

## CITY COUNCIL PROCEEDINGS

December 11, 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 December 5<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, Tom Kobus, Dana Trowbridge, Bruce Meysenburg, Pat Meysenburg, and John Vandenberg, City Attorney Jim Egr, and City Clerk Joan Kovar.

Also present for the meeting were: Cody Wickham of D.A. Davidson, Ryan Ruth of Agency One Ins., Clayton Keller, Planning Commission Member Janis Cameron, David McPhillips, Roy Metter, Sheriff Tom Dion, David Becker of the Banner Press, and Interim Water Supervisor Aaron Gustin.

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, out of courtesy to people present from a distance, if Agenda Items #20 and #21 concerning the City Administrator position, could be moved up to just after Agenda #7 – Committee and Officer Reports.

Therefore, Council member Trowbridge made a motion to advance Agenda Items #20 and #21 immediately following Agenda #7 and Council member Hotovy seconded the motion. Voting AYE: Council members Hotovy, B. Meysenburg, P. Meysenburg, Vandenberg, Kobus, and Trowbridge. Voting NAY: None. The motion carried.

The minutes of the November 13, 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, Pat Meysenburg, Vandenberg, Trowbridge, and Kobus. Voting NAY: None. The motion carried.

Council member Trowbridge made a motion to approve Pay Estimate #14 to Eriksen Construction Co., in the amount of \$312,899.45 for the Wastewater Treatment Plant Project. Council member Pat Meysenburg seconded the motion. Voting AYE: Council members Bruce Meysenburg, Vandenberg, Trowbridge, Kobus, Hotovy, and Pat Meysenburg. 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 B. Meysenburg seconded the

motion. Voting AYE: Council members P. Meysenburg, Vandenberg, Trowbridge, Kobus, Hotovy, and B. Meysenburg. Voting NAY: None. The motion carried.

Mayor Zavodny asked for any comments or questions concerning the Committee and Officer Reports. Mayor Zavodny stated: "Someone came up from the Wellness Center and asked why the City put snow in the handicapped parking space by the Post Office. I did some investigation, and talked to Street Supervisor Chris Kroesing, who stated that his street crew knew better. It turns out it was actually a private snow removal outfit that took it from the Bank and the Post Office and placed it in the handicapped parking spot. They have been contacted and told not to do that again. So, for the record, that was not the City's doings, and that needs to be made public and cleared up."

City Attorney Egr stated: "At last month's meeting, I was asked to make an application on behalf of the City, to the Power Review Board, relative to the two rate increases by Butler Public Power District to the Sub Transmission Wheeling Rates. I couldn't file that until after Butler Public Power District passed their resolution, and I don't know if they passed that yesterday or not at their meeting. Does anybody know? Yes, they did, OK. I wanted to let you know that I visited with Tim Texel of the Power Review Board and I got some information from him, and the one thing he said, and I don't know if that was just a hint, but he said "you know, we can only recommend, we can't force anything".

Council member Trowbridge stated: "And in the next breath he will tell you, the strongest response you will have in District Court, is what they say. I still don't think their (BPPD's) analysis has any more to do than "we are able to do this to you, so we are going to".

City Attorney Egr stated that now that BPPD has passed their resolution, he will file the application complaint with the Power Review Board.

Mayor Zavodny stated: "We continue to try to figure out the operating of the Power Plant. We've been making progress on that, so that has resumed, and we are collecting our payment from NPPD."

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

Mayor Zavodny stated: "Now we have a proposed agreement between the City Council and our candidate for City Administrator. I think the appropriate thing to do would be to give Clayton a second if you would like to say anything."

Clayton Keller stated: "Clayton Keller, City Administrator candidate. Thanks for taking the time to get to know me and having me out here the several times that you guys did, it's been awesome and the whole process has been great, so Thank You."

Council member Hotovy made a motion to execute the Administrator agreement and appoint Clayton Keller as the City Administrator effective January 2, 2020. Council member Kobus seconded the motion. Voting AYE: Council members B. Meysenburg, P. Meysenburg, Trowbridge, Hotovy, Vandenberg, and Kobus. Voting NAY: None. The motion carried.

## City Administrator Employment Agreement

## Introduction

This Agreement, made and entered into this 11<sup>th</sup> day of December 2019, by and between the City of David City of Nebraska, a municipal corporation, (hereinafter called "Employer") and Clayton Keller, (hereinafter called "Employee") an individual who has the education, training and experience in local government management and who, as a member of the International City/County Management Association (ICMA), is subject to the ICMA Code of Ethics, both of whom agree as follows:

## Section 1: Term

- A. This agreement shall remain in full force and effect from January 2, 2020 until terminated by the Employer or Employee as provided in Section 8, 9, or 10 of this agreement.
- B. The term of this agreement shall be for an initial period of 1 year from January 2, 2020 to January 1, 2021. This Agreement shall automatically be renewed on its anniversary date for a 1-year term unless notice that the Agreement shall terminate is given at least 3 months before the expiration date. In the event the agreement is not renewed, all compensation, benefits and requirements of the agreement shall remain in effect until the expiration of the term of the Agreement unless Employee voluntarily resigns.
- C. In the event that the Employee is terminated, as defined in Section 8 of this agreement, the Employee shall be entitled to all compensation including salary, accrued vacation, or in a continuation of salary on the existing [biweekly/monthly] basis, at the Employee's option, plus continuation of all benefits for the remainder of the term of this agreement.

## Section 2: Duties and Authority

- A. Employer agrees to employ Clayton Keller as City Administrator to perform the functions and duties specified in Article 5 Section 1-503 of the City of David City Ordinance and to perform other legally permissible and proper duties and functions without interference.
- B. Employee is the chief executive officer of the Employer and shall faithfully perform the duties as prescribed in the job description as set forth in the Employer's Ordinance and as may be lawfully assigned by the Employer and shall comply with all lawful governing body directives, state and federal law, Employer policies, rules and ordinances as they exist or may hereafter be amended.
- C. Specifically, it shall be the duty of the Employee to employ on behalf of the Employer all other employees of the organization consistent with the policies of the governing body and the ordinances of the Employer.
- D. It shall also be the duty of the Employee to direct, assign, reassign and evaluate all of the employees of the Employer consistent with policies, ordinances, state and federal law.
- E. It shall also be the duty of the Employee to organize, reorganize and arrange the staff of the Employer and to develop and establish internal regulations, rules and procedures which the Employee deems necessary for the efficient and effective operation of the Employer consistent with the lawful directives, policies, ordinances, state and federal law.
- F. It shall also be the duty of the Employee to accept all resignations of employees of the Employer consistent with the policies, ordinances, state and federal law, except the Employee's resignation which must be accepted by the governing body.
- G. The Employee shall perform the duties of city administrator of the Employer with reasonable care, diligence, skill and expertise.
- H. All duties assigned to the Employee by the governing body shall be appropriate to and consistent with the professional role and responsibility of the Employee.
- I. The Employee cannot be reassigned from the position of city administrator to another position without the Employee's express written consent.
- J. The Employee or designee shall attend, and shall be permitted to attend, all meetings of the governing body, both public and closed, with the exception of those closed meetings devoted to the subject of this

Agreement, or any amendment thereto or the Employee's evaluation or otherwise consistent with state law.

K. The governing body, individually and collectively, shall refer in a timely manner all substantive criticisms, complaints and suggestions called to their attention to the Employee for study and/or appropriate action.

### **Section 3: Compensation**

A. Base Salary: Employer agrees to pay Employee an annual base salary of \$75,000 payable in installments at the same time that the other management employees of the Employer are paid.

B. This agreement shall be automatically amended

to reflect any salary adjustments that are provided or required by the Employer's compensation policies to include all salary adjustments on the same basis as applied to the executive classification of employees.

C. In addition, consideration shall be given on an annual basis to an increase in compensation.

D. The Employer agrees to increase the compensation of the Employee dependent upon the results of the performance evaluation conducted under the provisions of Section 11 of this Agreement. Increased compensation can be in the form of a salary increase and/or performance incentive and/or an increase in benefits.

### **Section 4: Health, Disability and Life Insurance Benefits**

A. The Employer agrees to provide and to pay the premiums for health, hospitalization, surgical, vision, dental and comprehensive medical insurance for the Employee and his/her dependents, at a minimum, equal to that which is provided to all other employees of the City of David City. In the event no such plan exists, Employer agrees to provide coverage for the Employee and dependents in a manner mutually agreed upon by Employer and Employee.

B. The Employer agrees to put into force and to make required premium payments for short term and long-term disability coverage for the Employee.

### **Section 5: Vacation, Sick, and Military Leave**

A. Upon commencing employment, the Employee shall be credited with 40 accrued sick leave hours and 40 accrued vacation leave hours. In addition, beginning the first day of employment, Employee shall accrue sick leave and vacation leave on an annual basis, at a minimum, at the highest rate provided or available to any other employees, under the same rules and provisions applicable to other employees.

