

**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 regular meeting of said body and the agenda for such meeting to be held at 7:00 o'clock p.m. on the **13<sup>th</sup> day of June, 2018**, in the meeting room of the City Office, 557 North 4<sup>th</sup> 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 6<sup>th</sup> day of June, 2018.

**AGENDA AS FOLLOWS:**

- |  |   |
|--|---|
| 1. Roll Call;  |   |
| 2. Pledge of Allegiance;   | _____<br>Mayor Alan Zavodny                   |
| 3. Inform the Public about the location of the Open Meetings Act and the Citizens Participation Rules;   |   |
| 4. Minutes of the May 9 <sup>th</sup> , and May 23, 2018 meetings of the Mayor and City Council;   | _____<br>Council President Gary D. Smith      |
| 5. Consideration of Progress Estimate #10 for Constructors, Inc. in the amount of \$404,897.02;  | _____<br>Council member Thomas J. Kobus       |
| 6. Consideration of Claims;  |   |
| 7. Committee and Officer Reports;  |   |
| 8. Consideration of a final decision concerning an agreement with Henningsen Foods, Inc.;  | _____<br>Council member Dana E. Trowbridge    |
| 9. Consideration of awarding a bid for the Wastewater Treatment Plant Improvements;  | _____<br>Council member Kevin N. Hotovy       |
| 10. Reconsideration of motion to re-let bids on the park restrooms, showers, and shelter; and Consideration of accepting the bid of Rogge General Contractors, Inc. in the amount of \$178,000.00 as originally specified; | _____<br>Council member Patrick J. Meysenburg |
| 11. Public Hearing to consider amending the Zoning Ordinance 1060, Amending Article 2: Definitions by adding the definition of Materials Dumpster and Temporary Storage Containers;  | _____<br>Council member John P. Vandenberg    |
| 12. Consideration of Ordinance No. 1289, amending Zoning Ordinance #1060, as described above;  | _____<br>City Clerk Joan E. Kovar             |

13. Consideration of Resolution No. 5 – 2018 to consider the request by Daryl Glodowski to subdivide his property as described: A tract of land located in the Northwest Quarter (NW ¼) of Section Twenty-Nine (29), Township Fifteen (15) North, Range Three (3), East of the 6<sup>th</sup> P.M., Butler County, Nebraska, described as follows: Beginning at the Northeast corner of the NW ¼ of Section 29, Township 15 North, Range 3, East of the 6<sup>th</sup> P.M., Butler County, Nebraska; thence Southerly on the East line of the NW ¼ of said Section 29, 400.0 feet; thence Westerly, and parallel with, the North line of said NW ¼ , 653.5 feet; thence Northerly, and parallel with, the East line of said NW ¼ , 400.0 feet to a point on the North line of said NW ¼ ; thence Easterly on said North line, 653.5 feet to the point of beginning, into two tracts;
14. Consideration of the bids received for the demolition of the residence located on Lot 1 and the North 10' of Lot 4, Block 8, Litty's First Addition, otherwise known as 897 North 5<sup>th</sup> Street, David City, NE;
15. Consideration of Resolution No. 6 - 2018 concerning the application by the Butler County Parade Committee for a parade for Sunday, July 22, 2018;
16. Consideration of the request by Scott Samek to sell permissible fireworks between 12:01 a.m. June 25<sup>th</sup> and 11:59 p.m. July 4, 2018;
17. Consideration of appointing Monica Heller to another four-year term (April, 2022) on the Library Board of Trustees;
18. Consideration of the request from Rotary International to place "Don't Text and Drive" signs around the school;
19. Consideration of taking the Street Departments 1985 International Truck, and the Water Departments red 73 Ford, out of commission;
20. Consideration of City authorization for a new methane gas line to be installed;
21. Consideration of the status of the brick driving lanes in the Downtown Improvement Project;
22. Hearing as requested by Bob Wright concerning a mowing notice for the property located at 210 So. 8<sup>th</sup> Street;
23. Consideration of the mowing notice received by Bob Wright for the property located at 210 So. 8<sup>th</sup> Street;
24. Adjourn.

#### CITY COUNCIL PROCEEDINGS

June 13, 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 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 June 7<sup>th</sup>, and an affidavit of the publisher is on file in the office of the City Clerk. The Mayor and members of the City Council acknowledged advance notice of the meeting by signing the 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: Mayor Alan Zavodny, Council members Gary Smith, Thomas Kobus, Pat Meysenburg, Dana Trowbridge, Kevin Hotovy, and John Vandenberg, City Attorney Jim Egr, and City Clerk Joan Kovar.

Also present for the meeting were: Reed Miller of Miller & Associates, Mr. & Mrs. Mark Moseman, David McPhillips, Jeff Hilger, Planning Commission members Pam Kabourek and Janis Cameron, Paul Perske, Laura Kobza, Ashley Whitmer, Park/Auditorium Supervisor Bill Buntgen, and Building Inspector Ray Sueper.

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 and asked those present to please silence their cell phones.

The minutes of the May 9<sup>th</sup> and May 23<sup>rd</sup>, 2018 meetings of the Mayor and City Council were approved upon a motion by Council member Kobus and seconded by Council member Meysenburg. Voting AYE: Council members Hotovy, Smith, Trowbridge, Vandenberg, Kobus, and Meysenburg. Voting NAY: None. The motion carried.

Council member Trowbridge made a motion to approve Progress Estimate #10 for Constructors, Inc., in the amount of \$404,897.02. Council member Meysenburg seconded the motion. Voting AYE: Council members Hotovy, Smith, Kobus, Vandenberg, Meysenburg, and Trowbridge. Voting NAY: None. The motion carried.

