of the City Clerk for the construction of Storm Water Sewer improvements in Storm Water Sewer District No. 2019-2, have by the Mayor and City Council been heretofore approved, and the said plans specifications and cost estimate be and the same are hereby additionally approved;

Section 3. All actions of the Mayor and City Council and City Clerk, as set out in Sections 1 and 2, herein, are in all respects hereby approved, ratified and confirmed;

Section 4. That a Resolution of Necessity, designated Resolution No. 34-2019 creating Storm Water Sewer District No. 2019-2 of the City of David City be and it is hereby proposed.

PASSED AND APPROVED this 13<sup>th</sup> day of November, 2019.

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Mayor Alan Zavodny

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City Clerk Joan Kovar

[SEAL]

Council member Hotovy introduced and proposed Resolution No. 34 – 2019, which motion was seconded by Council member Bruce Meysenburg. The vote on the motion to be held over for final vote after a public hearing.

City Clerk Joan Kovar presented a proposed Resolution of Necessity for the creation of Storm Water Sewer District No. 2019-2. City Clerk Kovar again advised the Mayor and City Council it would be necessary to give notice of the proposed Resolution of Necessity and Notice of Hearing on the proposed resolution by publication two consecutive weeks prior to the hearing.

The following is the text of said **proposed** Resolution of Necessity:

**RESOLUTION NO. 34 - 2019**

**A RESOLUTION DECLARING THE NECESSITY OF CONSTRUCTING ADDITIONS AND IMPROVEMENTS TO THE CITY'S STORM WATER SEWER SYSTEM; CREATING STORM WATER SEWER DISTRICT NO. 2019-2 OF THE CITY; MAKING REFERENCE TO AND APPROVING PLANS AND SPECIFICATIONS; APPROVING THE ENGINEERS' ESTIMATE OF COSTS; PROVIDING FOR THE ISSUANCE OF BONDS, WARRANTS AND NOTES, DETERMINING IMPROVEMENTS TO BE GENERAL PUBLIC IMPROVEMENTS NOT OF SPECIAL BENEFIT TO PROPERTY WITHIN SAID DISTRICT AND PROVIDING FOR THE EFFECTIVENESS OF THIS RESOLUTION**

**BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF DAVID CITY, NEBRASKA, as follows:**

Section 1. The Mayor and City Council hereby find and determine that it is necessary and advisable to construct additions and improvements to the City's Storm Water sewer system consisting of the following:

***Construct and re-route a 30" storm sewer system to enable the development of the project site as defined in the legal description contained in this Resolution.***

Section 2. For purposes of constructing said additions and improvements, there is hereby ordered created Storm Water Sewer District No. 2019-2, which shall include certain property within the City fully described as follows:

***A tract of land located in part of the Southwest Quarter (SW1/4) of Section Eighteen (18), Township Fifteen (15) North, Range Three (3), East of the 6th P.M., City of David City, Butler County, Nebraska, and more particularly described as follows:***

***Commencing at the Northwest Intersection of the West Right of Way Line of Industrial Drive and the North Right of Way line of S Street and the point of beginning; thence on an assumed bearing of S02°11'22"E, along said West Right of Way Line of Industrial drive, a distance of 33.86 feet; thence S87°57'28"W a distance of 413.78 feet; thence N01°56'08"W a distance of 131.64 feet; thence S88°03'52"W a distance of 192.03 feet; thence N01°56'08"W a distance of 20.00 feet; thence N88°03'52"E a distance of 182.53 feet; thence N01°56'08"W a distance of 21.80 feet; thence S88°03'52"W a distance of 182.53 feet; thence N01°56'08"W a distance of 20.00 feet thence N88°03'52"E a distance of 227.53 feet; thence S01°56'08"E a distance of 148.36 feet; thence N87°57'28"E a distance of 463.20 feet; thence S01°59'20"E a distance of 11.14 feet to a point of the North right of way line of S Street; thence S87°57'28"W, along said North right of way line of S Street, a distance of 94.58 feet to the point of beginning. Said tract contains a calculated area of 33,838 square feet or 0.77 acres more or less.***

Section 3. Reference is hereby made to the plans and specifications (the "Plans") for said additions and improvements which have been prepared by Olsson Associates, engineers for the City, and which, together with the estimate of total cost for said additions and improvements have been filed with the City Clerk prior to the proposing of this resolution.

