

**ACKNOWLEDGEMENT OF RECEIPT OF NOTICE OF MEETING
OF THE MAYOR AND CITY COUNCIL OF
THE CITY OF DAVID CITY, NEBRASKA**

The undersigned members of the governing body of the City of David City, Nebraska, hereby acknowledge receipt of advance notice of a special meeting of said body and the agenda for such meeting to be held at 6:30 o'clock p.m. on the **25th day of July, 2018**, in the meeting room of the City Office, 557 North 4th Street, David City, Nebraska.

This agenda is available for public inspection in the office of the City Clerk and may be modified up to twenty-four hours prior to the opening of the meeting.

Dated this 19th day of July, 2018.

AGENDA AS FOLLOWS:

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| 1. Roll Call; | <hr/> Mayor Alan Zavodny |
| 2. Pledge of Allegiance; | |
| 3. Inform the Public about the location of the Open Meetings Act and the Citizens Participation Rules; | <hr/> Council President Gary D. Smith |
| 4. Consideration of awarding a bid for the Wastewater Treatment Plant Improvements; | |
| 5. Discussion and consideration of the water and wastewater system review, and the new electrical service and facility dampening for the proposed Timpfe facility expansion; | <hr/> Council member Dana E. Trowbridge |
| 6. Consideration of a proposed utility easement concerning the Timpfe expansion; | <hr/> Council member Thomas J. Kobus |
| 7. Adjourn. | <hr/> Council member Kevin N. Hotovy |
| | <hr/> Council member Patrick J. Meysenburg |
| | <hr/> Council member John P. Vandenberg |
| | <hr/> City Clerk Joan E. Kovar |

CITY COUNCIL PROCEEDINGS

July 25, 2018

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 4th Street, David City, Nebraska. The Public had been advised of the special meeting by publication of notice in The Banner Press on July 19th, 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 Agenda which is a part of these minutes. The advance notice to the Public, Mayor, and Council members conveyed the availability of the agenda, which was kept continuously current in the office of the City Clerk and was available for public inspection during regular office hours. No new items were added to the agenda during the twenty-four hours immediately prior to the opening of the Council meeting.

Present for the meeting were: Council President Gary Smith, Thomas Kobus, Dana Trowbridge, Patrick Meysenburg, John Vandenberg, and Kevin Hotovy, City Attorney James Egr, and City Clerk Joan Kovar. Mayor Zavodny was absent.

Also present for the meeting were: Craig Reinsch of Olsson Associates, Rick Schneider, Jeff Hilger, Jim Angell, David McPhillips, Deb Dinkelman, Mark & Bev Rerucha, Tom Dion, Sheriff Deputies, Planning Commission Member Janis Cameron, Nicholas Schneider, Attorney Michael Bacon of Bacon & Vinton, Park/Auditorium Supervisor Bill Buntgen, Water/Sewer Supervisor Travis Hays, Electric Plant Supervisor Eric Betzen, Electric Supervisor Pat Hoeft, and Building Inspector Ray Sueper.

The meeting opened with the Pledge of Allegiance. Council President Gary Smith informed the public of the "Open Meetings Act" posted on the east wall of the meeting room.

The first agenda item was consideration of awarding a bid for the Wastewater Treatment Plant Improvements. The bids were originally opened on April 3rd; however, no bid was accepted at the time because we were waiting for a signed agreement with Henningsen Foods. The bids came in substantially higher than the anticipated price with the apparent low bidder being Eriksen Construction of Blair, Nebraska. The total of the Base Bid and Alternate Bid 2 was \$2.481 million, however, the deadline for the acceptance of the bids has passed.