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

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

Mayor Zavodny stated: "We have been working on the administrator search, where on we on this? I just fear that the longer we go, we're going to run into some trouble with that. Where do we stand on it?"

Council member Trowbridge stated: "We collected applications 6 months ago, so anybody that applied six months ago more than likely has found a job by now. So, do we start over, do we forget about it, do we just hire a warm body...."

Council member Meysenburg, who was on the Search Committee along with Council member Smith, stated: "I thought we decided on two people we were going to call and try to get them to come in."

Mayor Zavodny stated: "We did. I think the thing we were waiting on is, we talked about a background check, you were going to check with legal on that."

Council member Trowbridge stated: "And my legal guy is retired."

Mayor Zavodny stated: "Ok, we might have to rethink that at this point then. We had some stuff we're going to need, that we thought we needed some legal on, and how to go about it."

Council member Trowbridge stated: "I thought somebody was going to contact an HR expert."

Council member Hotovy stated: "And I did, and he would be willing to help us out, but he doesn't do background checks."

Mayor Zavodny stated: "You wanted the criminal and financial records too as I recall."

Council member Trowbridge asked: "So, where are we?"

Mayor Zavodny stated: "We've got a little bit more work to do. I think we set up interviews and tell them that those things are coming, we're not ready for them yet. We're going to need the releases, figure out how to do it, but we've got to interview, it's been too long. Maybe we can talk about that tomorrow."

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, Smith, Vandenberg, Meysenburg, Trowbridge, and Hotovy. Voting NAY: None. The motion carried.

Mayor Zavodny asked where we were, concerning a final agreement with Henningsen Foods, Inc.

Council member Trowbridge stated: "We're just about done. Last month we had the change of heart of Henningsen's on the financial end of it, and they would have rather that we ate the \$350,000 worth of Olsson Engineering Fee's, and that was the deal breaker, and they have reconsidered and they are fine with the financial end of it. We have been working with Craig (of Olsson's), for a few days, on sampling protocol, and Terry Tanaka is now in Japan, so he is out of the close loop on sampling protocol. I have not at all been happy with how our engineering people have handled our sampling protocol questions, because we seem to be taking the attitude that this is an adversarial relationship we have with this company, that we need to catch you doing something, and then when we catch you doing it we'll fine you, and we're going to fine you more this time than we did last time, and to me that isn't a partnership attitude or a partnership way to approach this. So anyway, it may get to the point that the committee doing the negotiating is going to just simply say "this is the way that paragraph's going to read", and we're going to move on with it. Henningsen has indicated, with sampling protocol being taken care of, then sampling protocol is not a big issue. Jim (Egr), you and Mostek (Michael Mostek, Attorney at Law) have the big issue which is indemnification, and I know you've been hammering on that, are you getting closer?"

City Attorney Egr stated: "We think so. One thing that's caused a delay on finishing that up is with the storm, Mostek had an oak tree come through his house, and so we've not been able to finish that up."

Council member Trowbridge stated: "If we can finish those two, indemnification and sampling protocol, Henningsen will be willing to sign that agreement on the 26<sup>th</sup> of this month. That will be a week from Tuesday. Governor Ricketts is going to be here on the 19<sup>th</sup> which is next Tuesday, and there will be something going on between the State of Nebraska Economic Development, University of Nebraska, and Henningsen for an announcement, and we'll let that die down and a week later sign the agreement."

Mayor Zavodny stated: "We're going to have to table Agenda #9 then again until we have that signed agreement."

Council member Hotovy made a motion to table consideration of awarding a bid for the wastewater treatment plant improvements. Council member Vandenberg seconded the motion. Voting AYE: Council members Smith, Kobus, Meysenburg, Trowbridge, Vandenberg, and Hotovy. Voting NAY: None. The motion carried.

Mayor Zavodny stated: "Reconsideration of a motion to re-let bids on the Park Shelter and Restroom/Shower Facility; Consideration of accepting the bid of Rogge General Contractors, Inc. in the amount of \$178,000 as originally specified. I've given this some thought and here is the conclusion I have come to. Our next closest bid is \$22,000 more. I was on board when we said "let's accept the bid, let's negotiate down, see if we can have savings here and there, and the more I thought about it, we are building a new shelter, the old concrete isn't terrible but for something that's going to be there for the next 30, 40, maybe 50 years I don't know why we don't put new concrete in."

Council member Trowbridge stated: "New concrete wasn't bid."

Reed Miller, President of Miller & Associates Consulting Engineers, P.C., was present. Mr. Miller stated: "Yes, it was."

Much discussion followed.

Council member Smith made a motion to rescind the motion to re-let bids on the Park Shelter and Restrooms/Shower Facility and to accept the bid of \$178,000 to Rogge General Contractors, Inc. as originally specified. Council members Meysenburg seconded the motion. Voting AYE: Council members Hotovy, Vandenberg, Smith, and Meysenburg. Voting NAY: Council members Trowbridge and Kobus. The motion carried.

Mayor Zavodny declared the Public Hearing open at 7:22 p.m. to consider amending Zoning Ordinance 1060, Amending Article 2: Definitions, by adding the definitions of Materials Dumpster and Temporary Storage Containers.

Building Inspector Ray Sueper stated: "This is nothing more than adding the words "Materials Dumpster and Temporary Storage Containers" and providing definitions for them to add clarification."

As requested, the definitions were read aloud. Discussion followed.

Mayor Zavodny asked for any further comments, and there being none, declared the Public Hearing closed at 7:28 p.m.

