

**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 **10th day of September, 2014**, in the meeting room of the City Office, 557 N 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 3rd day of September, 2014.

Mayor Alan Zavodny

AGENDA AS FOLLOWS:

- | | |
|---|---|
| 1. Roll Call; | _____
Council President Gary L. Kroesing |
| 2. Pledge of Allegiance; | |
| 3. Inform the Public about the location of the Open Meetings Act and the Citizens Participation Rules; | _____
Council member Michael E. Rogers |
| 4. Minutes of the August 13 th , and August 27 th , 2014, meetings of the Mayor and City Council; | |
| 5. Consideration of Claims; | _____
Council member Ruddy L. Svoboda |
| 6. Committee and Officer Reports; | |
| 7. Sheriff Marcus Siebken to present an update/review on law enforcement; | |
| 8. Update on the LARM Insurance by Geneie Andrews; | _____
Council member William Scribner |
| 9. Consideration of changing the City's Health Insurance from BCBS to CoOpportunity Health HSA Gold, and selecting an agent; | _____
Council member Gary D. Smith |
| 10. Consideration of entering into an agreement with PeopleService, Inc. for operational and maintenance oversight services for the water and sewer departments; Chris Gutschow, Director of Business Development, will be present; | _____
Council member John P. Vandenberg |
| 11. BUDGET HEARING and Budget Summary for the purpose of hearing support, opposition, criticism, suggestions or observations of taxpayers relating to the proposed budget Fiscal Year 2014 – 2015; | _____
City Clerk Joan E. Kovar |

12. Consideration of Ordinance No. 1215 adopting the budget statement to be termed the Annual Appropriation Bill to appropriate the budget for the 2014 – 2015 fiscal year;
13. Public Hearing to consider setting the final tax request at a different amount than the prior year tax request;
14. Consideration of Resolution No. 18 – 2014 approving an additional one percent (1%) increase in restricted funds;
15. Consideration of Resolution No. 19 – 2014 setting the property tax request;
16. Consideration of Resolution No. 20 – 2014 carrying forward the unused budget authority;
17. Consideration of Ordinance No. 1212, on second reading only, for the annexation of the McPhillips property described as follows: A Tract of land located in part of the S ½ NW ¼ of Section 20, T15N, R3E of the 6th P.M., in Butler County, Nebraska, more particularly described as follows: COMMENCING AT THE NORTHWEST CORNER S 1/2 NW1/4 OF SECTION 20, T15N, R3E OF THE 6TH P.M., IN BUTLER COUNTY, NEBRASKA, AND ASSUMING THE WEST LINE OF SAID S½ NW¼ TO HAVE A BEARING OF S00°38'50"E ON SAID WEST LINE S 1/2 NW1/4, 293.50 FEET, TO THE POINT OF BEGINNING; THENCE S89°46'54"E, 329.60 FEET; THENCE N00°34'16"W, 293.07 FEET TO A POINT ON THE NORTH LINE S 1/2 NW1/4 OF SECTION 20; THENCE S89°42'30"E ON SAID NORTH LINE S 1/2 NW1/4, 1010.05 FEET; THENCE S00°05'05"E, 293.05 FEET; THENCE S20°08'13"W, 166.91 FEET; THENCE S22°37'01"W, 71.80 FEET; THENCE N89°51'11"W, 695.05 FEET; THENCE N02°05'04"E, 49.50 FEET; THENCE 89°08'47W, 170.00 FEET; THENCE N01°26'14"W, 144.13 FEET; THENCE N89°46'54"W, 384.90 FEET, TO A POINT ON THE WEST LINE S1/2 NW1/4 OF SECTION 20; THENCE N00°38'50"W ON SAID WEST LINE S1/2 NW1/4, 30.00 FEET TO THE POINT OF BEGINNING, CONTAINING 11.54 ACRES, MORE OR LESS.
18. Public Hearing to hear evidence in support of or protest against the issuance of a Class "C" Liquor License for Kevin Orr d.b.a. Papa Tango's, 412 E Street;
19. Consideration of the application of Kevin J. Orr, d.b.a. Papa Tango's, 412 E Street, for a Class C Liquor License;
20. Consideration of entering into an agreement with Olsson Associates for Street Superintendent Services, Jerry Hain as our Class A Street Superintendent, on an annual time and expenses, not to exceed basis as follows: Street Superintendent Services: \$1,000 and Consulting Services: \$5,000;
21. Consideration of entering into an agreement with Olsson Associates to study two drainage structures (the bridges located on south 11th Street and East "A" Street) and make recommendations for improvements at a cost not to exceed \$6,500.00;
22. Consideration of the bids received for concrete work needed at the City Auditorium (\$2,000 is budgeted from Keno Funds for the current fiscal year 2013-2014);
23. Consideration of authorizing Mayor Zavodny to sign the annual lease agreement for the tract of land designated as the David City Golf Course;