Section 4. The size, kind and location and terminal points of storm water sewer pipe, surface drainage structures and storm water surface drainage ways and other related improvements proposed to be constructed as a part of said additions and improvements are described as follows:

***The project consisted of removing 220 l.f. of 30" reinforced concrete pipe (rcp) to allow for the construction of the new Timpte Manufacturing office building. Approximately 387 l.f. of new 30" rcp was installed and re-routed around the new office building. This new pipe connected into the existing 30" at the***

***upstream end of the removal limits and heads north to a curb inlet, and then proceeds west and discharges into the existing drainage ditch.***

Section 5. The engineer's estimate of total cost for the proposed Storm Water sewer system additions and improvements for said District is \$88,370, which amount includes interest cost, cost of issuance and other expenses of the City.

Section 6. It is hereby found and determined that such improvements are of general benefit to the City and that no special assessments shall be levied against the property in the District. Temporary financing may be provided through the issuance of bond anticipation notes as provided by Section 10-137, R.R.S. Neb. 2007. Said additions and improvements shall be financed on a permanent basis by the issuance of the City's general obligation storm sewer bonds issued pursuant to Section 17-925, R.R.S. Neb. 2012.

Section 7. This resolution of necessity shall be in force and effect from and after its adoption as provided by law.

PASSED AND APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

(following notice of public hearing)  
Mayor Alan Zavodny

(following notice of public hearing)  
City Clerk Joan Kovar

Council member Hotovy introduced Resolution No. 35 - 2019 and moved for its passage and adoption. Council member Pat Meysenburg seconded the motion. Voting AYE: Council members Kobus, Trowbridge, Hotovy, B. Meysenburg, P. Meysenburg, and Vandenberg. Voting NAY: None. The motion carried and Resolution No. 35 - 2019 was passed and approved as follows:

**RESOLUTION NO. 35-2019**

**RESOLUTION SETTING A HEARING DATE FOR FINAL CONSIDERATION OF RESOLUTION NO. 34-2019 CREATING STORM SEWER DISTRICT NO. 2019-2 AND DIRECTING THE CITY CLERK TO PUBLISH NOTICE OF SAID HEARING.**

BE IT RESOLVED by the Mayor and City Council of the City of David City, Nebraska:

Section 1. By Action of the Mayor and City Council Resolution No. 34-2019 has been proposed for the creation of Storm Sewer District No. 2019-2 and a hearing is required to be held prior to the passage of said Resolution of Creation.

Section 2. That 7:00 o'clock p.m. on the 11<sup>th</sup> day of December, 2019, at the David City, City Office, 557 No. 4<sup>th</sup> Street, in David City, Nebraska, is hereby set as the time and place for the Mayor and City Council to conduct a hearing on the adoption of said resolution and to hear any objections to its passage, at which owners of real property located in said district may appear and make objections to such improvements, and the City Clerk is hereby instructed to provide notice of such hearing as required by law.

PASSED AND APPROVED this 13<sup>th</sup> day of November, 2019.

Mayor Alan Zavodny

City Clerk Joan Kovar

Council member Hotovy introduced Resolution No. 29 - 2019 and moved for its passage and adoption. Council member Bruce Meysenburg seconded the motion. Voting AYE: Council members Trowbridge, Kobus, Hotovy, B. Meysenburg, P. Meysenburg, and Vandenberg. Voting NAY: None. The motion carried and Resolution No. 29 - 2019 was passed and approved as follows:

**RESOLUTION NO. 29 - 2019**

WHEREAS, Nebraska State Statute 17-503 allows any city of the second class to convey any real and personal property owned by it providing the passage of a resolution directing the sale at public auction or by sealed bid of such real and personal property and the manner and terms thereof; and,