### **Section 6: Automobile**

A. The Employer shall reimburse the Employee at the IRS standard mileage rate for any business use of the vehicle.

### **Section 7: Retirement**

A. The Employer agrees to enroll the Employee into the applicable state or local retirement system and to make all the appropriate contributions on the Employee's behalf.

### **Section 8: Termination**

A. For the purpose of this agreement, termination shall occur when:

1. The majority of the governing body votes to terminate the Employee in accordance with Article 5 Section 1-503 at a properly posted and duly authorized public meeting.

2. If the Employer, citizens or legislature acts to amend any provisions of the city code pertaining to the role, powers, duties, authority, responsibilities of the Employee's position that substantially changes the

form of government, the Employee shall have the right to declare that such amendments constitute termination.

3. If the Employer reduces the base salary, compensation or any other financial benefit of the Employee, unless it is applied in no greater percentage than the average reduction of all department heads, such action shall constitute a breach of this agreement and will be regarded as a termination.

4. If the Employee resigns following an offer to accept resignation, whether formal or informal, by the Employer as representative of the majority of the governing body that the Employee resign, then the Employee may declare a termination as of the date of the suggestion.

5. Breach of contract declared by either party with a 30-day cure period for either Employee or Employer. Written notice of a breach of contract shall be provided in accordance with the provisions of Section 20.

6. In the event the Employee is terminated by the Employer during the six (6) months immediately following the seating and swearing-in of one or more new governing body members, and during such time that Employee is willing and able to perform his duties under this Agreement, then, Employer agrees to pay Severance in accordance with Section 10 plus salary and benefits in accordance with Section 10 for any portion of the six months not worked.

### **Section 9: Severance**

Severance shall be paid to the Employee when employment is terminated as defined in Section 8.

A. If the Employee is terminated, the Employer shall provide a minimum severance payment equal to six (6) months' salary at the then current rate of pay. This severance shall be paid in a lump sum or in a continuation of salary on the existing [biweekly/monthly] basis, at the Employee's option,

B. The Employee shall also be compensated for all vacation leave, and all paid holidays.

C. The Employer agrees to make a contribution to the Employee's deferred compensation account on the value of this compensation calculated using the then current annual salary of Employee at the date of termination divided by two thousand and eighty (2080) hours. If the amount of the contribution under this Section exceeds the limit under the Code for a contribution to the Deferred Compensation plan, the remainder shall be paid to the Employee in a lump sum as taxable compensation.

### **Section 10: Resignation**

A. In the event that the Employee voluntarily resigns his/her position with the Employer, the Employee shall provide a minimum of 60 days' notice unless Employer and Employee agree otherwise.

### **Section 11: Performance Evaluation**

A. Employer shall semi-annually review the performance of the Employee subject to a process, form, criteria, and format for the evaluation which shall be mutually agreed upon by the Employer and Employee.

B. The evaluation process, at a minimum, shall include the opportunity for both parties to: (1) conduct a formulary session where the governing body and the Employee meet first to discuss goals and objectives of both the past six (6) month performance period as well as the upcoming six (6) month performance period, (2) following that formulary discussion, prepare a written evaluation of goals and objectives for the past and upcoming year, (3) next meet and discuss the written evaluation of these goals and objectives, and (4) present a written summary of the evaluation results to the Employee. The final written evaluation should be completed and delivered to the Employee within 30 days of the initial formulary evaluation meeting.

C. Unless the Employee expressly requests otherwise in writing, the evaluation of the Employee shall at all times be conducted in executive session of the governing body and shall be considered confidential to the extent permitted by law. Nothing herein shall prohibit the Employer or Employee from sharing the content of the Employee's evaluation with their respective legal counsel.

D. In the event the Employer deems the evaluation instrument, format and/or procedure is to be modified by the Employer and such modifications would require new or different performance expectations, then the Employee shall be provided a reasonable period of time to demonstrate such expected performance before being evaluated.

## **Section 12: Hours of Work**

A. It is recognized that the Employee must devote a great deal of time outside the normal office hours on business for the Employer, and to that end Employee shall be allowed to establish an appropriate work schedule. The schedule shall be appropriate to the needs of the Employer and shall allow Employee to faithfully perform his assigned duties and responsibilities.

## **Section 13: Ethical Commitments**

A. Employee will at all times uphold the tenets of the ICMA Code of Ethics, a copy of which is attached hereto and incorporated herein. Specifically, Employee shall not endorse candidates, make financial contributions, sign or circulate petitions, or participate in fundraising activities for individuals seeking or holding elected office, nor seek or accept any personal enrichment or profit derived from confidential information or misuse of public time.

B. Employer shall support Employee in keeping these commitments by refraining from any order, direction or request that would require Employee to violate the ICMA Code of Ethics. Specifically, neither the governing body nor any individual member thereof shall request Employee to endorse any candidate, make any financial contribution, sign or circulate any petition, or participate in any fundraising activity for individuals seeking or holding elected office, nor to handle any matter of personnel on a basis other than fairness, impartiality and merit.

## **Section 14: Indemnification**

A. Beyond that required under Federal, State or Local Law, Employer shall defend, save harmless and indemnify Employee against any obligation to pay money or perform or no perform action, including without limitation, any and all losses, damages, judgments, interests, settlements, penalties, fines, court costs and other reasonable costs and expenses of legal proceedings including attorney's fees, and any other liabilities arising from, related to, or connected with any tort, professional liability claim or demand or any other threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, arbitative or investigation, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of Employee's duties as city administrator or resulting from the exercise of judgment or discretion in connection with the performance of program duties or responsibilities, unless the act or omission involved willful or wanton conduct. The Employee may request and the Employer shall not unreasonably refuse to provide independent legal representation at Employer's expense and Employer may not unreasonably withhold approval. Legal representation, provided by Employer for Employee, shall extend until a final determination of the legal action including any appeals brought by either party. The Employer shall indemnify Employee against any and all losses, damages, judgments, interest, settlements, penalties, fines, court costs and other reasonable costs and expenses of legal proceedings including attorney's fees, and any other liabilities incurred by, imposed upon, or suffered by such Employee in connection with or resulting from any claim, action, suit, or proceeding, actual or threatened, arising out of or in connection with the performance of his or her duties. Any settlement of any claim must be made with prior approval of the Employer in order for indemnification, as provided in this Section, to be available.

B. Employee recognizes that Employer shall have the right to compromise and unless the Employee is a party to the suit which Employee shall have a veto authority over the settlement, settle any claim or suit; unless, said compromise or settlement is of a personal nature to Employee. Further, Employer agrees to pay all reasonable litigation expenses of Employee throughout the pendency of any litigation to which the

Employee is a party, witness or advisor to the Employer. Such expense payments shall continue beyond Employee's service to the Employer as long as litigation is pending. Further, Employer agrees to pay Employee reasonable consulting fees and travel expenses when Employee serves as a witness, advisor or consultant to Employer regarding pending litigation.

### **Section 15: Bonding**

A. Employer shall bear the full cost of any fidelity or other bonds required of the Employee under any law or ordinance.

### **Section 16: Other Terms and Conditions of Employment**

A. The Employer, only upon agreement with Employee, shall fix any such other terms and conditions of employment, as it may determine from time to time, relating to the performance of the Employee, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, the City of David City Ordinance, local ordinances or any other law.

B. Except as otherwise provided in this Agreement, the Employee shall be entitled, at a minimum, to the highest level of benefits that are enjoyed by or offered to other appointed officials, appointed employees, department heads or general employees of the Employer as provided in the Ordinances, Code, Personnel Rules and Regulations or by practice.

C. The Employer has appropriated, set aside and encumbered, and does hereby appropriate, set aside, and encumber, available and unappropriated funds of the municipality in an amount sufficient to fund and pay all financial obligations of the Employer pursuant to this Agreement, including but not limited to, the Severance and other benefits set forth in Section 10.

### **Section 17: Notices**

Notice pursuant to this Agreement shall be given by depositing in the custody of the United States Postal Service, postage prepaid, and addressed as follows:

(a) EMPLOYER: City of David City  
557 N 4<sup>th</sup> St.  
David City, NE 68632

(b) EMPLOYEE: Clayton Keller  
773 "D" Street Apt. #5  
David City, NE 68632

Notice shall be deemed given as of the date of personal service or as the date of deposit of such written notice in the course of transmission in the United States Postal Service.

### **Section 18: General Provisions**

A. **Integration.** This Agreement sets forth and establishes the entire understanding between the Employer and the Employee relating to the employment of the Employee by the Employer. Any prior discussions or representations by or between the Employer and Employee are merged into and rendered null and void by this Agreement. The Employer and Employee by mutual written agreement may amend any provision of this agreement during the life of the agreement. Such amendments shall be incorporated and made a part of this agreement.

B. **Binding Effect.** This Agreement shall be binding on the Employer and the Employee as well as their heirs, assigns, executors, personal representatives and successors in interest.