Council member Hotovy introduced Ordinance No. 1289 amending Zoning Ordinance No. 1060, amending Article 2: Definitions, by adding the definitions of Materials Dumpster and Temporary Storage Containers. Mayor Zavodny read Ordinance No. 1289 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 Meysenburg seconded the motion. Voting AYE: Council members Trowbridge, Hotovy, Vandenberg, Kobus, Smith, and Meysenburg. Voting NAY: None. The motion carried.

Council member Hotovy made a motion to pass and adopt Ordinance No. 1289 on the third and final reading. Council member Vandenberg seconded the motion. Voting AYE: Council members Meysenburg, Smith, Hotovy, Kobus, Trowbridge, and Vandenberg. Voting NAY: None. The motion carried and Ordinance No. 1289 was passed on 3<sup>rd</sup> and final reading as follows:

**ORDINANCE NO. 1289**

AN ORDINANCE TO AMEND ZONING ORDINANCE NO. 1060, BY AMENDING ARTICLE 2: DEFINITIONS, BY ADDING THE DEFINITIONS OF: MATERIALS DUMPSTER AND TEMPORARY STORAGE CONTAINERS; TO PROVIDE FOR THE REPEAL OF ANY ORDINANCE OR RESOLUTION IN CONFLICT THEREWITH; TO PROVIDE FOR AN EFFECTIVE DATE THEREOF; AND TO AUTHORIZE PUBLICATION IN PAMPHLET FORM.

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF DAVID CITY, BUTLER COUNTY, NEBRASKA, THAT THE FOLLOWING SECTIONS OF ZONING ORDINANCE NO. 1060 BE AMENDED AS FOLLOWS:

**ARTICLE 2: DEFINITIONS**

**Section 2.02 Definitions.**

**MATERIALS DUMPSTER** shall mean an open or closed container used for the recycling or disposal of materials used in the manufacturing process.

**TEMPORARY STORAGE CONTAINERS** shall mean any transportable container used for the storage of non-hazardous household, commercial and industrial materials. Said containers are typically delivered to a specified location in order to fill or retrieve materials and then transported to a location off-site where it is stored. These containers are occasionally referred to by the brand name Pods.

This Ordinance shall be in full force and effect from and after passage, approval and publication or posting as required by law.

PASSED AND APPROVED THIS 13<sup>th</sup> day of June, 2018.

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

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

Council member Hotovy introduced Resolution No. 5 – 2018 to consider the request of Daryl & Melissa Glodowski to subdivide their property as described: A tract of land located in the Northwest Quarter (NW ¼) of Section Twenty-Nine (29), Township Fifteen (15) North, Range Three (3), East of the 6<sup>th</sup> P.M., Butler County, Nebraska, described as follows: Beginning at the Northeast corner of the NW ¼ of Section 29, Township 15 North, Range 3, East of the 6<sup>th</sup> P.M., Butler County, Nebraska; thence Southerly on the East line of the NW ¼ of said Section 29, 400.0 feet; thence Westerly, and parallel with, the North line of said NW ¼, 653.5 feet; thence Northerly, and parallel with, the East line of said NW ¼, 400.0 feet to a point on the North line of said NW ¼; thence Easterly on said North line, 653.5 feet to the point of beginning, into two tracts, and moved for its passage and adoption. Council member Vandenberg seconded the motion. Voting AYE: Council members Kobus, Trowbridge, Meysenburg, Hotovy,

Smith, and Vandenberg. Voting NAY: None. The motion carried and Resolution No. 5 - 2018 was passed and approved as follows:

### **RESOLUTION NO. 5 – 2018**

WHEREAS, Daryl R. & Melissa K. Glodowski, as the owners of property legally described as: A tract of land located in the Northwest Quarter (NW  $\frac{1}{4}$ ) of Section Twenty-Nine (29), Township Fifteen (15) North, Range Three (3), East of the 6<sup>th</sup> P.M., Butler County, Nebraska, described as follows: Beginning at the Northeast corner of the NW  $\frac{1}{4}$  of Section 29, Township 15 North, Range 3, East of the 6<sup>th</sup> P.M., Butler County, Nebraska; thence Southerly on the East line of the NW  $\frac{1}{4}$  of said Section 29, 400.0 feet; thence Westerly, and parallel with, the North line of said NW  $\frac{1}{4}$  , 653.5 feet; thence Northerly, and parallel with, the East line of said NW  $\frac{1}{4}$  , 400.0 feet to a point on the North line of said NW  $\frac{1}{4}$  ; thence Easterly on said North line, 653.5 feet to the point of beginning, into two lots, have submitted a request to divide their property into two tracts as follows:

#### TRACT I DESCRIPTION

A tract of land located in the NE  $\frac{1}{4}$  of the NW  $\frac{1}{4}$  of Section 29 T15N R3E of the 6<sup>th</sup> P.M., Butler County, Nebraska, described as follows:

Beginning at the northeast corner of said NW  $\frac{1}{4}$ ; thence southerly, on the east line of said NW  $\frac{1}{4}$ , 400.00 feet; thence westerly, parallel with the north line of said NW  $\frac{1}{4}$ , 326.75 feet; thence northerly, parallel with the east line of said NW  $\frac{1}{4}$ , 400.00 feet, to a point on the north line of said NW  $\frac{1}{4}$ ; thence easterly, 326.75 feet, to the Point of Beginning, containing 3.00 acres more or less.