OLSSON ASSOCIATES		WASTEWATER TREATMENT PLANT IMPROVEMENTS DAVID CITY, NEBRASKA - 2018			BID TABULATION 3-Apr-2018 CA #008-1828 1:50 p.m. Page 1 of 3
CONTRACTOR	ITEM	Eriksen Construction Co Inc State, Nebraska Lump Sum	Weiss Construction Co, LLC MI/MI/MI - Detroit, MI Lump Sum	Christ & Co., Inc. Columbus, Nebraska Lump Sum	Lump Sum
	Base Bid: Work shall consist of general construction of a Wastewater Treatment Plant:				
	TOTAL BASE BID:	\$2,469,000.00	\$2,701,845.00	\$2,980,000.00	
	Similar to Base Bid with Alternate Anaerobic Lagoon Cover Material:				
	TOTAL ALTERNATE BID 1:	Deduct - \$7,000.00	Deduct \$21,774.00	No Bid	
	Removal & Replacement of 7 Gate Valves (GV-1 to GV-7 in the Existing LIR Station Ranging in sizes from 8-12 inches.				
	TOTAL ALTERNATE BID 2:	Add \$13,000.00	Add \$12,000.00	\$4,250.00	
	Substantially Complete On or Before:	May 1, 2019	May 1, 2019	May 1, 2019	
	Complete and Ready for Final Payment On or Before:	August 15, 2019	August 15, 2018	August 15, 2019	
	Addendum No. 1	March 23, 2018	March 23, 2018	March 23, 2018	
	Addendum No. 2	March 28, 2018	March 28, 2018	March 28, 2018	
	Addendum No. 3	March 30, 2018	March 30, 2018	March 30, 2018	
	USDA Documents:	Yes	Yes	Yes	
	Named Equipment:	Yes	Yes	Yes	
	Bid Guarantee:	5% Bid Bond	5% Bid Bond	5% Bid Bond	
	Remarks:				

Craig Reinsch provided the following correspondence that he had with Tim Shaw of Eriksen Construction regarding whether or not they would still stand by their bid:

Craig,

My dirt subcontractor notified me yesterday he cannot do the work this year, he took a couple other projects after this one was not awarded.

I have not received clarification back from all of my suppliers but it appears my bid price will have to raise approximately \$175,000 to \$190,000 to cover material price increases and going to another dirt subcontractor.

If the owner would be interested in awarding the project now and not starting the dirt work until next spring my original dirt contractor said he could honor his original price and that could would require me to only have to raise my original bid by \$40,000 to \$60,000 for the material price increases.

My suppliers have all told me that since this project bid last April they have had price increases from 10 to 30% on all steel items and anticipate additional price increases as the year continues.

Thank you,
 Tim Shaw

Craig Reinsch then visited with Martin Norton of the USDA Rural Development and following is his response:

From: Norton, Marty - RD, Lincoln, NE <Marty.Norton@ne.usda.gov>
Sent: Thursday, July 19, 2018 11:54 AM
To: Craig Reinsch <creinsch@olssonassociates.com>; Joan Kovar <jkovar@davidcityne.com>
Cc: Stopak, Janice - RD, Lincoln, NE <Janice.Stopak@ne.usda.gov>
Subject: David City Sewer

Craig,

Thanks for talking today. As we discussed, the bids have expired and Eriksen wants David City to accept his bid plus some materials costs if the City can work out an agreement with Henningsen Foods at the end of the month. This is highly unusual. RD would want you to make a new recommendation after the agreement is worked out and if Eriksen is still "holding" its bid. RD would also want to have a legal opinion from the City's attorney researching that this is legal and in the City's best interest.

If that cannot happen, RD would recommend rebidding after the agreement is worked out.

Let me know if you have any questions. Thanks.

Martin J Norton, PE
USDA Rural Development – Nebraska
Suite 308
100 Centennial Mall North
Lincoln, NE 68508
Phone: 402-437-5560

City Clerk Kovar then forwarded the information to City Attorney James Egr for his opinion which follows:

Egr, Birkel & Wollmer, P.C.

*Attorneys at Law
465 - 4th St,
P.O. Box 46*

*James M. Egr
James L. Birkel
Timothy J. Wollmer*

*David City, NE 68632
Telephone: 402-367-3139
Toll Free: 1-866-859-1306
Fax: 402-367-3900*

*jamesegr@egrbirkel.com
jamesbirkel@egrbirkel.com
timwollmer@egrbirkel.com*

July 19, 2018

Sent via Email Only

City of David City

Attn: Joan Kovar- City Clerk

P.O. Box 191

David City, NE 68632

Re: Hold Over Bid of Ericksen

Dear Joan,

I have reviewed your e-mail concerning an Agreement with Ericksen for the lagoon project with Ericksen proposing that the City accept their expired bid plus some materials costs if the City can work out an agreement with Henningsen Foods, Inc. at the end of the month. Rural Development would like my legal opinion if the offer of Ericksen is legal and in the City's best interest.