C. **Effective Date.** This Agreement shall become effective on January 2, 2020.

D. **Severability.** The invalidity or partial invalidity of any portion of this Agreement will not affect the validity of any other provision. In the event that any provision of this Agreement is held to be invalid, the remaining provisions shall be deemed to be in full force and effect as if they have been executed by both Employer and Employee subsequent to the expungement or judicial modification of the invalid provision.

E. **Precedence.** In the event of any conflict between the terms, conditions and provisions of this Agreement and the provisions of Council's policies, or Employer's ordinance or Employer's rules and regulations, or any permissive state or federal law, then, unless otherwise prohibited by law, the terms of this Agreement shall take precedence over contrary provisions of Council's policies, or Employer's ordinances, or Employer's rules and regulations or any such permissive law during the term of this Agreement.

Executed this 11<sup>th</sup> day of December, 2019.

City of David City

---

Mayor Alan Zavodny



City Administrator

---

Clayton Leigh Keller

Council member Hotovy introduced Ordinance No. 1329 setting the salary for City Administrator Clayton Keller. Mayor Zavodny read Ordinance No. 1329 by title. Council member Hotovy made a motion to suspend the statutory rule that requires an Ordinance be read on three separate days. Council member Pat Meysenburg seconded the motion. Voting AYE: Council members Trowbridge, Kobus, Hotovy, Vandenberg, P. Meysenburg, and B. Meysenburg. Voting NAY: None. The motion carried.

Council member Hotovy made a motion to pass and adopt Ordinance No. 1329 on the third and final reading. Council member Vandenberg seconded the motion. Voting AYE: Council members P. Meysenburg, Trowbridge, Hotovy, B. Meysenburg, Kobus, and Vandenberg. Voting NAY: None. The motion carried and Ordinance No. 1329 was passed on 3<sup>rd</sup> and final reading as follows:

**ORDINANCE NO. 1329**

AN ORDINANCE OF THE CITY OF DAVID CITY, NEBRASKA TO SET THE PAY FOR THE CITY ADMINISTRATOR; REPEAL ALL ORDINANCES OR PORTIONS OF ANY ORDINANCE IN CONFLICT THEREWITH; PROVIDE AN EFFECTIVE DATE; AND PROVIDE FOR PUBLICATION OF THE ORDINANCE IN PAMPHLET FORM.

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

SECTION 1. The Mayor and City Council of David City, Nebraska, do hereby establish and fix the salary for City Administrator Clayton Keller at \$75,000.00 per year, after the passage of this ordinance.

SECTION 2. Any and all ordinances, or sections thereof, passed and approved prior to the passage, approval and publication or posting of this ordinance, and in conflict with its provisions, is hereby repealed.

SECTION 3. This ordinance shall be published in pamphlet form and shall be in full force and effect beginning on January 2, 2020.

PASSED AND APPROVED this 11<sup>th</sup> day of December, 2019.

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

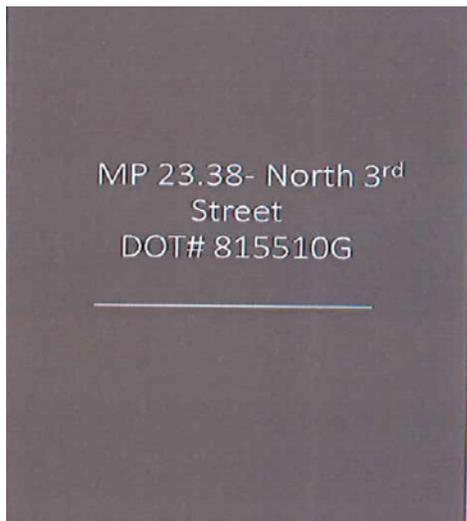
\_\_\_\_\_  
City Clerk Joan Kovar

Taylor Kelley, Manager of Safety, and Jason Quast, General Manager, both of the Nebraska Central Railroad Co. were present to discuss the possibility of railroad crossing closures in David City. They would like to enhance safety in David City. They presented the following:

The Nebraska Central Railroad Company is committed to safety in every community that we traverse through. We believe we're all partners in safety and can always evaluate new ways to increase safety within this partnership. In the upcoming slides we believe we've recognized an opportunity of potential railroad crossing closures in David City. This will enhance safety and cut down on the public's potential for complacency when traversing railroad grade crossings.

While Operation Lifesaver's role is primarily to promote education, engineering is one of the important three E's of rail traffic safety. We support and encourage the kinds of continued engineering research and innovation responsible for having greatly improved the safety of America's railroad crossings because whenever two modes of transportation share the same section of roadway, as they do at highway-rail grade crossings, the possibility for a collision exists. Engineering technologies play a critical role in helping minimize and reduce those collision risks.

Taylor Kelley stated: "I've selected a few crossings that I, and the Railroad, feel are some good candidates for closure. They may or they might not be, and there may be others that aren't on this list that maybe is a better fit. So, I just picked a few out of the eight."



North 3<sup>rd</sup> Street in David City is a Public Highway – Rail Grade Crossing. This railroad crossing traverses the Stromsburg Mainline track.

MP 23.15- North 6<sup>th</sup>  
Street  
DOT# 818100T

---

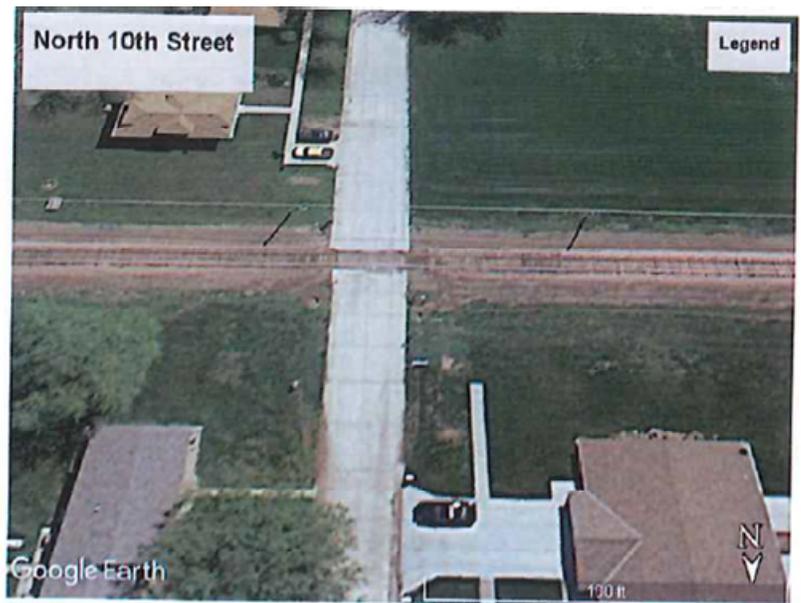


North 6<sup>th</sup> Street is a Public Highway – Rail Grade Crossing in David City. This crossing traverses the Stromsburg Mainline and one-yard track.

Alternative to crossing at North 6<sup>th</sup> Street is 5<sup>th</sup> Street to the West and Seventh Street to the East.

MP 22.84- North 10<sup>th</sup>  
Street  
DOT# 818096F

---



North 10<sup>th</sup> Street is a Public Highway – Rail Grade Crossing in David City. This crossing traverses over the Stromsburg mainline.

Alternatives are North 9<sup>th</sup> Street to the west and North 11<sup>th</sup> to the east. This crossing has alternative routes in close proximity.

## Added Community Benefits

Title 415 Nebraska Department of Roads – Rail and Public Transportation Division

### CHAPTER 5

002.01 If the Department and the political subdivision with jurisdiction over the crossing, agree that a grade crossing should be eliminated by closing the street, road, or highway, the political subdivision making such closing, after entering into an agreement with the Department and the railroad involved, shall receive five thousand dollars from the State Grade Crossing Protection Fund, five thousand dollars from the railroad involved, and the actual cost of closure, not to exceed twelve thousand dollars, from the State Grade Crossing Protection Fund.

#### The Next Step:

The next step in the process if any closures are agreed upon by the local municipality is:  
A signed Resolution on the applicable crossing.

Then a diagnostic study of the crossing by the Nebraska Department of Roads.

Mayor Zavodny asked: “How many trains come through; what’s the consistency?”

Taylor Kelley stated: “I would say around just two a day.”

Mayor Zavodny asked: “Through this? For the number of streets we have, this seems like a lot. We do have 8<sup>th</sup> Street closed and now you are “proposing” closing almost half of our ways to get from the north to the south, and the one on 6<sup>th</sup> Street by Sack Lumber and the grocery store....

Taylor Kelley stated: “And I’m not saying we have to do all of these, you know, even if a community wants to do one, or whatever it might be.”

Council member Hotovy stated that he thought this was something that a person would want to consider for a while. Hotovy said we might want to have a good conversation with Principal Chad Denker of David City Public Schools to see if they have plans to expand and would want another street closed down like they did on 8<sup>th</sup> Street. The public should also be notified so we could get their comments and views as to what they think of this.