WHEREAS, the City of David City, Nebraska, is the owner of the property legally described as the south twenty-five feet (S 25') of Lot One (1) and the north fifty feet (N 50') of Lot Four (4), Block Two (2), Miles Fourth (4<sup>th</sup>) Addition to David City, Butler County, Nebraska, and,



WHEREAS, the City of David City, Nebraska, desires to sell said property, as is, to the bidder that is deemed by the City Council of the City of David City, Nebraska as the most favorable. The City of David City, Nebraska reserves the right to reject any and all bids.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF DAVID CITY, NEBRASKA, that the City of David City, Nebraska be allowed to conduct a sale of real property and that notice shall be given that said property is for sale, as is, and that sealed bids be accepted until 3:00 o'clock p.m. on **January 8<sup>th</sup>, 2020** for the sale of the property. All sealed bids shall be publicly opened and read aloud during the Regular City Council Meeting on **January 8<sup>th</sup>, 2020** which convenes at 7:00 o'clock p.m. at the City Office, 557 North 4<sup>th</sup> Street, David City, NE. Terms of the sale will include a 10% down-payment with the balance payable within 90 days. The buyer shall pay all closing costs associated with said property.

BE IT FURTHER RESOLVED that the City of David City, Nebraska shall set a minimum price of Seven Thousand Five Hundred dollars (\$7,500.00) and this price shall serve as a minimum price for all sealed bids.

BE IT FURTHER RESOLVED that the sale of real property and the terms thereof shall be published once each week for three consecutive weeks in a legal newspaper published in or of general circulation in David City, Nebraska.

Dated this 13<sup>th</sup> day of November, 2019.

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Mayor Alan Zavodny

(ATTEST)

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City Clerk Joan Kovar

Ryan Ruth of First State Insurance stated: "We received the renewal back from your current insurance company, Allied Benefit Systems Inc. – National General Health Insurance – and it's going up 66.18%. The reason driving this huge increase is we are dealing with some more costly medical conditions that some of the employees have. I would advise that we go back to the fully insured which would be Blue Cross Blue Shield or United Healthcare. Ryan provided the following handout:



**CITY OF DAVID CITY**  
**MEDICAL SUMMARY**  
 Effective: 1/1/2020

Proposal Type	CURRENT		RENEWAL	
Carrier	NHIC		NHIC	
Note	HSA - Embedded		HSA - Embedded	
Plan Name	HSA \$5,000 80%		HSA \$5,000 80%	
Option Type	*SF* - SPEC: \$30K		*SF* - SPEC: \$30K	
Network	In Network		In Network	
Deductible - EE	\$5,000		\$5,000	
Deductible - Family	\$10,000		\$10,000	
Coinsurance	80%		80%	
Out of Pocket Max	\$6,750		\$6,750	
Out of Pocket Max - Family	\$13,500		\$13,500	
Physician/Specialist Copay	Ded then 20%		Ded then 20%	
Copay Note				
Standard Telehealth Copay	Upon Request		Upon Request	
Urgent Care Copay	Ded then 20%		Ded then 20%	
Emergency Room Copay	Ded then 20%		Ded then 20%	
X-Ray/Lab	Ded then 20%		Ded then 20%	
Major Diagnostic (MRI,CT,etc.)	Ded then 20%		Ded then 20%	
Prescriptions(Rx)	Ded then 20%/20%/40%		Ded then 20%/20%/40%	
Specialty Rx	Ded then 20%		Ded then 20%	
Rx Notes				
Provider Network	Aetna Signature Administrators @ PPO		Aetna Signature Administrators @ PPO	
Employee	5	\$335.02	5	\$556.74
Employee + Spouse	2	\$1,005.03	2	\$1,670.17
Employee + Child(ren)	2	\$837.52	2	\$1,391.81
Employee + Family	3	\$1,273.02	3	\$2,115.55
Employee Total		\$4,020.24		\$6,680.88
Dependent Total		\$5,159.02		\$8,573.43
Admin Fee				
<b>Combined Monthly Total</b>		<b>\$9,179.26</b>		<b>\$15,254.31</b>
%Variance				66.18%