#### TRACT II DESCRIPTION

A tract of land located in the Northwest Quarter (NW  $\frac{1}{4}$ ) of Section Twenty-Nine (29), Township Fifteen (15) North, Range Three (3), East of the 6<sup>th</sup> P.M., Butler County, Nebraska, described as follows:

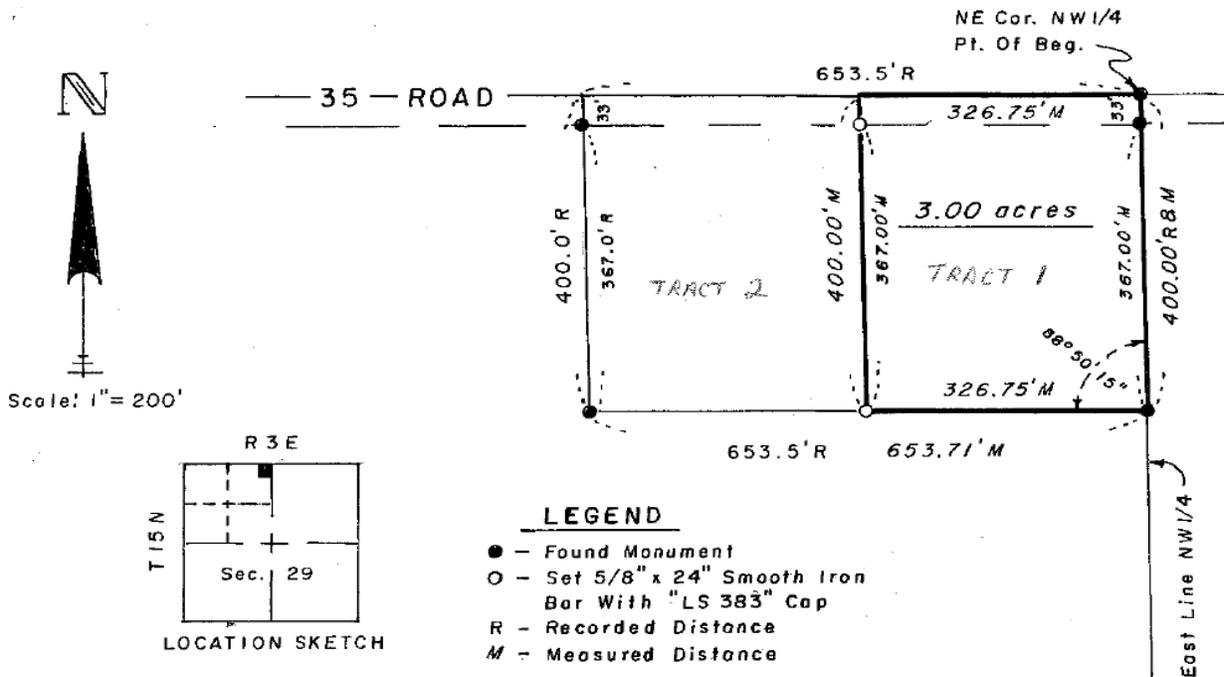
Beginning at the Northeast corner of the NW  $\frac{1}{4}$  of Section 29, Township 15 North, Range 3, East of the 6<sup>th</sup> P.M., Butler County, Nebraska; thence Southerly on the East line of the NW  $\frac{1}{4}$  of said Section 29, 400.0 feet; thence Westerly, and parallel with, the North line of said NW  $\frac{1}{4}$  , 653.5 feet; thence Northerly, and parallel with, the East line of said NW  $\frac{1}{4}$  , 400.0 feet to a point on the North line of said NW  $\frac{1}{4}$  ; thence Easterly on said North line, 653.5 feet to the point of beginning; **except for** the northeast corner of said NW  $\frac{1}{4}$ ; thence southerly, on the east line of said NW  $\frac{1}{4}$ , 400.00 feet; thence westerly, parallel with the north line of said SW  $\frac{1}{4}$ , 326.75 feet; thence northerly, parallel with the east line of said NW  $\frac{1}{4}$ , 400.00 feet, to a point on the north line of said NW  $\frac{1}{4}$ ; thence easterly, 326.75 feet, to the Point of Beginning, containing 3.00 acres more or less.

WHEREAS, there were no objections expressed concerning the request of Daryl & Melissa Glodowski.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF DAVID CITY, NEBRASKA, that the request of Daryl & Melissa Glodowski to subdivide their property legally described above into Tract I and Tract II, as legally described above, and shown below, is hereby approved.

ADMINISTRATIVE SUBDIVISION

PART OF THE NW1/4 OF SECTION 29 T15 N  
 R3E, BUTLER COUNTY, NEBRASKA



Passed and approved this 13<sup>th</sup> day of June, 2018.

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

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

City Clerk Kovar reported that only one bid was received for the demolition of the residence located on Lot 1 and the North 10' of Lot 4, Block 8, Litty's First Addition, otherwise known as 897 North 5<sup>th</sup> Street, David City, Nebraska, as follows:



Mid-Nebraska Grading & Demo Inc.  
 P.O. Box 366  
 David City, NE 68632  
 402-672-6258

**Proposal**

PROPOSAL NO.	5118
SHEET NO.	1
DATE	5-14-2018

PROPOSAL SUBMITTED TO:

WORK TO BE PERFORMED AT:

NAME City of David, city	ADDRESS 897 North 5 <sup>th</sup> street
ADDRESS 557 N. 4 <sup>th</sup> Street	David, City, NE. 68632
David, City NE. 68632	DATE OF PLANS MAY-2018
PHONE NO. 402-367-3135	ARCHITECT N-A

We hereby propose to furnish the materials and perform the labor necessary for the completion of Demolition of  
Said Property Located At 897 N 5<sup>th</sup> Street.  
 Scope of Work:

1. Demolition of 2 story home.  
Per city specs.
2. Tree Removals outside of city Right of way.
3. Utility Disconnects.
4. Asbestos Abatement.
5. Backfill and seed lot.