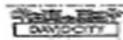
Mayor Zavodny asked: “If a traffic study were commissioned, you would conduct that or fund that?”

Taylor Kelley stated: “Typically it’s been done by the City, but we can talk about that.”

Discussion followed. This is basically to start the conversation as they (the Railroad) realize the Mayor and Council will want to get the public’s feedback before making any decisions.

Ryan Ruth of First State Insurance stated: “Well, nothing new, but we did hear back from the Union that they are okay with the proposed plan, so a quick recap, the renewal came in at a 66% increase based on a myriad of different health issues. So, what I was recommending was going back to Blue Cross & Blue Shield, with that Silver plan, which comes in at a 53% increase but it’s less than the renewal and it’s the most similar plan to what the employees had, it’s

actually a little better in the out-of-pocket area, and so to appease the Union and everyone involved as far as keeping it similar to what we had, that would be my recommendation.”



### 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<br>® PPO |            | Aetna Signature Administrators<br>® PPO |             |
| Employee                       | 5                                       | \$335.02   | 5                                       | \$555.74    |
| 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                      |   |            |   |             |
| Combined Monthly Total         |   | \$9,179.26 |   | \$15,254.31 |
| %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                 |                                  | \$8,163.78  |                                  | \$7,114.86  |
| Dependent Total                |                                  | \$5,867.27  |                                  | \$5,100.92  |
| Admin Fee                      |                                  |             |                                  |             |
| Combined Monthly Total         |                                  | \$14,051.05 |                                  | \$12,215.78 |
| %Variance                      |                                  | 53.07%      |                                  | 33.06%      |

Council member Trowbridge stated: “This is not sustainable and we all know that; the question is “what day does it fall apart?”. We are swimming upstream; we are going against the current. The current of a funded plan for the deductibles is to keep people out of the doctor’s

office because they are paying for it out of their own pocket, and it works, but when we pay for it, it doesn't seem to work, and everybody tells you it won't, and it doesn't. So, I don't know why we keep swimming upstream. We are charging the people in this community a shameful amount of money. I realize as an employee I would love this plan."

Mayor Zavodny stated: "Insurance has really moved to more of a catastrophic prevention to keep it affordable and to make it work for everybody. The thing I'm worried about, because I've heard rumblings already, is the employees want the percentage to be 90% instead of the current 75%, so there's increased cost. I don't think we are treating every employee the same, because some have single insurance coverage and others have family insurance coverage. We currently pay 75% of either, but we should be paying the same for every employee, but we're not. If they want or need the family plan that should be up to them."

Discussion followed. It was noted that discussion of the Health Insurance coverage should be discussed in June or July with the upcoming budget requests so that there is more time to research options.

Council member Kobus made a motion to approve the Blue Cross Blue Shield of NE, Silver Plan, for the employee's health insurance coverage. Council member P. Meysenburg seconded the motion. Voting AYE: Council members Vandenberg, Hotovy, B. Meysenburg, Trowbridge, Kobus, and P. Meysenburg. Voting NAY: none. The motion carried.

The City Council reviewed the updated contract for Raymond S. Sueper as the Building Inspector.

Council member Trowbridge stated: "I don't think we are accomplishing what we would like to; I think it is moving very slowly."

Mayor Zavodny asked: "Is that because of that position or is it somewhat us? Are our expectations not meeting...."

Council member Trowbridge stated: "Maybe our, maybe "my" expectations, maybe Pat's expectation is greater than we are ever going to receive benefit of, in clean-up. It's a difficult position because the people you are dealing with are never in agreement with you; they see life through a different prism and then fight you at every turn and do nothing to cooperate. I'd love to see them all in Court to be honest with you."

Council member Kobus asked: "What kind of schooling does that involve, to be one of those building inspectors?"

Mayor Zavodny stated: "I think really, it's application of the rules is the most important thing. Construction background, which is what Ray brings, but short of a certified engineer, you could have a wide range of qualifications that could do that type of job. For what we are paying, our results don't seem to be in sync."

Council member Trowbridge stated: "They do not mesh; you are correct."

Council member Meysenburg stated: "I've brought stuff in to him and asked him to look into it, and I can come back two weeks later and ask him what he's found out, and he has no recollection of me having asked him."



election, and it has to be filed within 30 days after the third publication notice. If there is a remonstrance, the property cannot be sold for a year after that. If there is not a remonstrance, the City can go ahead and sell the property. City Clerk Kovar will publish the notice for three weeks and if there is no remonstrance then the bid could be accepted by an ordinance at the February 12, 2020 Council Meeting.]

As Cody Wickham of D. A. Davidson was not yet present, Council member Trowbridge made a motion to skip over Agenda Items #12, #13, #14, and #15, until his arrival, and advance to Agenda Item #16. Council member Hotovy seconded the motion. Voting AYE: Council members B. Meysenburg, P. Meysenburg, Kobus, Trowbridge, Hotovy, and Vandenberg. Voting NAY: None. The motion carried.

Mayor Zavodny stated: "I have done some research on the recycling program and this is truly a national issue. In the articles, that we can see, the countries that were buying these products have just stopped; our cardboard went to zero, they weren't paying for it anymore. Now, it's back to \$5/ton which isn't even close to meeting our expenses. I thought about this, and we are going to discuss this as a group, and I came up with 3 things we can potentially do: 1: we can do nothing and keep operating it and know that we are taking a loss, and a big loss, bigger than we've ever had before, and hoping that it will turn around. There is some belief from people that it will turn around at some point, but they can't say when; 2: another option is we just don't do a recycling program anymore; cut the expense of it, we don't have any place to store it, that kind of thing; and 3: the compromise position that I thought of is, we suspend recycling temporarily until hopefully the price becomes something where we can at least pay for transporting it, and a little bit of our expense for running the program. So, those are the three options I came up with, you might have different ones. Really, right now, we are subsidizing the landfill is what we are doing."

Council member Trowbridge stated: "I think we are subsidizing the landfill when we don't take cardboard and we make people shove it in their trash cans because then the hauler has to pay for it when he dumps it. So, it's going to be hard on the hauler because he is going to have more."

Council member P. Meysenburg stated: "They are already complaining."

Council member B. Meysenburg asked: "Do we get anything for the plastic, and stuff like that, or how does that work?"

Mayor Zavodny stated: "That has gone to almost zero also. Paper, they were even talking about not taking anymore. There are no markets for anything right now."

Discussion followed.

Council member Kobus made a motion to temporarily suspend the recycling program, for six (6) months, and then revisit this. Council member Hotovy seconded the motion. Voting AYE: Council members Trowbridge, B. Meysenburg, P. Meysenburg, Kobus, Vandenberg, and Hotovy. Voting NAY: None. The motion carried.

Council member Hotovy made a motion to take the Agreement to Timpte and start negotiations concerning an agreement between the City and Timpte, Inc., to define the terms and conditions applicable for utilizing State of Nebraska Economic Opportunity Program Funds for the expenditure of EOP funds to finance transportation improvements to attract and support new businesses and business expansions. Council member Trowbridge seconded the motion.

Voting AYE: Council members B. Meysenburg, Kobus, P. Meysenburg, Vandenberg, Trowbridge, and Hotovy. Voting NAY: None. The motion carried.



**LOCAL AUTHORITY/ BUSINESS  
ECONOMIC OPPORTUNITY PROGRAM AGREEMENT  
(Recommended Provisions)**

---

THIS AGREEMENT is entered into by and between the *[Local Authority: Insert name and address]*, hereinafter the "LA", and the *[Insert name of Business and address]*, hereinafter the "Business", and who together will be collectively referred to as "the Parties".

**WHEREAS**, the purpose of this Agreement is to define the terms and conditions applicable to the Parties for utilizing State of Nebraska Economic Opportunity Program Funds (hereinafter "EOP" or "EOP Funds"), in a manner consistent with Neb. Rev. Stat. §39-2806. Nebraska law provides for the expenditure of EOP Funds to finance transportation improvements to attract and support new businesses and business expansions by successfully connecting such businesses to Nebraska's multimodal transportation network, and to increase employment, create high-quality jobs, increase business investment, and revitalize rural and other distressed areas of the state.