**CITY OF DAVID CITY**  
**MEDICAL SUMMARY**  
 Effective: 1/1/2020

Proposal Type	PROPOSED		PROPOSED	
Carrier	BCBSNE		BCBSNE	
Note	HSA - Embedded		HSA - Embedded	
Plan Name	HSA \$4,500 100% - SHB20NB		HSA \$6,900 100% - BHA20NB	
Option Type	Silver		Bronze	
Network	In Network		In Network	
Deductible - EE	\$4,500		\$6,900	
Deductible - Family	\$9,000		\$13,800	
Coinsurance	100%		100%	
Out of Pocket Max	\$4,500		\$6,900	
Out of Pocket Max - Family	\$9,000		\$13,800	
Physician/Specialist Copay	Ded then 0%		Ded then 0%	
Copay Note				
Standard Telehealth Copay	Ded then 0%		Ded then 0%	
Urgent Care Copay	Ded then 0%		Ded then 0%	
Emergency Room Copay	Ded then 0%		Ded then 0%	
X-Ray/Lab	Ded then 0%		Ded then 0%	
Major Diagnostic (MRI,CT,etc.)	Ded then 0%		Ded then 0%	
Prescriptions(Rx)	Ded then 0%		Ded then 0%	
Specialty Rx	Ded then 0%		Ded then 0%	
Rx Notes	Preferred Rx, SBC has add'l info		Preferred Rx, SBC has add'l info	
Provider Network	NEtwork Blue		NEtwork Blue	
Employee	5		5	
Employee + Spouse	2		2	
Employee + Child(ren)	2		2	
Employee + Family	3		3	
Employee Total		\$8,183.78		\$7,114.86
Dependent Total		\$5,867.27		\$5,100.92
Admin Fee				
<b>Combined Monthly Total</b>		<b>\$14,051.05</b>		<b>\$12,215.78</b>
%Variance		53.07%		33.06%

**CITY OF DAVID CITY**  
**MEDICAL SUMMARY**  
 Effective: 1/1/2020

Proposal Type	PROPOSED	PROPOSED	PROPOSED
Carrier	UHC	UHC	UHC
Note	HSA - Embedded	HSA - Embedded	HSA - Embedded
Plan Name	HSA \$4,000 100% - BI-51 w/ 649	HSA \$6,000 80% - BR-CF w/ 941	HSA \$8,550 100% - BR-CL w/ 356
Option Type	Silver	Bronze	Bronze
Network	In Network	In Network	In Network
Deductible - EE	\$4,000	\$6,000	\$8,550
Deductible - Family	\$8,000	\$12,000	\$13,100
Coinsurance	100%	80%	100%
Out of Pocket Max	\$6,550	\$8,550	\$8,550
Out of Pocket Max - Family	\$13,000	\$13,100	\$13,100
Physician/Specialist Copay	Ded then 0%	Ded then 20%	Ded then 0%
Copay Note			
Standard Telehealth Copay	Ded then 0%	Ded then 20%	Ded then 0%
Urgent Care Copay	Ded then 0%	Ded then 20%	Ded then 0%
Emergency Room Copay	Ded then 0%	Ded then 20%	Ded then 0%
X-Ray/Lab	Ded then 0%	Ded then 20%	Ded then 0%
Major Diagnostic (MRI, CT, etc.)	Ded then 0%	Ded then 20%	Ded then 0%
Prescriptions (Rx)	Ded then \$10/\$40/\$90/\$200	Ded then \$10/\$35/\$70/\$200	Ded then 0%
Specialty Rx	Refer to Formulary	Refer to Formulary	Refer to Formulary
Rx Notes	Preferred Rx, SBC has add'l info	Preferred Rx, SBC has add'l info	Preferred Rx, SBC has add'l info
Provider Network	Choice Plus	Choice Plus	Choice Plus
Employee	5 \$700.92	5 \$570.34	5 \$569.80
Employee + Spouse	2 \$1,401.84	2 \$1,140.68	2 \$1,137.61
Employee + Child(ren)	2 \$1,296.71	2 \$1,055.13	2 \$1,052.29
Employee + Family	3 \$1,997.63	3 \$1,625.47	3 \$1,621.09
Employee Total	\$8,411.07	\$6,844.07	\$6,825.05
Dependent Total	\$6,483.53	\$5,275.63	\$5,261.44
Admin Fee			
Combined Monthly Total	\$14,894.60	\$12,119.70	\$12,086.49
%Variance	62.26%	32.03%	31.66%