TOTAL = 22,325.00

All material is guaranteed to be as specified, and the above work to be performed in accordance with the drawings and specifications submitted for above work and completed in a substantial workmanlike manner for the sum of Twenty Two thousand Three Hundred Twenty Five Dollars (\$ 22,325.00) with payments to be made as follows.  
Five.

Any alteration or deviation from above specifications involving extra costs will be executed only upon written order, and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents, or delays beyond our control.

Respectfully submitted

*Joseph Holus*  
 Per Completed Project.

Note — this proposal may be withdrawn by us if not accepted within 30 days.

**ACCEPTANCE OF PROPOSAL**

The above prices, specifications, and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payments will be made as outlined above.

Signature \_\_\_\_\_

Date \_\_\_\_\_

Signature \_\_\_\_\_

Council member Trowbridge made a motion to accept the bid of Mid-Nebraska Grading & Demo Inc., in the amount of \$22,325.00 for the demolition of the residence located on Lot 1 and the North 10' of Lot 4, Block 8, Litty's First Addition, otherwise known as 897 North 5<sup>th</sup> Street, David City, Nebraska, and then we mail the homeowner a bill, we give the homeowner

30 days to pay us, and on the 31<sup>st</sup> day we begin foreclosure. Council member Meysenburg seconded the motion. Voting AYE: Council members Vandenberg, Smith, Hotovy, Kobus, Trowbridge, and Meysenburg. Voting NAY: None. The motion carried.

The request of the Butler County Parade Committee for a parade on Sunday, July 22, 2018, was discussed. The parade route will begin at 6<sup>th</sup> & "C" Streets, travel north to "L" Street, turn west on "L" Street, crossing Highway 15 (4<sup>th</sup> Street) and continue west to the Butler County Fairgrounds. City Clerk Kovar stated that she has acquired a copy of the parade insurance from LARM for General Liability in the amount of \$5,000,000.

Council member Hotovy introduced Resolution No. 6 – 2018 and moved for its passage and adoption. Council member Smith seconded the motion. Voting AYE: Council members Kobus, Vandenberg, Trowbridge, Meysenburg, Smith, and Hotovy. Voting NAY: None. The motion carried.

### **RESOLUTION NO. 6 - 2018**

WHEREAS, the Butler County Fair's Annual parade is scheduled for July 22, 2018, and

WHEREAS, the Butler County Parade Committee has designated 2:00 p.m. to 7 p.m. to allow for set-up and clean-up, with the parade beginning at 5:00 p.m., and

WHEREAS, the Butler County Parade Committee has requested that Highway 15, at the intersection of "L" Street and Highway 15, be closed so the parade can cross Highway 15,

WHEREAS, the Mayor and Council acknowledge Revised Statutes Chapter 39-1359, Rights-of way; inviolate for state and Department of Roads purposes; temporary use for special events; conditions; notice; Political Subdivisions Tort Claims Act; applicable, which states:

- (1) The rights-of way acquired by the department shall be held inviolate for state highway and departmental purposes and no physical or functional encroachments, structures, or uses shall be permitted within such right-of-way limits, except by written consent of the department or as otherwise provided in subsections (2) and (3) of this section.
- (2) A temporary use of the state highway system, other than a freeway, by a city including full and partial lane closures, shall be allowed for special events, as designated by a city, under the following conditions:
  - (a) The roadway is located within the official corporate limits or zoning jurisdiction of the city;
  - (b) A city making use of the state highway system for a special event shall have the legal duty to protect the highway property from any damage that may occur arising out of the special event and the state shall not have any such duty during the time the city is in control of the property as specified in the notice provided pursuant to subsection (3) of this section, and
  - (c) Any existing statutory or common law duty of the state to protect the public from damage, injury, or death shall become the duty of the city making use of the state highway system for the special event, and the state shall not have such statutory or common law duty during the time the city is in control of the property as specified in the notice provided pursuant to subsection (3) of this section, and
  - (d) The city using the state highway system for a special event shall formally, by official governing body action, acknowledge that it accepts the duties set out in

this subsection and, if a claim is made against the state, shall indemnify, defend, and hold harmless the state from all claims, demands, actions, damages, and liability, including reasonable attorney's fees, that may arise as a result of the special event.

- (3) If a city has met the requirements of subsection (2) of this section for holding a special event and has provided thirty days' advance written notice of the special event to the department, the city may proceed with its temporary use of the state highway system. The notice shall specify the date and time the city will assume control of the state highway property and relinquish control of such state highway property to the state.
- (4) The Political Subdivisions Tort Claims Act shall apply to any claim arising during the time specified in a notice provided by a political subdivision pursuant to subsection (3) of this section.

WHEREAS, the City of David City wishes to support this annual event, and

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF DAVID CITY, NEBRASKA, that the City Clerk is hereby authorized to forward this resolution to the State of Nebraska Department of Roads for the closing of Highway 15 and "L" Street, from 2:00 p.m. to 7:00 p.m. for the parade to be held on Sunday, July 22, 2018 in David City, Nebraska.

Passed and adopted this 13<sup>th</sup> day of June, 2018.

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

\_\_\_\_\_  
City Clerk Joan E. Kovar



Certificate No.: 4  
Member Number: 310

CERTIFICATE OF COVERAGE

This Certificate is issued as a matter of information only and confers no rights upon the Certificate holder. This Certificate does not amend, extend or alter the coverage afforded by the coverage document(s) listed below.