**WHEREAS**, the Business has committed to a project that meets the criteria of the State's Economic Opportunity Program; and

**WHEREAS**, the LA has committed to entering into a Program Agreement with the Business to implement the project consistent with the State's Economic Opportunity Program guidelines and Neb. Rev. Stat. §39-2806; and

**WHEREAS**, the Parties understand that the LA will also be entering into a separate Program Agreement with the State of Nebraska, Department of Roads (hereinafter the "State") to implement the project consistent with the State's Economic Opportunity Program guidelines and Neb. Rev. Stat. §39-2806;

**NOW THEREFORE**, in consideration of the mutual promises and understandings specifically set forth herein, the LA and the Business jointly agree to the following:

---

**I. Project Description/Objective:**

- 1.1 Project Location: \_\_\_\_\_
- Current Jurisdictional Authority: \_\_\_\_\_
- Key Project Features and Project Description/Objective:

---

---

---

---

---

---

---

---

## 1.2 Estimated Positive Economic Impact resulting from the Project:

|   |  |
|---|--|
| Anticipated number of new jobs                |  |
| Anticipated number of retained jobs           |  |
| Anticipated private capital investment        |  |
| Village/City/MPO/area impacted by improvement |  |

**II. Division and Reimbursement of Costs:**

| Type of Work                                     | Anticipated EOP Funds % | LA Funds % | Business Funds % | Total |
|--|-------------------------|------------|------------------|-------|
| Preliminary Engineering and Property Acquisition | \$                      | \$         | \$               | \$    |
| Construction                                     | \$                      | \$         | \$               | \$    |
| Construction Engineering                         | \$                      | \$         | \$               | \$    |
| <b>TOTAL:</b>                                    | \$                      | \$         | \$               | \$    |

- 2.1 The Parties understand that construction and engineering expenses which will be approved for reimbursement (hereinafter "Eligible Expenses") may only include the necessary, reasonable, and customary costs, fees and other expenses that are incurred to complete a transportation project, and will be determined solely at the discretion of the State subject to the Program Agreement entered into between the LA and the State. Expenses which are generally eligible include, but are not limited to, the usual and customary design, engineering, construction, inspection, and right of way expenditures. Expenses which are generally ineligible include, but are not limited to, utility placement and/or established utility relocation, refinancing or payment of existing debt, and betterments or improvements which are above and beyond the original scope and objective of the transportation project.
- 2.2 The Parties understand that the State's **maximum reimbursement amount** to the LA for Eligible Expenses incurred upon the project is \$\_\_\_\_\_. Any remaining balance necessary to complete the project as defined in this Program Agreement shall be attributed as follows:

[INSERT TEXT: Provide HERE for the agreement between the Parties regarding financial responsibility for remaining balances; this may require some negotiation between the LA and the Business. Some examples might include:

- "any remaining balance shall be the sole responsibility of the Business", or
- "any remaining balance shall be the sole responsibility of the LA", or
- "any remaining balance shall be shared by the Parties, with \_\_\_\_% paid by the LA and \_\_\_\_% paid by the Business.]

The Parties are responsible for ensuring that funds are available to meet their financial obligations to complete this EOP project as contemplated by the Parties and as set forth in this Program Agreement, including the availability of funds necessary to complete the project if the State's maximum reimbursement amount is exceeded or for any project costs determined by the State to be ineligible for reimbursement.

- 2.3 The Parties understand that State EOP Funds will be made available for reimbursement of Eligible Expenses upon receipt by the LA, generally in accordance with the following Phasing schedule:
- a. **Phase I: Preliminary Engineering and Property Acquisition:** 20% of the State's EOP Funding will be disbursed upon:
- i. documentation that the LA governing body has formally approved and set aside all matching funds identified herein to be utilized for the completion of this project;
  - ii. documentation that the Business has officially and formally committed to the project in this LA/Business Program Agreement;
  - iii. verification of compliance with all right-of-way requirements and completion of final design plans consistent with provisions 3.1, 3.2.a and 3.2.b below; and
  - iv. receipt by the State of a billing invoice/request for reimbursement setting forth all Eligible Expenses thus far.
- b. **Phase II: Construction:** An additional 70% of State's EOP Funding will be disbursed to the LA according to the following schedule:
- i. **Initial 30% upon:**
    - A. documentation of a properly awarded construction contract for the project consistent with provisions 3.1 and 3.2.c below, such that construction is ready to commence; and
    - B. receipt of a billing invoice/request for reimbursement setting forth all Eligible Expenses thus far.
  - ii. **Additional 40% upon:**
    - A. completion of approximately one-half of project construction in a manner consistent with provisions 3.1 and 3.2.d.
    - B. receipt of a billing invoice/request for reimbursement setting forth all Eligible Expenses thus far.
- c. **Phase III: Project Closeout:** The final disbursement of EOP Funds, up to the final 10% of the original EOP funding amount, will be paid to the LA upon receipt of:
- i. a final billing invoice/request for reimbursement which sets forth a complete and final accounting of all Eligible Expenses incurred to complete the project, as more specifically set forth in provision 2.4.b below; and
  - ii. a full and complete copy of the as-built plans.
- 2.4 a. All billing invoices/requests for reimbursement must be submitted to the LA in a manner consistent with the State's billing processing system so that timely payment may be made, and must include all necessary state and federal tax documentation required by the State to process payment. Billing invoices/requests for reimbursement shall only be submitted to the LA after amounts due exceed \$1,000.00, and shall be submitted to the LA no more frequently than monthly. Billing invoices/requests for reimbursement by the Business must contain adequate documentation to substantiate the expenses incurred, and to determine compliance with the EOP program application and the LA's Program Agreement with the State. Noncompliant invoices or requests for reimbursement will not be paid; notice and explanation of a noncompliant invoice or request for reimbursement will be returned to the Business within thirty (30) days of receipt by the LA.
- b. The final billing invoice/request for reimbursement must be received no later than one year from the date of completion of the project; if a final invoice is not received within one year of completion of the improvement, the most recent billing invoice/request for reimbursement

received by the Business will be considered the final invoice submitted upon the improvement, and any and all obligation by the LA to pay additional funds will terminate.

- 2.5 All obligations set forth in this Program Agreement, including all obligations of the LA to reimburse costs as set forth herein, shall terminate immediately without penalty or further payment required if, in any fiscal year, the Nebraska Legislature fails to appropriate or otherwise make available funds for the work contemplated herein. In such an event, the LA will provide the Business with written notice setting forth the effective date of termination.

---

### III. Additional Obligations, Declarations, and Certifications:

- 3.1 [PROVISION REQUIRED BY STATE/LA PROGRAM AGREEMENT] The Parties agree to comply with all applicable federal, state and local laws, ordinances, rules and regulations relating to the activities carried out by the Parties under this Program Agreement, including but not limited to the requirements of Neb. Rev. Stat. §4-108 to 4-114 to utilize a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska; Neb. Rev. Stat. §81-3445, governing the use of professional architects or engineers for projects which exceed \$100,000; and Neb. Rev. Stat. §81-3437 requiring designation of a coordinating professional. The Business further agrees to cooperate and provide any and all efforts requested or required by the LA so that the LA may meet the terms of its Program Agreement with the State.

The LA and the Business agree to commit all reasonable efforts and resources necessary to carry out the provisions of this Program Agreement, understanding that failure to comply with the terms set forth herein may result in the State's termination of the EOP project, and the State's demand for reimbursement from the Parties of all EOP funds disbursed thus far.

- 3.2 [PROVISION REQUIRED BY STATE/LA PROGRAM AGREEMENT] It is understood that the LA will be required by its Program Agreement with the State to accept responsibility for the management, planning, design, right-of-way activities, bid letting, construction, construction engineering and future operation and maintenance of this project subject to terms which will be specifically set forth in the Program Agreement between the State and the LA. A copy of the Program Agreement between the State and the LA will be provided to the Business. To implement the project as contemplated by the Parties, the following assignment of duties and responsibilities between the LA and the Business will apply during the term of this Program Agreement:

[INSERT TEXT: Provide **HERE** for the assignment and/or delegation of specific tasks; this may require some negotiation between the LA and the Business.]

In addition, the Parties understand and agree that:

a. Prior to advertising for bids for the project, the LA will be required to certify to the State that all necessary right-of-way, temporary and permanent easements, and temporary use permits have been properly obtained by the LA and that the project is legally prepared to proceed. The State may, in some circumstances, require that a dedication of property be made to the ownership of the LA to ensure that funds utilized upon the project result in a meaningful contribution to a purpose generally beneficial to the citizens of the State of Nebraska.

b. The LA will be required to provide plans which have been prepared and signed by a licensed professional engineer for the State's review, and the State must review all plans and specifications prepared by the LA prior to letting. In the event the project connects to, physically

touches or impacts a portion of the state highway system, the LA will be required to provide plans for review which meet the higher NDOR standard highway design and construction requirements applicable to State highway projects.

c. The LA will be required to advertise the project, accept bids, and award the contract for construction of the project in a manner consistent with applicable state and local law. This Program Agreement will terminate in the event no contract has been awarded by \_\_\_\_\_ (date), and recovery of EOP funds disbursed thus far to the LA may commence as more specifically set forth in provision 3.5 below.

d. The LA will be required to oversee construction to ensure the project is constructed as described or shown upon the approved plans, specifications, and estimates, or as amended by any approved change orders.