My research shows the following:

- (A) It IS LEGAL to sign the expired Agreement with Ericksen plus some materials costs. Why? This happened because of various circumstances and delays, which happened here and because both parties were agreeable to sign several months ago but delayed because of circumstances causing delays with the HFI Agreement; namely their attorney having the tree fall through his house roof and his recent accident. As of the date of this e-mail, the HFI Agreement is being passed around and the surrounding circumstances justify STILL pursuing the Agreement with Ericksen. The materials costs is justified because of inflation costs. I believe there is NO REASON TO RE-BID the project.
- (B) It IS IN THE BEST INTEREST OF THE CITY TO PROCEED! Why? We have the EPA looking over our shoulder; we need to start while the weather still is good to start the project; a rebid could result in higher costs as seen from the bids we already received; and we need to move things along. I am of the legal opinion the best interests of the City IS TO PROCEED!
- (C) Now that the HFI Agreement is in the process of being signed as this e-mail is being sent, it would not be in everyone's best interest to rebid and start all over. We are now in the position to move things along; we can now tell the EPA all is signed; and we can now keep things with Rural Development moving.

Should you have any questions, please do not hesitate to contact me again.

Sincerely,



James M. Egr

JME/bnr

City Attorney Egr stated: "After my research and so forth, I believe it is still legal to go ahead and accept that bid if Eriksen is willing to go ahead and keep that bid. It appears that they are willing to go with that, they wanted to cover any increase in some materials. I do not think that we have to rebid that. I think if we rebid that I think we'd come up with some higher bids, in light of everything, especially the amount of the bids we did receive in the first place. I was also asked to comment on the best interest of the City and I think it is in the best interest of the City to proceed and get this thing going especially with the EPA."

Craig Reinsch of Olsson Associates stated that Tim Shaw of Eriksen Construction did say that if the City accepted the bid, and they want to do it right away, he would have to go with one dirt sub-contractor. If the City moves it to the spring, then the other contractor will honor his price. So, there is a range in prices depending on when the City wants the project started.

Craig Reinsch stated: "We will need a change order to adjust the prices and to adjust the schedule, but I don't anticipate that that will impact the timeline that DEQ or EPA has for the project, but again that will part of the next process once the bid's been accepted."

City Attorney Egr asked: "Did Eriksen say he might be able to start yet this summer?"

Craig Reinsch stated: "So, that's part of the conversation. If the City is okay pushing off construction of the dirt work to save whatever the difference is I think it's \$40,000 – \$60,000 on one, and \$175,000 - \$190,000 on the other, so by shifting the dirt work they can save some funds. I don't know what other things they can get started on as part of the discussion that we have to have, but that's a discussion to have after the bids are awarded."

Council member Kobus made a motion to accept the bid of Eriksen Construction with the additional considerations. Council member Trowbridge seconded the motion. Discussion followed.

Council member Trowbridge asked: "Craig, do you have any idea how much more? Is it \$2,481,000.00 as this one was written? You don't know how much more?"

Craig Reinsch stated: "There are two ranges. So, we have my initial recommendation, so then it's \$40,000 - \$60,000 more if we delay until spring."

Council member Trowbridge stated: "But if you want them to start right away then he has to go with another sub-contractor because the lower one filled his schedule with not knowing. So, if the City wants to move forward right away, then there will be a higher price."

Council member Kobus stated: "I say we do it right away; we've put it off long enough."

Roll call on the motion to accept the bid of Eriksen Construction with the additional considerations: Voting AYE: Council members Vandenberg, Meysenburg, Smith, Hotovy, Kobus, and Trowbridge. Voting NAY: None. Mayor Zavodny was absent. The motion carried.

The agreement for professional services by Olsson Associates for line strengthening for the Timpte circuit was discussed.

Craig Reinsch of Olsson Associates stated: "I know that it was submitted and I can speak about that much on it. This is basically upgrading the poles and line on the City side and it's basically design and bid, as I understand it." *[Note: the letter of agreement signed by Randy*

Huisinga, Technical Lead of Olsson's states: Olsson will evaluate the existing overhead line design to determine pole class and strength. The pole circumference at ground level will be used to determine the class of the pole if the pole stamps are not legible. Olsson will develop a new line design with "twice" the strength of the existing design based upon defined pole class strength. A +/- 30% cost comparison between wood and steel pole construction will be developed. After the city determines which option to develop, Olsson will create construction drawings and specifications for the design approach approved by the City.]

Council member Trowbridge stated: "So we will get a design. System hardening is decreasing the susceptibility of your system to fail under adverse weather conditions driven generally by hurricane season in the south and what it's done to the grid. So, he's going to look into everything, he's going to look into guy wire placements, full arm structure and hardware up above; would be my guess on a hardening exercise."