NAME & ADDRESS OF MEMBER: City of David City  
PO Box 191  
557 4th Street  
David City, NE 68632

This is to certify that the coverage document(s) listed below have been issued to the Member named above and are in force at this time. Notwithstanding any requirement, term or condition of any agreement or other document with respect to which this Certificate may be issued or may pertain, the coverage(s) afforded is subject to all the terms, exclusions and conditions of the Coverage Agreement(s).

TYPE OF COVERAGE	EFFECTIVE DATE	EXPIRATION DATE	LIMIT OF COVERAGE
General Liability	10/01/2017	10/01/2018	\$5,000,000/\$5,000,000 Limit

CANCELLATION: Should the above described coverage document(s) be cancelled, the League Association of Risk Management will endeavor to mail 30 days written notice to the below named Certificate holder, but failure to mail such notice shall impose no obligation or liability of any kind upon the pool.

SPECIAL CONDITIONS/OTHER COVERAGES: Verification for the City of David City - Member has liability coverage for parades

NAME & ADDRESS OF CERTIFICATE HOLDER:  
Nebraska Department of Roads  
PO Box 94759  
Lincoln, NE 68509

DATE ISSUED: 06/11/2018

Authorized Representative

Council member Trowbridge made a motion to approve the request by Scott Samek to sell permissible fireworks between 12:01 a.m. June 25<sup>th</sup> and 11:59 p.m. July 4, 2018, at 375 Nebraska Street, Amigo's parking lot. Council member Smith seconded the motion. Voting

YEA: Council members Meysenburg, Trowbridge, Hotovy, Vandenberg, Kobus, and Smith.  
Voting NAY: None. The motion carried.

Monica Heller's term on the Library Board of Trustees expired in April, 2018. When asked if she would be willing to serve another term she responded by text:

Sure, I would be willing to serve another 4 yr term. I have enjoyed it. Plus we will have an empty nest soon.

God's Blessings,  
Monica

Council member Trowbridge made a motion to appoint Monica Heller to another four-year term (April, 2018 – April, 2022) on the Library Board of Trustees. Council member Vandenberg seconded the motion. Voting AYE: Council members Hotovy, Smith, Kobus, Meysenburg, Trowbridge, and Vandenberg. Voting NAY: None. The motion carried.

Ashley Kobza Whitmer was present to discuss a request by the David City Rotary to install signs around the school areas. They are approximately 6" wide and 9" tall metal signs that mount to the posts of the stop signs. The signs basically say: "Don't text and drive", "Buckle Up", and "Drive Safely".

Ashley Whitmer stated: "This is actually a request by the David City Rotary, inspired by the Columbus Rotary Morning Club. They've put up signs around all of their schools encouraging not only children, but anyone who happens to be in the proximity of the schools, to drive safer and be extra cautious. So, it would be a group project where we are taking all the design and things from the Columbus Rotary Club. They will be the exact same size, the same company will make them, Rotary will provide the signs, and as long as we have approval we can install them as well. These signs will be added to the posts of the stop signs and I believe we counted about ten. These will be around St. Mary's, all of the D.C. Public School within a one block radius, and Aquinas' one stop sign."

Council member Trowbridge made a motion to approve the request of the David City Rotary to provide and install signs on the posts of the stop signs by the schools. Council member Kobus seconded the motion. Voting AYE: Council members Meysenburg, Trowbridge, Hotovy, Smith, Vandenberg, and Kobus. Voting NAY: None. The motion carried.

Council member Meysenburg made a motion to take the Street Departments 1985 International Truck and the Water Departments red 73 Ford, out of commission. Council member Hotovy seconded the motion. Voting AYE: Council members Kobus, Smith, Vandenberg, Trowbridge, Hotovy, and Meysenburg. Voting NAY: None. The motion carried.

At a previous meeting, Andy Riales an agent for Black Hills Energy, stated that they are attempting to take, what's considered brown methane gas, burn off the impurities in the methane at their proposed site, and then ship the gas into town for public and commercial use which should provide an excellent heat source and energy source for the town.

Council member Trowbridge asked: "Has this project started in the City limits of David City? Yes? So how did it start without approval?"

City Clerk Kovar stated: "They don't really need approval because we have a contract with Black Hills Energy that they can use our right-of-ways."

The current agreement dated March, 2011, states as follows:

Ordinance No. 1139

**An Ordinance granting Black Hills/Nebraska Gas Utility Company, LLC d/b/a Black Hills Energy, a Delaware limited liability company, its lessees, successors and assigns, a natural gas and landfill gas franchise and the authority to construct, operate, maintain, and extend a natural gas or landfill gas distribution plant and system, and granting the right to use the streets, alleys, and other public places within the present or future corporate limits of the City of David City, Nebraska**

Be it ordained by the City Council of the City of David City, NE, as follows:

**FRANCHISE GRANTED**

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

**TERM**

The rights and privileges granted hereunder shall remain in effect for a period of twenty five (25) years commencing on the effective date of this Ordinance, with an option to extend the term an additional twenty-five years commencing at the expiration of this franchise in the year 2033.

Mayor Zavodny stated: "The next agenda item is the status of the brick driving lanes in the Downtown Improvement Project. You want to kind of summarize our meeting Monday, maybe a little bit?"