- 3.3 **[PROVISION REQUIRED BY STATE/LA PROGRAM AGREEMENT]** The Business and the LA agree to maintain records and documentation of the project for at least five years after termination/expiration of this Program Agreement, including but not limited to: books kept in accordance with generally accepted accounting principles, detailed records of expenditures, recipients and uses of all funds paid and disbursed in conjunction with this Program Agreement, as well as final design plans, as-built plans, and structural material certifications. Each shall make such documentation available to the other to copy or review upon request, within a reasonable time period, and in particular in a manner sufficient to respond or comply with internal or external audit requirements of the LA, the Business, and/or the State.
- 3.4 **[PROVISION REQUIRED BY STATE/LA PROGRAM AGREEMENT]** The Business must submit an annual economic impact progress report to the the LA by **December 1st** of each subsequent year after completion of the project, for a period of five consecutive years after completion of the project.
- 3.5. **[PROVISION REQUIRED BY STATE/LA PROGRAM AGREEMENT]** The Parties understand that in the event the LA or the Business fails to meet the terms of this Program Agreement, or in the event the Business does not fulfill its commitment to locate operations on the site or demonstrate positive economic impact as contemplated or described within provisions 1.1 and 1.2 of this Program Agreement (also known as "default"), the State may immediately provide the LA with notice of termination of funding and seek reimbursement and repayment of all EOP funds disbursed thus far upon the project from the LA. In the event of such occurrence, the Business shall immediately reimburse and repay the LA for all EOP funds disbursed thus far to the Business by the LA; all EOP funds reimbursed and repaid by the Business to the LA shall then be repaid by the LA to the State.

Furthermore, in the event of termination of this Program Agreement, the Parties agree to the following terms regarding reimbursement and repayment of non-EOP funds expended upon the project by the Business and the LA up to the date of termination:

**[INSERT TEXT: Provide HERE for the agreement of the Parties regarding reimbursement and repayment of project expenditures from non-EOP funds in the event State EOP funds are withdrawn; this may require some negotiation between the LA and the Business, as many variations are possible. Some examples might include:**  
"Each party shall bear the cost and expense of its own non-EOP funded expenditures upon the project up to the date of termination"; or  
"if the termination is due to the Business's failure to fulfill its commitment to locate operations on the site or demonstrate positive economic impact as contemplated by this

Program Agreement, the Business shall reimburse and repay the LA \_\_\_\_% of non-EOP funds expended by the LA upon the project up to the date of termination”.

- 3.6 This Program Agreement commences upon signature by the last of all required signatories and terminates 30 days after the LA’s receipt of the final annual progress report unless terminated sooner pursuant to the terms set forth herein, or by the written mutual agreement of the Parties.
- 3.7 This Program Agreement, along with any and all attachments and items incorporated by references herein, contains the entire agreement between the Parties. This Agreement shall be binding upon and inure to the benefit of the Parties hereto, their successors and assigns. The LA and the Business shall adopt all necessary ordinances and/or resolutions as may be necessary to give full force and effect to the terms of this Program Agreement.
- 3.8 **[PROVISION REQUIRED BY STATE/LA PROGRAM AGREEMENT]** The Business agrees to hold the LA and the State harmless from any and all claims, demands, or actions based upon or arising out of the negligent or willful acts or omissions of the Business and its officials, officers, employees, agents, associates, contractors, or subcontractors in the performance of this Program Agreement, or impacting the performance of the Program Agreement between the LA and the State. The LA agrees to hold the Business harmless from any and all claims, demands, or actions based upon or arising out of the negligent or willful acts or omissions of the LA and its officials, officers, employees, agents, associates, contractors, or subcontractors in the performance of this Program Agreement, or impacting the performance of the LA’s Program Agreement with the State.
- 3.9 Nothing in this Program Agreement should be construed in any manner as creating or establishing a joint relationship or partnership between the parties, nor shall either party have the right, power or authority to create any obligations or duties, express or implied, on behalf of the other party.

---

#### IV. Attachments

- 4.1 Application
- 4.2 [ADDITIONAL ATTACHMENTS]

---

#### V. Additional Terms and Conditions

- 5.1 **[INSERT TEXT: Provide HERE for all additional terms and conditions negotiated by the parties and/or recommended by your attorney(s):**
- a)
  - b)
  - c)

**VI. Final Affirmation and Signatures**

IN WITNESS WHEREOF, the Parties acknowledge they have read and understand this Program Agreement, and that they execute this Program Agreement pursuant to lawful authority granted to them, effective upon the date set forth by the last signatory below:

EXECUTED by the LA this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Printed Name of Official, including Title

\_\_\_\_\_  
Signature

EXECUTED by the Business this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Printed Name of Official, including Title

\_\_\_\_\_  
Signature

Mayor Zavodny stated: "I met with Korey Donahoo, Engineer, Strategic Planning Nebraska Department of Transportation, and he actually..., you know, you go into these things a little weary because usually when someone knocks on your door and says "I'm from the government and I'm here to help", it doesn't turn out that great, but this was actually good news. They have been looking at what we're doing with Timpte and obviously the State is very happy with Timpte staying in Nebraska and very proud of David City for being able to make that happen to the extent we did, so he said, "Here's what we want to do. We've looked at a project here and we want to take from "O" Street to "S" Street and we want to make that part of our project because it was going to cost you about \$700,000 - \$800,00 to do it, and all we are going to ask you to do is the turn lane", which we could probably do for a couple hundred thousand, that comes from the north into Timpte and they are going to do the rest. They are going to try to make that a three lane all the way out there, and they are going to make it a priority of theirs in part of the highway projects they have coming up. They're asking if we would be interested in that. It won't happen this construction season, as he brought up the flood damage as that is taking up a lot of their time and crews, but redoing that whole stretch is something the Department of Transportation want to do anyway. I explained to him that they need to look at that intersection at "O" Street, the way it is marked now. He said he doesn't think they need any more width; it's just going to be restriping to some extent, he thinks they have enough there. So, that's the discussion we had, and in order to do that, we need these couple of agreements which they sent out to us in electronic form, so we will negotiate with Timpte on that, and what we will have to do, and we couldn't do it tonight because you didn't have a chance to look at this and hear the proposal, is we would have to hire an engineer to design that for us; for that cost and just the turn lane; the Department of Transportation will take care of the rest. I also raised the issue, that for this to work, if we hire someone to do our design piece, they are going to have

to work with your engineers too to make it work, and he said yes, that would be the way we would want to do this; have all of them working together for a seamless design to make it all work.”

Council member Bruce Meysenburg stated: “Wouldn’t it make more sense just to take their design guy, or whoever they are going to have do it, and get him to do our end too and just call it good? I have no problem with paying them for it, but that way you wouldn’t have to worry about one design guy fighting the other, and the price might be more reasonable.”

Council member Kobus stated: “Incorporate it into their design.”

Mayor Zavodny stated: “I could try that; he made it sound like that was our responsibility. Why don’t we table this and we can talk to Korey and ask him if that would be an option and find out some more.”

Council member Trowbridge made a motion to table consideration of an agreement between the City and the NE Department of Transportation concerning Highway 15 between “O” and “S” Street. Council member P. Meysenburg seconded the motion. Voting AYE: Council members Hotovy, Kobus, B. Meysenburg, Vandenberg, P. Meysenburg, and Trowbridge. Voting NAY: None. The motion carried.

---

**STATE OF NEBRASKA, DEPARTMENT OF TRANSPORTATION / DAVID CITY  
ECONOMIC OPPORTUNITY PROGRAM AGREEMENT**

---

THIS AGREEMENT, is entered into by and between the State of Nebraska, Department of Transportation, hereinafter referred to as the “State”, and the City of David City, hereinafter referred to as the “LA”, and who together will be collectively referred to as the “Parties”.

The purpose of this Agreement is to define the terms and conditions applicable to the Parties for utilizing State Economic Opportunity Program Funds (hereinafter “EOP Funds”), in a manner consistent with Neb. Rev. Stat. §39-2806. Nebraska law provides for the expenditure of EOP Funds to finance transportation improvements to attract and support new businesses and business expansions by successfully connecting such businesses to Nebraska’s multimodal transportation network, and to increase employment, create high-quality jobs, increase business investment, and revitalize rural and other distressed areas of the state.

In consideration of the mutual promises and understandings of the Parties specifically set forth herein, the State and the LA jointly agree to the following:

---

**I. Project Description/Objective:**

- 1.1 **Project Location:** NE-15 / “S” Street intersection in David City, NE  
**Current Jurisdictional Authority:** David City  
**Key Project Features and Project Description/Objective:**

This project will make improvements to intersections on NE-15 and adjoining roadways in David City. The improvements are required as a result of an expansion by a business in the area, and are recommended by a traffic study. The project is anticipated to include all activities associated with construction of an intersection, including (but not limited to) engineering, grading, paving, culvert work, utilities and lighting. ROW acquisition may be required.

This project meets the objectives of the EOP because it provides a transportation connection that will facilitate business expansion in the area, attract high quality jobs and encourage capital investment within the state of Nebraska as a result.