City Clerk Kovar stated: "I am confused. Previously we had a bid from Olsson's, which I thought was for this same study, and it was for \$50,000, and the Council had discussed that and said it was way too much and they told Pat (Electric Supervisor Hoeft) to check into this. Now, this one came in and it's \$25,000, but is Pat still supposed to be checking or what are we doing? I am not sure how we got to this."

Council member Meysenburg stated: "Yes, I thought we were going to have Pat take care of this."

Council member Trowbridge stated: "That was my understanding. Pat have you had any conversations with anyone?"

Electric Supervisor Pat Hoeft stated: "I might try to meet with Don Hartman out of Columbus because I need him to design some switch gear, so if I need to shut Region V off, I'm not shutting Timpote's building down. So, I'm going to have him look the line over at least that's what the plan was. I talked to a guy about laminated poles today, and he goes "you don't put that on a pole line" but he did give me some literature and stuff that we could strengthen the poles we have there, against the wind and breakage, so that's what I've been looking into so far."

Council member Trowbridge stated: "It seems to be a fairly new discipline in the electric distribution industry; laminated poles generally are transmission lines instead of distribution lines."

Electric Supervisor Pat Hoeft stated: "And where you don't have the right of way to put guy wires."

Council member Trowbridge stated: "Exactly. Let's leave it like it is with Pat's instruction to do that."

Council member Trowbridge made a motion to table consideration of a proposed agreement with Olsson Associates for professional services concerning a line strengthening study for Timpote, pending further investigation by Electric Supervisor Pat Hoeft. Council member Kobus seconded the motion. Voting AYE: Council members Vandenberg, Meysenburg, Hotovy, Kobus, Trowbridge, and Smith. Voting NAY: None. Mayor Zavodny was absent. The motion carried.

Council member Trowbridge stated: "We rescinded the earlier easement at Timpte for the 30" storm drain tube and this is the utility easement to replace that utility easement and to give them utility zones for bringing in the necessary utilities so they have the easements to go along with the project."

City Clerk Kovar stated that there was some mis-communication when she had received the following e-mail from Eric Beiermann of Olsson Associates:

Joan Kovar

From: Eric Beiermann <ebeiermann@olssonassociates.com>
Sent: Monday, July 23, 2018 3:26 PM
To: Joan Kovar; Alan Zavodny (alanzavodny80@gmail.com)
Cc: Erin Bright; Wachal, Mike
Subject: Timpte Site Utility
Attachments: 18-07-23_Site Utility Plan.pdf

Joan,

Attached is a pdf of the Timpte site utility plan with the easement shown (in red). We are working on actual exhibits and legals for the easement, and will have these ready for the special council meeting on Wednesday.

Should you need anything else, please let me know.

Thank you,

Eric Beiermann | Site Civil | Olsson Associates
601 P Street | Lincoln, NE 68508 | ebeiermann@olssonassociates.com
TEL 402.474.6311 | DIR 402.458.5915 | CELL 402.570.9032 | FAX 402.474.5160



City Clerk Kovar stated that from the e-mail she assumed they were taking care of the paperwork, as others have done in the past, however when she hadn't received it and questioned why, they said that the City Attorney should prepare it:

Joan Kovar

From: Eric Beiermann <ebeiermann@olssonassoates.com>
Sent: Wednesday, July 25, 2018 2:59 PM
To: Joan Kovar
Subject: RE: Timpte easement

Joan,

Actually, you shouldn't need to sign the easement exhibit I provided to you. All the other language that is associated with it is created by the City's legal counsel. The council and mayor need to approve of the easement exhibit, and then formalize language for it.

Eric Beiermann | Site Civil | Olsson Associates
601 P Street | Lincoln, NE 68508 | ebeiermann@olssonassociates.com
TEL 402.474.6311 | DIR 402.458.5915 | CELL 402.570.9032 | FAX 402.474.5160



City Clerk Kovar stated that she thought it was too late in the day to expect City Attorney Egr to prepare the necessary utility easement for the meeting. City Clerk Kovar stated: "We could probably approve the easement contingent upon City Attorney drafting it."

City Attorney Egr stated: "This is my first knowledge of this. You could pass approval for this Timpote utility easement, upon my getting it drafted."

Council member Trowbridge stated: "Then that easement is in effect upon signature?"