24. Consideration of installing water main from 1st Street to Oak Street on West E Street;
25. Consideration of hiring Olsson Associates to engineer the water main from 1st Street to Oak Street on West E Street;
26. Consideration of hiring Olsson Associates to engineer the water main from 8th & "I" Street to 5th & "I" Street and from 7th & "I" Street to 7th & "J" Street – St. Joseph's Villa Project;
27. Consideration of an airport lease with Jared Storm;
28. Consideration of Resolution No. 21-2014 adopting the Disadvantaged Business Enterprise (DBE) Program;
29. Consideration of Resolution No. 22 – 2014 dividing property owned by Steve Maguire which is approximately 600' x 140' legally described as: Parcel ID #120007840 referred to as follows: All that part of the West ½ of the SW Quarter (W½ SW¼) of Section 19, Township 15 North, Range Three East of the 6th P.M., known as Outlot 3 in the West Addition of David City beginning at a point on the west line of Oak Street in Miles 4th Addition to David City, 320' South of the South line of Right-of-way of Fremont, Elkhorn, and Missouri Valley Railroad Company across said west ½ of the SW Quarter of Section 19, thence running west in a direct line 637' more or less to the West section line of said Section 19, thence running South on said section line 187' more or less, thence running East 637' to the West line of Oak Street, thence running North on said West line of Oak Street 187' more or less, to the place of beginning, less that portion of said real estate deeded in Book 82, Page 238 described as follows: Beginning at the NE corner of Lot 5, Block 1, Hall's Addition to David City, running thence North at right angles to said Block 1, a distance of 20'; running thence West in a line parallel to the North line of said Block 1, a distance of 75', running thence South, a distance of 20' to the NW corner of the East ½ of Lot 6, in said Block 1, Hall's Addition to David City, running thence East along the North line of said Block 1, a distance of 75' to the point of beginning; into 2 lots approximately 140' x 170' and 140' x 430';
30. Consideration of hiring someone to appraise the Ball Fields;
31. Consideration of going into executive session to discuss possible litigation and a personnel matter;
32. Adjourn.

CITY COUNCIL PROCEEDINGS

September 10, 2014

The City Council of the City of David City, Nebraska, met in open public session in the meeting room of the City Office, 557 N 4th Street, David City, Nebraska. The Public had been advised of the meeting by publication of notice in The Banner Press on September 4th, 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 Ruddy Svoboda, John Vandenberg, Gary Kroesing, Gary Smith, Bill Scribner, and Mike Rogers. Also present were City Attorney Jim Egr, and Interim City Administrator/City Clerk Joan Kovar.

Also present for the meeting were: Chris Gutschow of PeopleService, Jared Storm of Storm Land Holdings, Hilary Christian of Christian Insurance, Tracy Juranek & Mike Nolan of LARM Insurance, Pam Siroky and Ryan Ruth of Agency One Insurance, Dan Duren of Benefit Management, Mike Jones of Jones Insurance, Pete Tech, Lizette Shatto, Larry Sabata, Becky McPhillips, David McPhillips, Steve Maguire, Fire Chief Matt Hilger, Bob Palik, Jackie DeWispelare, Sheriff Marcus Siebken, County Board of Supervisors member Greg Janak, Planning Commission member Janis Cameron, Ball Association member Jason Lavicky, Caroline Yates, Mike Draper, Banner Press Editor Larry Peirce, Park/Auditorium Supervisor Bill Buntgen, Electric Plant Supervisor Eric Betzen, Water Employee Kevin Betzen, and Sewer Employee James Pedersen.

The meeting opened with the Pledge of Allegiance.

Mayor Zavodny informed the public of the "Open Meetings Act" posted on the east wall of the meeting room.