- 1.2 **Individual/Entity with whom Local Authority will partner to complete project (referred to herein as the “Business”):**  
Timpte, Inc.  
1827 Industrial Drive  
David City, NE 68632

1.3 Estimated Positive Economic Impact resulting from the Project:

|   |                             |
|---|-----------------------------|
| Anticipated number of new jobs                | 41                          |
| Anticipated private capital investment        | \$10,000,000 - \$14,000,000 |
| Village/City/MPO/area impacted by improvement | David City                  |

STATE OF NEBRASKA, DEPARTMENT OF TRANSPORTATION / DAVID CITY ECONOMIC OPPORTUNITY PROGRAM AGREEMENT

**II. Division and Reimbursement of Costs:**

| Type of Work                                     | EOP Funds        | LA Funds        | Total            |
|--|------------------|-----------------|------------------|
| Preliminary Engineering and Property Acquisition | \$40,000         | \$17,000        | \$57,000         |
| Construction                                     | \$140,000        | \$59,500        | \$199,500        |
| Project Closeout                                 | \$20,000         | \$8,500         | \$28,500         |
| <b>TOTAL:</b>                                    | <b>\$200,000</b> | <b>\$85,000</b> | <b>\$285,000</b> |

Note: These are estimated costs. Actual costs and payments will be determined based on final project costs.

- 2.1 Eligible construction and engineering expenses (hereinafter "Eligible Expenses") include the necessary, reasonable, and customary costs, fees and other expenses that are incurred to complete a transportation project, and are determined solely at the discretion of the State. Expenses which are generally eligible include, but are not limited to, the usual and customary design, engineering, construction, inspection, and right of way expenditures. Expenses which are generally ineligible include, but are not limited to, utility placement and/or established utility relocation, refinancing or payment of existing debt, and betterments or improvements which are above and beyond the original scope and objective of the transportation project.
- 2.2 The State will reimburse the LA for Eligible Expenses incurred upon the project for **75% of the total eligible construction and engineering expenses, subject to a maximum reimbursement amount of \$200,000.** Any remaining balance shall be the sole responsibility of the LA. The LA is responsible for ensuring that funds are available to meet its obligations as set forth in this Program Agreement, including the availability of funds necessary to complete the project if the State's maximum reimbursement amount is exceeded.
- 2.3 The State will disburse EOP Funds to the LA in accordance with the following Phasing schedule:
  - a. **Phase I: Preliminary Engineering and Property Acquisition:** 20% of the State's EOP Funding will be disbursed to the LA upon:
    - i. documentation that the LA governing body has formally approved and set aside all matching funds identified herein to be utilized for the completion of this project;
    - ii. documentation that the Business has officially and formally committed to the project in a writing received by the LA (the LA/Business Program Agreement may suffice);
    - iii. verification of compliance with all right-of-way requirements and completion of final design plans consistent with provisions 3.1, 3.2.a and 3.2.b below; and
    - iv. receipt of a billing invoice/request for reimbursement setting forth all Eligible Expenses thus far.
  - b. **Phase II: Construction:** An additional 70% of the State's EOP Funding will be disbursed to the LA according to the following schedule:
    - i. **Initial 30% upon:**
      - A. documentation of a properly awarded construction contract for the project consistent with provisions 3.1 and 3.2.c below, such that construction is ready to commence; and
      - B. receipt of a billing invoice/request for reimbursement setting forth all Eligible Expenses thus far.

- ii. **Additional 40% upon:**
    - A. completion of approximately one-half of project construction in a manner consistent with provisions 3.1 and 3.2.d.
    - B. receipt of a billing invoice/request for reimbursement setting forth all Eligible Expenses thus far.
  - c. **Phase III: Project Closeout:** The final disbursement of EOP Funds, up to the final 10% of the original EOP funding amount, but in no event in excess of the total expenses eligible for reimbursement, will be paid to the LA upon receipt of:
    - i. a final billing invoice/request for reimbursement which sets forth a complete and final accounting of all Eligible Expenses incurred to complete the project, as more specifically set forth in provision 2.4.b below; and
    - ii. a full and complete copy of the as-built plans.
- 2.4 a. All billing invoices/requests for reimbursement must be submitted by the LA in a manner consistent with the State's billing processing system so that timely payment may be made, and must include all necessary state and federal tax documentation required by the State to process payment. Billing invoices/requests for reimbursement shall only be submitted to the State after amounts due exceed \$1,000.00, and shall be submitted to the State no more frequently than monthly. Billing invoices/requests for reimbursement by the LA must contain adequate documentation to substantiate the expenses incurred, and to determine compliance with the EOP program application and this Program Agreement. Noncompliant invoices or requests for reimbursement will not be paid; notice and explanation of a noncompliant invoice or request for reimbursement will be returned to the LA within thirty (30) days of receipt by the State.
- b. The final billing invoice/request for reimbursement to the State must reflect the total final amount due, the total incurred cost of the improvement, less previous payments made to the LA, and less funds applied to the cost of the improvement by the LA. The final billing invoice/request for reimbursement must be received no later than one year from the date of completion of the project; if a final invoice is not received within one year of completion of the improvement, the most recent billing invoice/request for reimbursement received by the State will be considered the final invoice submitted upon the improvement, and any and all obligation by the State to pay additional funds will terminate.
- 2.5 All obligations set forth in this Program Agreement, including all obligations of the State to reimburse costs as set forth herein, shall terminate immediately without penalty or further payment required if, in any fiscal year, the Nebraska Legislature fails to appropriate or otherwise make available funds for the work contemplated herein. In such an event, the State will provide the LA with written notice setting forth the effective date of termination.

---

### III. Additional Obligations, Declarations, and Certifications:

- 3.1 The LA agrees to comply with all applicable federal, state and local laws, ordinances, rules and regulations relating to the activities carried out by the LA under this Program Agreement, including but not limited to the requirements of Neb. Rev. Stat. §4-108 to 4-114 to utilize a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska; Neb. Rev. Stat. §81-3445, governing the use of professional architects or engineers for projects which exceed \$100,000; and Neb. Rev. Stat. §81-3437 requiring designation of a coordinating professional.

- 3.2 The LA shall be responsible for all aspects of this project, including management, planning, design, right-of-way activities, bid letting, construction, construction engineering and future operation and maintenance of this project. The LA agrees that its failure to comply with the terms of this Program Agreement may lead to the State, in its sole discretion, withdrawing funding for the project as more specifically set forth in provision 3.5 below. The LA agrees to supervise and oversee all engineering and construction of the project in a manner consistent with the terms of this Program Agreement, and in a manner which meets all criteria applicable to the project as determined by the State, including but not limited to:
- a. Prior to advertising for bids for the project, the LA must certify to the State that all necessary right-of-way, temporary and permanent easements, and temporary use permits have been properly obtained by the LA and that the project is legally prepared to proceed. The State may, in some circumstances, require that a dedication of property be made to the ownership of the LA to ensure that funds utilized upon the project result in a meaningful contribution to a purpose generally beneficial to the citizens of the State of Nebraska.
  - b. The LA must provide plans which have been prepared and signed by a licensed professional engineer for the State's review, and the State must review all plans and specifications prepared by the LA prior to letting. In the event the project connects to, physically touches or impacts a portion of the state highway system, the LA must provide plans for review which meet the higher NDOT standard highway design and construction requirements applicable to State highway projects.
  - c. After the State's review, the LA will advertise the project, accept bids, and award the contract for construction of the project in a manner consistent with applicable state and local law. This Program Agreement will terminate in the event no contract has been awarded by December 31, 2020, and recovery of EOP funds disbursed thus far to the LA may commence as more specifically set forth in provision 3.5 below.
  - d. The LA is required to oversee construction to ensure the project is constructed as described or shown upon the approved plans, specifications, and estimates, or as amended by any approved change orders.
  - e. Review of any kind by the State pursuant to this Program Agreement shall not be considered a full and comprehensive review or examination of the work product of the LA and/or its consultants, and shall not be construed to be an undertaking or assumption of the LA's and/or its consultants' duties to provide appropriate design plans for the Project, to appropriately advertise the project for bids and let the project, and to accurately construct the project according to plans. The State makes no representations nor warranties, neither express nor implied, to any person or entity concerning the performance of the terms of this Program Agreement by the LA, its consultants, and/or contractors, or the performance of the Program Agreement between the LA and the Business.
- 3.3 The LA shall maintain records and documentation of the project for at least five years after termination/expiration of this Program Agreement, including but not limited to: books kept in accordance with generally accepted accounting principles, detailed records of expenditures, recipients and uses of all funds paid and disbursed in conjunction with this Program Agreement, as well as final design plans, as-built plans, and structural material certifications. The LA shall make such documentation available to the State to copy or review upon request, within a reasonable time period, and in particular in a manner sufficient to allow the State to comply with internal or external audit requirements.