Mayor Zavodny stated: "How much time do we have before we have to pull the trigger?"

Ryan Ruth stated: "I would need a vote at the next meeting. I have to submit paper work at the very latest, New Year's Eve, but I'd like to...; typically, what we've done in the past is you give me the vote, we'll submit paperwork probably the next day, or the day after, to get things moving along."

Mayor Zavodny stated: "I'm a little more comfortable with that, because I tell you right now, with the rules the way they are with the Union, we can't, we get our hands tied quite a bit on this."

Ryan Ruth stated: "Knowing that, and knowing the conversations we had last year, I don't think they will object too much to that first Blue Cross Blue Shield policy because the benefits get better than what they had last year. Last year, the max out of pocket was \$6,750 and \$13,500 where the max out of pocket this year is \$4,500 and \$9,000 with BCBS, so it's all better benefits, so they shouldn't really throw up too much objection to that."

Discussion followed. Attorney Jerry Pigsley will be asked to discuss these options with the Union Representative Richard Michel.

Council member Trowbridge made a motion to table consideration of the Health Insurance Renewal options to the December 11, 2019 Council Meeting. Council member Pat Meysenburg seconded the motion. Voting AYE: Council members Hotovy, Kobus, Trowbridge, B. Meysenburg, P. Meysenburg, and Vandenberg. Voting NAY: None. The motion carried.

A letter from General Manager Mark Kirby of Butler Public Power District stated: *On March, 11, 2019 the Butler Public Power District Board of Directors passed Resolution 19-105 which increased the Wheeling Rates from \$1.10 to \$1.27. It is time for the second increase and the Butler Board of Directors will be acting on the second increase at the December 10, 2019 board meeting. The second-year increase will take the rate from \$1.27 to \$1.48 for the year 2020. I will recommend that it take effect on all bills rendered after January 1, 2020.*

Mayor Zavodny stated: "Well, this is far from a real easy thing to have a discussion about because they've said what they say it is, and I did share the letter (from General Manager Gary Westphal dated April 24, 2009 which stated annual wheeling rate increases will most likely be less than 1%) we have with Mark saying, "You know, there's a disconnect here; a significant one". This represents an increase to our rate payer that we really get, I would say, very little benefit from. Granted, they are paying for their infrastructure, but we don't get to pay any more for our people, we don't get to buy a new truck or anything, it's just an increase in expense."

Council member Trowbridge stated: "It is being levied for one reason only and that is because they "can" do it to us. They don't substantiate a need; they never talk about a need; it's here's what we can do to you and we're going to do it. It's 34½% in the last ten months. They provide us no more service than they have in the past, they haven't substantiated any cost increases to warrant this increase, this will end up being \$70,000 a year. We've got 1,100 rate payers, that's \$65 a year for every person that has a meter in David City, Nebraska, and when they ask us what they got for it we'll tell them "absolutely nothing". We got put over a barrel. I think the people at the District should be ashamed of themselves if they vote for this at their meeting. We didn't put our own infrastructure in ten years ago because they promised us this wasn't going to happen; but guess what, memories are short."

Mayor Zavodny asked: "What do we have as far as recourse?"

Council member Trowbridge stated: "We go to the Power Review Board and we ask somebody to substantiate why they need this, and my guess is, it can't be done."

Discussion followed.