City Attorney Egr stated: "Yes."

Therefore, Council member Trowbridge made a motion to authorize City Attorney Egr to draft an ordinance for Timpote Industries, Inc. to grant to the City of David City a utility easement upon their described property, and for the City of David City to approve and accept such easement. Council member Kobus seconded the motion. Voting AYE: Council members Meysenburg, Trowbridge, Hotovy, Smith, Kobus, and Vandenberg. Voting NAY: None. Mayor Zavodny was absent. The motion carried.

Note: City Attorney Egr drafted the following easement and it was signed by Dale Jones, President of Timpote, on July 30, 2018, granting the utility easement to the City:

TO: EGR, BIRKEL & WOLLMER, P.C.
PO BOX 46
DAVID CITY NE 68632

GRANT OF UTILITY EASEMENT

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS, TIMPTE INDUSTRIES, INC., a Delaware Corporation, duly authorized to do business in the State of Nebraska, hereinafter referred to as "Grantor", whether one or more, is the owner of the following described real estate, to-wit:

A parcel of land being part of the Northeast Quarter of the Southwest Quarter (NE1/4SW1/4) of Section Eighteen (18), Township Fifteen (15), North, Range Three (3), East of the 6th P.M., Butler County, Nebraska and vacated "S" Street, in the City of David City, Butler County, Nebraska consisting of 15.24 acres, more or less, now annexed by the City of David City, Butler County, Nebraska,