The minutes of the August 13th and August 27th, 2014 meetings of the Mayor and City Council were approved upon a motion by Council member Kroesing and seconded by Council member Vandenberg. Voting AYE: Council members Smith, Scribner, Svoboda, Vandenberg, and Kroesing. Voting NAY: None. Council member Rogers was absent. 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 Scribner, Kroesing, Svoboda, Vandenberg, and Smith. Voting NAY: None. Council member Rogers was absent. The motion carried.

Mayor Zavodny called for Committee and Officer Reports.

Council member Kroesing made a motion to accept the committee and officers reports as presented. Council member Smith seconded the motion. Voting AYE: Council members Svoboda, Scribner, Vandenberg, Kroesing, and Smith. Voting NAY: None. Council member Rogers was absent. The motion carried.

Sheriff Marcus Siebken introduced himself to the Mayor and Council and stated that he just wanted to let them know that nothing is changing as far as City coverage, ordinance violations, etc. Siebken stated that these may be re-evaluated later down the road but for now nothing is changing.

Tracy Juranek of League Association of Risk Management (LARM) stated: "Just here to announce that LARM has negotiated a broker agreement, just pending signatures, for a local agent present in David City. I believe you know Hilary Christian."

Hilary Christian stated: "Yes, within a couple weeks I should be your local agent located at 375 "E" Street." (LARM currently has the City's liability, work comp, commercial, inland marine, etc. insurance coverage.)

Mayor Zavodny continued onto the next agenda item: Consideration of changing the City's Health Insurance.

Mayor Zavodny stated: "I've been approached that some people would prefer that we consider taking this to bid. I don't know that's there's any huge hurry of getting this done. I know the one is a lot cheaper but I worry about making changes like that given the uncertainty of it. With the Affordable Care Act it's a whole new ballgame, we don't know for sure. My suggestion would be, given that we've had people say we should probably put this out for bid, I don't know about the prices because the companies will be similar but we will need to choose "a" company and "a" broker. That's my two cents worth. I know there are people who took the time to come see us tonight, so if there's anything you would like to say, please feel free."

Dan Duren of Benefit Management stated: "We are the firm that has been representing you the last few years with regards to health insurance. We looked at Blue Cross, health compliant plans such as Coventry, really there's not many products out there anymore as far as what's available. Any broker, any agent's going to get the same rate; the rates are the rates no matter what, so I'm not really sure what you are going to gain other than maybe a different plan design or approach, which we have compared the plan designs that are available to you. The savings with CoOpportunity are so significant that you can't pass those up. We met with your employees for a good hour, took applications, explained everything, discussed everything, went through the process with them, got all the applications and as far as I know we are ready to go with CoOpportunity. Our gauge was if you were in favor of it, turn in the application, and all of the employees turned them in."

Mayor Zavodny asked: "How are our future price points going to be set? Is it going to be experienced based?"

Council member Mike Rogers arrived at 7:13 p.m.

Dan Duren stated: "No, in fact, what's happened already, by going with an October 1st effective date you will know, we'll know by the end of this month, what the rates are for 2015. So we know your rates for October 2015 already, so that will take you all the way into the end of September 2016, so you have in effect two years' worth of rates that you are going to know for a budgeting standpoint and everything else. These rates are effective October 1, 2014. We will be seeing an increase if you don't get on by October 1st. September 15th is the deadline date for the October 1st date. If you don't have them in by September 15 you are looking at November. The savings that we are looking at monthly, is \$5,945.00, so you can sure open it up for bids but I can tell you, the brokers are going to get the same numbers we got, so it's got to be a different plan design or a different structure. So, if that's the case that's fine, but I'm just saying I'm not sure you're going to see anything different than you're seeing right now, plus you do have local representation with Agency One here. "

Discussion followed.

Council member Scribner made a motion to put the City's Health Insurance up for bids. Council member Rogers seconded the motion. Voting AYE: Council members Kroesing, Rogers, and Scribner. Voting NAY: Council members Smith, Vandenberg, and Svoboda. Mayor Zavodny broke the tie and voted AYE. The motion carried.