Council member Trowbridge made a motion to make a protest (an application) to the Power Review Board relative to the two rate increases by Butler Public Power District to the Sub Transmission Wheeling Rates. Council member Hotovy seconded the motion. Voting AYE: Council members P. Meysenburg, Trowbridge, B. Meysenburg, Hotovy, and Kobus. Voting NAY: None. Council member Vandenberg abstained. The motion carried.

City Attorney Jim Egr stated he would check into filing the application with the Power Review Board.

As no-one has volunteered to serve on the Library Board, Council member Hotovy made a motion to table consideration of making an appointment for someone to serve on the Library Board. Council member Trowbridge seconded the motion. Voting AYE: Council members B. Meysenburg, P. Meysenburg, Vandenberg, Trowbridge, Kobus, and Hotovy. Voting NAY: None. The motion carried.

Council member Hotovy made a motion to approve the updated Progress Estimate #22 to Constructors, Inc. in the amount of \$317,912.83 for the Downtown Redevelopment Project. Council member Pat Meysenburg seconded the motion. Voting AYE: Council members B. Meysenburg, Vandenberg, Trowbridge, Kobus, P. Meysenburg, and Hotovy. Voting NAY: None. The motion carried.

Scott Steager was present to explain the request by Homeland Security for a propane generator to be installed by the power plant. Scott stated: "Currently when we had a power outage what we had been doing is taking a little portable generator over there, and when Eric

Betzen was at the Power Plant, he used to do it for us because he was at the Power Plant anyway. Now, they are moving forward to wanting us to have a permanent generator there so no-body has to worry about being there. There would be no cost to the City for any maintenance of any kind. Instead of a diesel generator they want to do a propane generator. So, it takes about 72 gallons every two days; they want to put a 125-gallon propane tank there so we could run at least two days without having to refill it, if it would need to run that long.”

Mayor Zavodny stated: “So our responsibility is basically just giving you the permission to put it on our property. No expense to us, all the maintenance and everything will be handled through Homeland Security.”

Scott Steager replied: “Yes.”

Council member B. Meysenburg made a motion to approve the installation of a backup propane generator on City property by the Power Plant for the Homeland Security 911 System, noting there will be no expense to the City for installation or maintenance. Council member Kobus seconded the motion. Voting AYE: Council members Vandenberg, P. Meysenburg, Hotovy, Trowbridge, Kobus, and B. Meysenburg. Voting NAY: None. The motion carried.

Interim Water Supervisor Aaron Gustin introduced Wendy Ferguson, of Aqua-Aerobic Systems, who has been at the Wastewater Treatment Plant training Aaron and Emmalyn Gaudio-Gustin. Aaron stated: “I just wanted to extend my “Thank You”. A while back everybody decided that it would be a good idea to get training for our people and we have Wendy Ferguson of Aqua-Aerobics here, doing training currently. I would just like to say that even just this first day, the knowledge that she brought with the training on not just the how, but the why things work the way they work with our basins, is more than I’ve gotten from anybody in the past, so it is greatly appreciated.”

Wendy Ferguson, of Aqua-Aerobic Systems reported on the biological process at the Wastewater Treatment Plant and the importance of cross training and continuing education for the employees.

There being no further business to come before the Council, Council member Hotovy made a motion to adjourn. Council member Pat Meysenburg seconded the motion. Voting AYE: Council members Kobus, B. Meysenburg, Trowbridge, Vandenberg, P. Meysenburg, and Hotovy. Voting NAY: None. The motion carried and Mayor Zavodny declared the meeting adjourned at 8:46 p.m.



CERTIFICATION OF MINUTES  
November 13<sup>th</sup>, 2019

I, Joan Kovar, duly qualified and acting City Clerk for the City of David City, Nebraska, do hereby certify with regard to all proceedings of November 13<sup>th</sup>, 2019; that all of the subjects included in the foregoing proceedings were contained in the agenda for the meeting, kept continually current and 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 the minutes of the meeting of the City Council of the City of David City, Nebraska, 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 with advance notification of the time and place of said meeting and the subjects to be discussed at said meeting.

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Joan Kovar, City Clerk