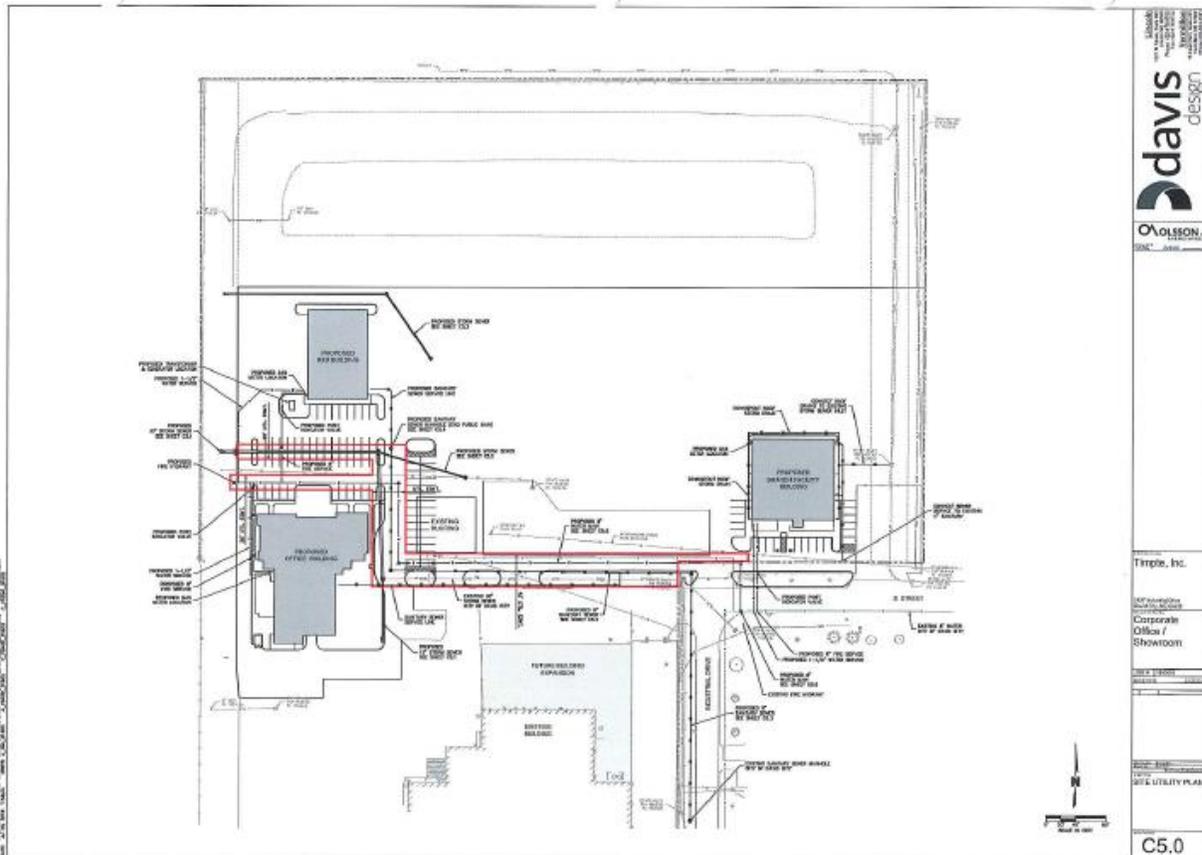
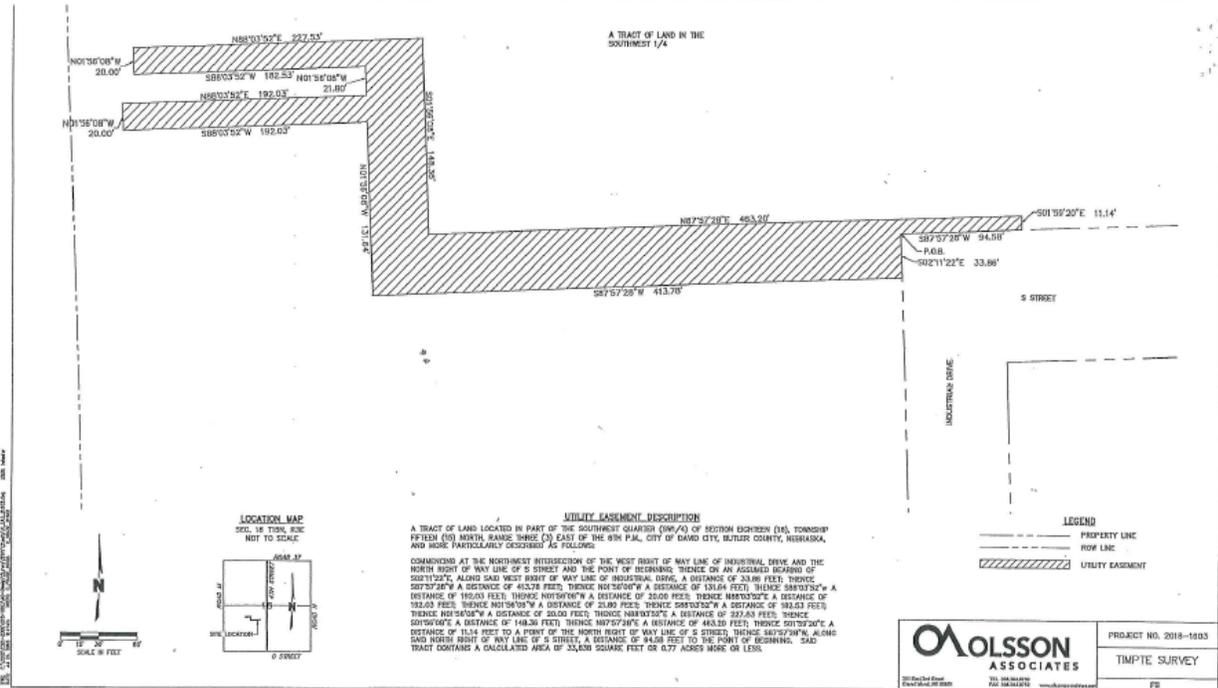
and;

WHEREAS, the CITY OF DAVID CITY, NEBRASKA, hereinafter referred to as "Grantee", is a Municipal Corporation duly organized, existing and operating under the laws of the State of Nebraska and who operates and maintains various utilities, including but not necessarily limited to sewer, water, electricity, gas, telephone, and cable television, directly or indirectly.

NOW, THEREFORE, in consideration of ONE DOLLAR (\$1.00) and other valuable consideration, the Grantor does hereby grant unto the Grantee an easement over, across, under and upon the following described real estate, to-wit:

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. A copy of the utility easement area is attached hereto and incorporated herein by reference as if fully set forth.

for the purpose of constructing, maintaining, operating and using utilities, including but not necessarily limited to sewer, water, electricity, gas, telephone, and cable television, directly or



There being no further business to come before the Council, Council member Vandenberg made a motion to adjourn. Council member Kobus seconded the motion. Voting AYE: Council members Trowbridge, Vandenberg, Meysenburg, Smith, Hotovy, and Kobus. Voting NAY: None. Mayor Zavodny was absent. The motion carried and Council President Gary Smith declared the meeting adjourned at 6:45 p.m.



CERTIFICATION OF MINUTES
July 25, 2018

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 July 25th, 2018; 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