Chris Gutschow, Director of Business Development for PeopleService Inc. stated: "We are covering the water certification for the City and we have also been assisting with the operational and maintenance oversight for the water and sewer departments. They had sent

you a draft agreement for service for us to provide the certified operator to be here. I believe Duane (Grashorn) has been here a minimum of once a week and Duane, or one of our operators from Gibbon, have also been helping James out at the Waste Water Treatment Plant with their ability to get the mechanical stuff up and going at the same time. PeopleService is a contract water/wastewater company based out of Omaha. We've been in business for 25 years, we have around 150 arranged contracts here in the Midwest, about 35 – 40 of those contracts are here in Nebraska. They range anywhere from towns like David City down to a small homeowners development that we're taking care of the water system. The largest client we have is probably like Maryville, Missouri who are around 20,000 people roughly with the college. This is what we do on a day to day basis; we come in and operate water and wastewater facilities. Outside of this agreement we would also like to mention the option of us doing a presentation on a longer term option like what we do and provide to Gibbon, Valley, and Waterloo on more of a full service arrangement."

City Attorney Egr suggested the following changes to the proposed agreement:

- On page 1, paragraph 4, it says: WHEREAS, Contractor wishes to enter into a contract as ~~in~~ **an** independent contractor.....
Simply change "in" to "an".
- Page 2, #9. 3rd line.....Contaminants exceed engineering design of the facility **or** unless due to the sole.....
Attorney Egr wanted instead: Contaminants exceed engineering design of the facility, unless due to the sole.....

Discussion followed.

Council member Scribner made a motion to enter into an agreement with PeopleService, Inc. contingent upon the changes suggested by City Attorney Egr. Council member Smith seconded the motion. Voting AYE: Council members Svoboda, Kroesing, Vandenberg, Rogers, Smith, and Scribner. Voting NAY: None. The motion carried.

Mayor Zavodny stated: "At 7:44 we are going to enter into our Budget Hearing and Budget Summary, so I open that hearing. Anyone from the public wish to speak on the budget? Anyone from the Council wish to speak on the budget? Hearing nothing, I will close the Public Hearing at 7:46 p.m."

Council member Kroesing introduced Ordinance No. 1215. Mayor Zavodny read the Ordinance by Title. Council member Smith made a motion to suspend the statutory rule requiring an ordinance to be read on three separate days. Council member Rogers seconded the motion. Voting AYE: Council members Vandenberg, Scribner, Kroesing, Svoboda, Rogers, and Smith. Voting NAY: None. The motion carried.

Council member Smith made a motion to pass Ordinance No. 1215 on third and final reading. Council member Vandenberg seconded the motion. Voting AYE: Council members Scribner, Rogers, Svoboda, Kroesing, Vandenberg, and Smith. Voting NAY: None. The motion carried and Ordinance No. 1215 was passed on third and final reading as follows:

ORDINANCE NO. 1215
THE ANNUAL APPROPRIATION BILL

AN ORDINANCE OF THE CITY OF DAVID CITY, NEBRASKA, ADOPTING THE BUDGET STATEMENT TO BE TERMED THE ANNUAL APPROPRIATION BILL; TO APPROPRIATE SUMS FOR NECESSARY EXPENSES AND LIABILITIES; 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.

WHEREAS, Nebraska Revised Statute 17-706 provides that a city council of the second class shall adopt a budget statement pursuant to the Nebraska Budget Act, to be termed "The Annual Appropriation Bill", in which corporate authorities may appropriate such sums of money as may be deemed necessary to defray all necessary expenses and liabilities of the city.

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF DAVID CITY, BUTLER COUNTY, NEBRASKA, AS FOLLOWS:

SECTION 1. That after complying with all procedures required by law, the budget presented and set forth in the budget statement is hereby approved as the Annual Appropriation Bill for the fiscal year beginning October 1, 2014, through September 30, 2015. All sums of money contained in the budget statement are hereby appropriate for the necessary expenses and liabilities of the City of David City, Nebraska. A copy of all completed State of Nebraska Budget Forms shall be forwarded as provided by law to the Auditor of Public Accounts, State Capital, Lincoln, Nebraska, and to the County Clerk of Butler County, Nebraska, for use by the levying authority.

SECTION 2. That any ordinance or section of any ordinance passed and approved prior to or subsequent 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 take effect and be in full force from and after its passage, approval, and publication or posting as required by law.

PASSED AND APPROVED this 10th day of September, 2014.