Council member Trowbridge stated: "The concern started when the first brick was laid, and it didn't get any better as they practiced the whole way to the end of the street, and then they did the other lane and we had lots of comments from the public and even the council went and took a peak at it. The first two lanes, I question if we will ever get to the point that they're acceptable. They have gotten better. Mark, Mr. Moseman, has been a great help as to being positive with these people and we find out today that Daly has never done a brick street before and the contractor, Constructors, has not done a brick street before. Linhart, or whatever their name is out of Omaha actually laying the bricks, they have done it before but they are learning on the run. They are getting better. Mark and I have reached that conclusion today with the meeting with the observer (Greg Goldman) and observing what they're doing. They're into the corner now. We still have a hammer in our hand and that is, that maybe we won't pay you until the first portion is acceptable, and I really think it has to be acceptable. It's expensive. I don't know how you put acceptable in terms in an agreement, and I don't know what the legal system

says Jim (Egr) about the dispute as to what is acceptable. Daly's people indicate that it probably isn't acceptable in the form it's in now, the 4<sup>th</sup> to 5<sup>th</sup> on "D", that it has a lot of healing and repair that need to be done."

Mayor Zavodny stated: "We were able to point out some of the bricks that are marred, some of them have paint on them; they did indicate to us that now they have a machine that will make a clean cut. We had a few other items we discussed like the transition on 5<sup>th</sup> Street there was just kind of left, and they know that has to be redone, so I think expectations wise we were able to lay out what we are expecting and that it was unacceptable to take an almost rounded brick, throw it right up against the concrete, and just put sand around it. So, they think they are cutting straighter edges and those kinds of things. I concur with everything Council member Trowbridge said. We had that discussion, I think we were able to convey what we thought was acceptable and I think we did see agreement. The difficulty's going to be, I think at this point is, some of those have been packed so hard, and with the sand, it's going to be a lot harder to take them out than if they would have done it while it was being done instead. My personal observation, I don't think there was any process to grade bricks or to sort them. I think it was they took a front-end loader out there, dumped them in a dump truck, dumped them here, maybe they glanced at them before they put them down but it wasn't working, and then using the same type of brick throughout based on quality. Mark, you've done a great lot of work, anything you want to add to what we're talking about?"

Mark Moseman stated: "Well, I think it's better. The question I have, I don't know the answer because I wasn't a party to it, was there an expectation of the City and an expectation of the contractor, that they would grade and sort bricks and deliver them to the site more carefully because what they do now is they take a Bobcat loader, scoop up bricks from the site out there, dump them once in the dump truck and they get damaged, then the dump truck drives them here and it dumps them and they get damaged some more, and then another Bobcat picks them up, and in order to take debris off the bricks the Bobcat loader has a bucket that has a grate rather than a solid base, and the way they take dirt off the bricks is they use the hydraulics to jerk that several times and let the dirt fall off, and then they use the brick. I do think they are installing the bricks better. They've had some instruction on how to lay them, how to lay them more uniformly, that's all better, but my main question is, is there an understanding from the City to the contractor and vice-versa, that they should actually be handling their material better before the installers get a hold of them?"

Mayor Zavodny stated: "What I can say is we were told, because we asked this question point blank, they would be cleaned, they would be sorted, and they would use the best of the best. We know, that under the highway, those bricks were in excellent condition for the most part and they were of the Purington, not the Buffalo, the majority of them. So, I know, I remember very clearly, being told that there was going to be a much more intricate process than we're seeing. Now, is that in writing?"

Mark Moseman stated: "If they continue what they are doing, we are going to have great brick streets, they're going to last a long time, but if they can be cleaned and graded better; damaged bricks invite erosion, and that's the basic issue. The more times you bang that brick around, and break more and more of that outer shell, then there are more places on the outer shell of that brick for erosion to occur."

Council member Trowbridge stated: "I think a month from tonight will be a threshold for us on that first bunch because I think we need to balk on paying a portion of the bricks until that block gets to somebody's satisfaction level."

Council member Meysenburg stated: "They tore out a bunch of the brick again today."

Council member Trowbridge stated: "Good, because they have a lot of them to go."

Mayor Zavodny stated: "You know, I always appreciated the quotation on the State Capitol that "The Salvation of the State is Watchfulness in the Citizen" and I think that's on display here and it's very nice to see."

Bob Wright had requested a hearing concerning a mowing notice for the property located at 210 So. 8<sup>th</sup> Street. This was an "informal hearing", not a public hearing.

City Code §6-429 states:

**§6-429 MISDEMEANORS; WEED REMOVAL.**

- (1) It shall be a nuisance to permit or maintain any growth of eight inches (8") or more in height of weeds, grasses, or worthless vegetation. It shall be the duty of each owner or owner's duly authorized agent or occupant of real estate in the Municipality to cut and clear such real estate, together with one-half (½) of the streets and alleys abutting thereon, of all weeds, grasses or worthless vegetation that are noxious, obstruct travel on public ways, or create a fire or health hazard. Such weeds, grasses and worthless vegetation shall be cut so as not to extend more than eight inches (8") in height above the ground. Subsequent to the cutting of the said weeds, grasses and worthless vegetation, all loose vegetation shall be immediately removed. Upon the failure of the owner or owner's duly authorized agent or occupant having control of any real estate to cut and clear the said weeds, grasses and worthless vegetation as set forth hereinbefore, the County Sheriff, or designated officer, shall give notice to abate and remove such nuisance to each owner or owner's duly authorized agent or occupant, if any, by personal service or first-class mail which has been conspicuously marked as to its importance. Within five (5) days after receipt of such notice, the owner or occupant of the lot or piece of ground may request a hearing with the city to appeal the decision to abate or remove a nuisance by filing a written appeal with the office of the City Clerk. A hearing on the appeal shall be held within fourteen days after the filing of the appeal and shall be conducted by the Mayor and City Council. A decision on the appeal shall be rendered within five business days after the conclusion of the hearing. If the appeal fails, the city may have such work done. Within five days after receipt of such notice, if the owner or occupant of the lot or piece of ground does not request a hearing with the city, or fails to comply with the order to abate and remove the nuisance, the city may have such work done, and the cost thereof shall be paid by the owner. (*Ref. 17-563 RS Neb.*)
- (2) The cost and expenses of any such work shall be paid by the property owner. If unpaid for two months after such work is done, the Municipality may either (a) levy and assess the costs and expenses of the work upon the lot or piece of ground so benefited in the same manner as other special taxes for improvements are levied and assessed or (b) recover in a civil action the costs and expenses of the work upon the lot or piece of ground and the adjoining street and alleys. (*Ref. 17-563 RS Neb.*)
- (3) For purposes of this section:
  - (a) Litter includes, but is not limited to: (i) trash, rubbish, refuse, garbage, paper, rags, and ashes; (ii) wood, plaster, cement, brick, or stone building rubble; (iii) grass, leaves, and worthless vegetation; (iv) offal and dead animals; and (v) any machine or machines, vehicle or vehicles, or parts of a machine or vehicle which have lost their identity, character, utility, or serviceability as such through deterioration, dismantling, or the ravages of time, are inoperative or unable to perform their intended functions, or are cast off, discarded, or thrown away or left as waste, wreckage, or junk; and
  - (b) Weeds includes, but is not limited to, bindweed, puncture vine, leafy spurge, Canada thistle, perennial peppergrass, Russian knapweed, Johnson grass, nodding or musk thistle, quack grass, perennial sow thistle, horse nettle, bull thistle, buckthorn, hemp plant, and ragweed. (*Ref. 17-563 RS Neb.*)

Much discussion followed. It seems that whenever the City demolishes a building and files the lien against the property, the City ends up continually mowing the property. The property located at 210 So. 10<sup>th</sup> is one of those properties. Bob Wright has tried to purchase the

property but the City has a lien against it so he can't get clear title, although according to the County Assessors website, Bob is listed as the owner.

Council member Meysenburg stated: "County Attorney Julie Reiter claims that the County owns that lot, so why are we mowing it?"

City Attorney Egr stated: "That's that piece of property, all the time, that comes up for sale and they don't approve the sale because he bid it in too low, and so the County owns that property. I have a disagreement with Julie on that because they won't sell it to him. He bids it in low, and doggone it we've got properties like that, so what if he bids it in low, let's get it on the tax rolls."

It was noted that previously Leo Meister tried to buy this property, then Bob Wright tried, then Lanny Cooper, and now Bob tried again but it came back as a "no sale".

City Attorney Egr stated: "For a tax sale, you have to have it confirmed by the District Court, and they did not have it confirmed in the District Court because they said it didn't bring enough money so we aren't going to have it confirmed."

Mayor Zavodny stated: "When I went to the County Board, the way I understand it is next fall it will be eligible to be sold. We need to bid in as the City for what we're owed and at that time Bob will relinquish his rights to it because it will be sold again, is the way she explained it to me."

City Attorney Egr stated: "I don't know why we can't sit down with the County and the City and get it sold to some taxpayer and get it back on the tax rolls."

Mayor Zavodny stated: "What we can't do is sit down with Bob and negotiate anything because we didn't give Leo that opportunity or anybody else that tried to buy it. The City needs to own it and then decide if they're going to forgive the liens, and then you sell it with forgiving whatever you're going to forgive, you get it back on the tax rolls and it goes through the bid process because that's what the City is required to do to dispose of the property. If we can make an agreement with the County to make sure the back real estate taxes are paid, and we pay Bob the \$500 he paid for it, and then the City actually owns it, then can we forgive whatever liens we are willing to forgive on it and sell it through a bid?"

City Attorney Egr stated: "Yes, and what we have to do is, we don't say that we forgive it, we have to file that it's been paid."

Mayor Zavodny stated: "That lot will never bring, or be worth the amount of money, for all the taxes and liens that keep adding up. It is a waste of our guys' time to have to mow it and the wear and tear on the equipment. Between now and the next meeting let's see if we can go play "Let's make a Deal" so we can bring it to the Council and say "Are you willing to buy it for the taxes and \$500?" and then we own our lien part of it and then we put it up for bid once we get clear title and we own it. You okay with that game plan of trying to do that? I don't know how else you get it."

City Attorney Egr stated: "Well I say we don't mow it anymore. You, County, are the ones who own it because you bought the tax sale certificate and you didn't get the sale confirmed under Bob, and he (Bob) should not have to be billed for the mowing, and we're not

going to mow it, you own it, you mow it County, you've got the mowers to do it, and we're not going to mow it anymore."

Mayor Zavodny stated: "Let me see what we can do, we can't fix it tonight."

City Clerk Kovar asked: "So is the City supposed to mow the property at 210 So. 8<sup>th</sup> or not?"

Mayor Zavodny stated: "Not right now. We have to figure out who even owns it."

Council member Hotovy made a motion to table consideration of the mowing notice received by Bob Wright for the property located at 210 So. 8<sup>th</sup> Street. Council member Vandenberg seconded the motion. Voting AYE: Council members Smith, Kobus, Trowbridge, Meysenburg, Hotovy, and Vandenberg. Voting NAY: None. The motion carried.

There being no further business to come before the Council, Council member Hotovy made a motion to adjourn. Council member Smith seconded the motion. Voting AYE: Council members Meysenburg, Vandenberg, Trowbridge, Smith, Hotovy, and Kobus. Voting NAY: None. The motion carried and Mayor Zavodny declared the meeting adjourned at 8:15 p.m.



CERTIFICATION OF MINUTES  
June 13, 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 June 13<sup>th</sup>, 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.

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Joan Kovar, City Clerk