- 3.4 The LA must retain an annual economic impact progress report for each subsequent year after completion of the project, for a period of five consecutive years after completion of the project. The LA must share the annual progress report with the State upon request in years one through four, with the report to the State required in year five after completion of the project.
- 3.5. In the event the LA fails to meet the terms of this Program Agreement, or in the event the Business does not fulfill its commitment to locate operations on the site or demonstrate positive economic impact as contemplated or described within provisions 1.1 and 1.3 of this Program Agreement, the State may immediately:
- a. provide the LA with notice of termination of this Program Agreement, and may immediately demand from the LA reimbursement and repayment of all EOP funds disbursed thus far under this Program Agreement; or
  - b. in the alternative, provide the LA with notice of breach of this Program Agreement and allow the LA a reasonable time to cure the breach. However, allowing the LA time to cure a breach does not waive the State's right to terminate this Program Agreement under 3.5.a for the same or a different breach which may occur pending resolution of the initial breach. If breach is due to one of the identified Businesses withdrawing from their commitment to locate operations on the site, LA's cure of the breach may include the substitution of another Business that meets the criteria established by the EOP panel, and which is willing to execute a Program Agreement with the LA as set forth in provision 3.6 below.
- 3.6 The LA is required to enter into a separate Program Agreement with the Business named under provision 1.2, above. Said Agreement must require the Business, at a minimum:
- a. to utilize EOP funds in a manner which complies with this Program Agreement between the State and the LA;
  - b. to indemnify and hold harmless the State from any and all claims, demands, or actions based upon or arising out of the negligent or willful acts or omissions of the Business and/or its officials, officers, employees, agents, associates, contractors, or subcontractors in the performance of the Program Agreement between the LA and the Business, or in meeting the terms of this Program Agreement between the LA and the State;
  - c. to retain records consistent with provision 3.3 of this Program Agreement for a period of five consecutive years after completion of the project, and to provide the LA with all information necessary for it to submit its mandatory annual progress report to the State in accordance with provision 3.4 of this Agreement.
  - d. to provide for the repayment of EOP Funds to the LA in the event of a default or unmet obligations by the Business.
- 3.7 This Program Agreement commences upon signature by the last of all required signatories and terminates 30 days after the State's receipt of the final annual progress report (provision 3.4) unless terminated sooner pursuant to the terms set forth herein or by the written mutual agreement of the Parties.
- 3.8 This Program Agreement, along with any and all attachments and items incorporated by references herein, contains the entire agreement between the Parties. This Agreement shall be binding upon and inure to the benefit of the Parties hereto, their successors and assigns. The LA shall adopt all necessary ordinances and/or resolutions as may be necessary to give full force and effect to the terms of this Program Agreement.

- 3.9 The LA Agrees to hold the State harmless from any and all claims, demands, or actions based upon or arising out of the negligent or willful acts or omissions of the LA and its officials, officers, employees, agents, associates, contractors, or subcontractors in the performance of this Program Agreement, or the performance of the Program Agreement between the LA and the Business.
- 3.10 Nothing in this Program Agreement should be construed in any manner as creating or establishing a joint relationship or partnership between the parties, nor shall either party have the right, power or authority to create any obligations or duties, express or implied, on behalf of the other party.
- 

#### IV. Attachments

##### 4.1 Application

---

#### V. Final Affirmation and Signatures

IN WITNESS WHEREOF, the Parties acknowledge they have read and understand this Program Agreement, and that they execute this Program Agreement pursuant to lawful authority granted to them, effective upon the date set forth by the last signatory below:

EXECUTED by the LA this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Printed Name of Official, including Title

\_\_\_\_\_  
Signature

EXECUTED by the State this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Kyle Schneweis  
Director, Nebraska Department of Transportation

Council member B. Meysenburg made a motion to table consideration of making an appointment for someone to serve on the Library Board. Council member Hotovy seconded the motion. Voting AYE: Council members P. Meysenburg, Kobus, Vandenberg, Trowbridge, Hotovy, and B. Meysenburg. Voting NAY: None. The motion carried.

At 8:17 p.m. Mayor Zavodny opened the Public Hearing on a Resolution of Necessity, Resolution No. 31-2019, creating Sanitary Sewer District No. 2019-1 of said City.

Cody Wickham of D. A. Davidson stated: "Since the last time I was out there were a few changes to the Sanitary Sewer Resolution of Necessity, the main one being the amount of estimated cost associated with that. We did not previously include the bids, invoices, and costs of Horizontal Boring for the work that they did, and some of the costs that Obrist did as well. The idea tonight is to just reaffirm and amend the Sanitary Sewer; we didn't make any changes to the Storm Sewer Water District and that estimate remains at \$88,370. The Sanitary Sewer total anticipated estimate is \$408,366 which is up from about \$112,000 that we introduced a few weeks ago, so the idea being that is such a drastic increase in the total cost, that for total transparency with the City and everybody involved to just reintroduce this Resolution of Necessity for both districts and we'll come back on January 8<sup>th</sup>, we'll hold the hearings again if anybody has any objections or wants to be heard they can do that, open and close, and then at that time your total between those two is pretty close to \$500,000 that you would then have the ability to move to final passage of these Resolutions of Necessity and then authorize the issuance of Bond Anticipation Notes. You can use the Tax Increment Financing to pay off that debt so it doesn't become a burden of the City it becomes a "paid for by the actual project itself".

Discussion followed.

City Clerk Kovar stated: "I am totally confused. How can I go back and amend Resolution No. 30 – 2019, which is not identical to Resolution No. 30 – 2019 that I was given today. How can I amend something that we have already passed and approved at the November 13<sup>th</sup> meeting?"

Cody Wickham stated: "The Resolution of Necessity wasn't adopted; it was just introduced at the last meeting.

City Clerk Kovar stated: "I realize that. The Resolution of Necessity was Resolution No. 31 – 2019 that we didn't pass. My question is how are we going from the Resolution No 30-2019 that we passed last month, to this Resolution No. 30-2019 which I was provided now? The resolution we passed said under Section 2: That the plans, specifications, and estimate of construction cost of \$112,970.50 filed by the City's Engineers....; where the new resolution 30-2019 under Section 4 – b. says: The principal amount of notes or bonds expected to be issued by the City for that portion of improvements pertaining to this reimbursement resolution is estimated to be no more than \$430,000. The previous resolution that we passed didn't even have a Section 4 – b."

Much discussion followed.

Cody Wickham asked: "Do you have the three (3) resolutions all tying to the Sanitary Sewer District, Resolutions No. 30-2019, Resolution No. 31-2019, and Resolution No. 32-2019, that were sent to you today, which starts out "On November 13, 2019, Resolutions No. 30-2019, Resolution No. 31-2019, and Resolution No. 32-2019 (the "Original Resolutions") were proposed and adopted by the City. The City hereby determines that the Original Resolutions be amended and restated to modify the sewer project within Sanitary Sewer District No. 2019-1".

City Clerk Kovar stated: "Yes, but that's part of the problem. I didn't receive this until this morning, as it was sent from Catie Mahaffey of D.A. Davidson, at 6:10 p.m. yesterday. So, I didn't have it twenty-four hours prior to the meeting, so I couldn't change the council meeting

agenda. Therefore, I don't have anything on the agenda that states "Consideration of amending the Original Resolutions...."

Cody Wickham stated: "Well, what we can do, we can address this at the January 8<sup>th</sup> Council meeting and amend them then, if you would feel more comfortable doing that."

City Attorney Egr stated: "Yes, that would be better."

Mayor Zavodny asked for any additional comments from the Public. There being none, Mayor Zavodny declared the Public Hearing closed at 8:31 p.m.

Council member Trowbridge made a motion to table consideration of Resolution No. 31-2019 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. Council member P. Meysenburg seconded the motion. Voting AYE: Council members Hotovy, Kobus, Vandenberg, B. Meysenburg, P. Meysenburg, and Trowbridge. The motion carried.

At 8:32 p.m. Mayor Zavodny opened the Public Hearing on a Resolution of Necessity, Resolution No. 34-2019, creating Storm Water Sewer District No. 2019-2 of said City.

Cody Wickham of D. A. Davidson stated: "Nothing has changed on this since our previous meeting. City Attorney Egr and City Clerk Kovar agreed.

Mayor Zavodny asked for any additional comments from the Public. There being none, Mayor Zavodny declared the Public Hearing closed at 8:33 p.m.

Council member Hotovy made a motion to approve Resolution No. 34 – 2019 and Council member Trowbridge seconded the motion. Voting AYE: Council members Kobus, Vandenberg, B. Meysenburg, P. Meysenburg, Trowbridge, and Hotovy. Voting NAY: None. The motion carried.

#### **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 11<sup>th</sup> day of December, 2019.

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

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

There being no further business to come before the Council, Council member Hotovy made a motion to adjourn. Council member Bruce Meysenburg seconded the motion. Voting AYE: Council members P. Meysenburg, Vandenberg, Trowbridge, Kobus, Hotovy, and B. Meysenburg. Voting NAY: None. The motion carried and Mayor Zavodny declared the meeting adjourned at 8:36 p.m.



CERTIFICATION OF MINUTES  
December 11<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 December 11<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.

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