Mayor Alan Zavodny

City Clerk Joan Kovar

Mayor Zavodny opened the Public Hearing at 7:48 p.m. to consider setting the final tax request at a different amount than the prior year tax request.

City Clerk Kovar stated that year the tax request was \$555,678.77 and this year the tax request is \$560,676.25.

There being no further comments from the public, Mayor Zavodny declared the public hearing closed at 7:50 p.m.

Council member Kroesing introduced Resolution No. 18 - 2014 and moved for its passage and adoption. Council member Smith seconded the motion. Voting AYE: Council members Svoboda, Scribner, Vandenberg, Rogers, Smith, and Kroesing. Voting NAY: None. The motion carried and Resolution No. 18 - 2014 was passed and approved as follows:

RESOLUTION NO. 18 - 2014

A RESOLUTION OF THE CITY OF DAVID CITY TO APPROVE AN ADDITIONAL ONE PERCENT (1%) INCREASE IN RESTRICTED FUNDS.

WHEREAS, Nebraska Revised Statute 13-519.02 provides that a governmental unit may exceed its restricted funds limit for a fiscal year by up to an additional one percent upon the affirmative vote of at least seventy-five percent of the governing body.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF DAVID CITY, NEBRASKA, that:

1. An additional one percent (1%) increase in restricted funds for the 2014 -2015 budget is approved.

PASSED AND APPROVED this 10th day of September, 2014.

Mayor Alan Zavodny

City Clerk Joan Kovar

Council member Vandenberg introduced Resolution No. 19 - 2014 and moved for its passage and adoption. Council member Smith seconded the motion. Voting AYE: Council members Rogers, Kroesing, Scribner, Svoboda, Smith, and Vandenberg. Voting NAY: None. The motion carried and Resolution No. 19 - 2014 was passed and approved as follows:

RESOLUTION NO. 19 - 2014

RESOLUTION OF THE CITY OF DAVID CITY
SETTING THE PROPERTY TAX REQUEST.

WHEREAS, Nebraska Revised Statute 77-1601.02 provides that the property tax request for the prior year shall be the property tax request for the current year for purpose of the levy set by the County Board of Equalization unless the Governing Body of the City of David City passes by a majority vote, resolution of ordinance setting the tax request at a different amount; and,

WHEREAS, a special public hearing was held as required by law to hear and consider comments concerning the property tax request; and,

WHEREAS, it is in the best interest of the City of David City that the property tax request for the current year be a different amount than the property tax request for the prior year.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF DAVID CITY, NEBRASKA, that:

1. The 2014 - 2015 property tax request be set at \$560,676.25.
2. A copy of this resolution be certified and forwarded to the Butler County Clerk prior to September 20, 2014.

PASSED AND APPROVED this 10th day of September, 2014.

Mayor Alan Zavodny

City Clerk Joan Kovar

Council member Smith introduced Resolution No. 20 - 2014 and moved for its passage and adoption. Council member Rogers seconded the motion. Voting AYE: Council members Kroesing, Vandenberg, Scribner, Svoboda, Rogers, and Smith. Voting NAY: None. The motion carried and Resolution No. 20 - 2014 was passed and approved as follows:

RESOLUTION NO. 20 - 2014

A RESOLUTION OF THE CITY OF DAVID CITY TO CARRY FORWARD THE UNUSED BUDGET AUTHORITY

WHEREAS, Nebraska Revised Statute 13-521 provides that a governmental unit may choose not to increase its total of restricted funds by the full amount by law in a particular year. In such cases, the governmental unit may carry forward to future budget years the amount of unused restricted funds authority.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF DAVID CITY, NEBRASKA, that:

1. The unused budget authority of \$2,369,269.84 from the 2013 - 2014 budget shall be carried forward to the 2014 - 2015 budget of the City of David City, Nebraska.

PASSED AND APPROVED this 10th day of September, 2014.

Mayor Alan Zavodny

ATTEST:

City Clerk Joan Kovar

Ordinance No. 1212, providing for the annexation of the Larry & Becky McPhillips property as described, was passed on first reading on August 13, 2014.

Mayor Zavodny stated: "Since the last meeting, one thing that I feel very strongly about is that we find a way, if this council is willing, to allow for the horses."

Mrs. McPhillips stated: "It's not just horses its animals, like you have on a farm; sheep, ducks, geese, horses, and chickens. We have an acreage out there, not a development; that is a totally different thing. I want my grandchildren to be able to come to our acreage and enjoy the animals."

David McPhillips stated: "I am not in favor of you annexing this property as a citizen. I'd like to speak to property rights. A true government that is of the people, by the people, and for the people, will look out for the property rights of its citizens. You as a body, a vote to annex this property, will take away some of the enjoyment of one of your citizens. He'll no longer be able to shoot his gun out there, a very enjoyable activity for him when he purchased the property. A vote to annex him will take away his enjoyment of his property. The livestock, you mentioned just horses, but they want the enjoyment of all animals."

Mayor Zavodny stated that he has had several citizens say they think the annexation is appropriate also.

Discussion followed and emotions ran high.

Council member Rogers made a motion to pass Ordinance #1212 on the second reading. Council member Svoboda seconded the motion. Voting AYE: Council members Svoboda, Smith, Kroesing, Vandenberg, and Rogers. Voting NAY: Council member Scribner. The motion carried and Ordinance #1212 was passed on second reading as follows:

ORDINANCE NO. 1212
(Passed on 2nd reading 9-10-14)

AN ORDINANCE PROVIDING FOR THE ANNEXATION OF CERTAIN CONTIGUOUS TERRITORY TO THE CITY OF DAVID CITY, NEBRASKA, DESCRIBED AS A TRACT OF LAND LOCATED IN PART OF THE S ½ NW ¼ OF SECTION 20, T15N, R3E OF THE 6TH P.M., IN BUTLER COUNTY, NEBRASKA, MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER S½ NW¼ OF SECTION 20, T15N, R3E OF

THE 6TH P.M., IN BUTLER COUNTY, NEBRASKA, AND ASSUMING THE WEST LINE OF SAID S ½ NW ¼ TO HAVE A BEARING OF S00°38'50"E ON SAID WEST LINE S ½ NW ¼, 293.50 FEET, TO THE POINT OF BEGINNING; THENCE S89°46'54"E, 329.60 FEET; THENCE N00°34'16"W, 293.07 FEET TO A POINT ON THE NORTH LINE S ½ NW ¼ OF SECTION 20; THENCE S89°42'30"E, ON SAID NORTH LINE S ½ NW ¼, 1010.05 FEET; THENCE S00°05'05"E, 293.05 FEET; THENCE S20°08'13"W, 166.91 FEET; THENCE S22°37'01"W, 71.80 FEET; THENCE N89°51'11"W, 695.05 FEET; THENCE N02°05'04"E, 49.50 FEET; THENCE 89°08'47"W, 170.00 FEET; THENCE N01°26'14"W, 144.13 FEET; THENCE N89°46'54"W, 384.90 FEET, TO A POINT ON THE WEST LINE S ½ NW ¼ OF SECTION 20; THENCE N00°38'50"W ON SAID WEST LINE S ½ NW ¼, 30.00 FEET TO THE POINT OF BEGINNING, CONTAINING 11.54 ACRES, MORE OR LESS, PARCEL ID #120035624, REPEALING ANY ORDINANCES IN CONFLICT HEREWITH; AND DESCRIBING THE TIME WHEN THIS ORDINANCE SHALL BE IN FULL FORCE AND EFFECT.

WHEREAS, the Planning Commission of the City of David City, Nebraska, met on July 28, 2014, but failed to make a recommendation on the annexation of the territory previously described, due to the lack of a second to the motion, and,

WHEREAS, a majority of the City Council of the City of David City, Nebraska, favors the annexation of said territory.

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

Section 1. That the boundaries of the City of David City, Nebraska, be amended and changed in order to include the above described property. See Attachment "A"

Section 2. That this Ordinance be filed with the Office of the County Assessor and County Clerk of Butler County, Nebraska, and that the City Clerk be directed to amend the plat filed in her office to show the inclusion of the real estate described above and that the boundary of David City as amended by this Ordinance be certified and placed on record in the office of the City Clerk of David City, Nebraska.

Section 3. That any Ordinance, setting or establishing boundaries of the City of David City, Nebraska, which is in conflict with this Ordinance, be and the same is hereby repealed.

Section 4. That this Ordinance shall take effect and be in force from and after its passage and publication according to law.

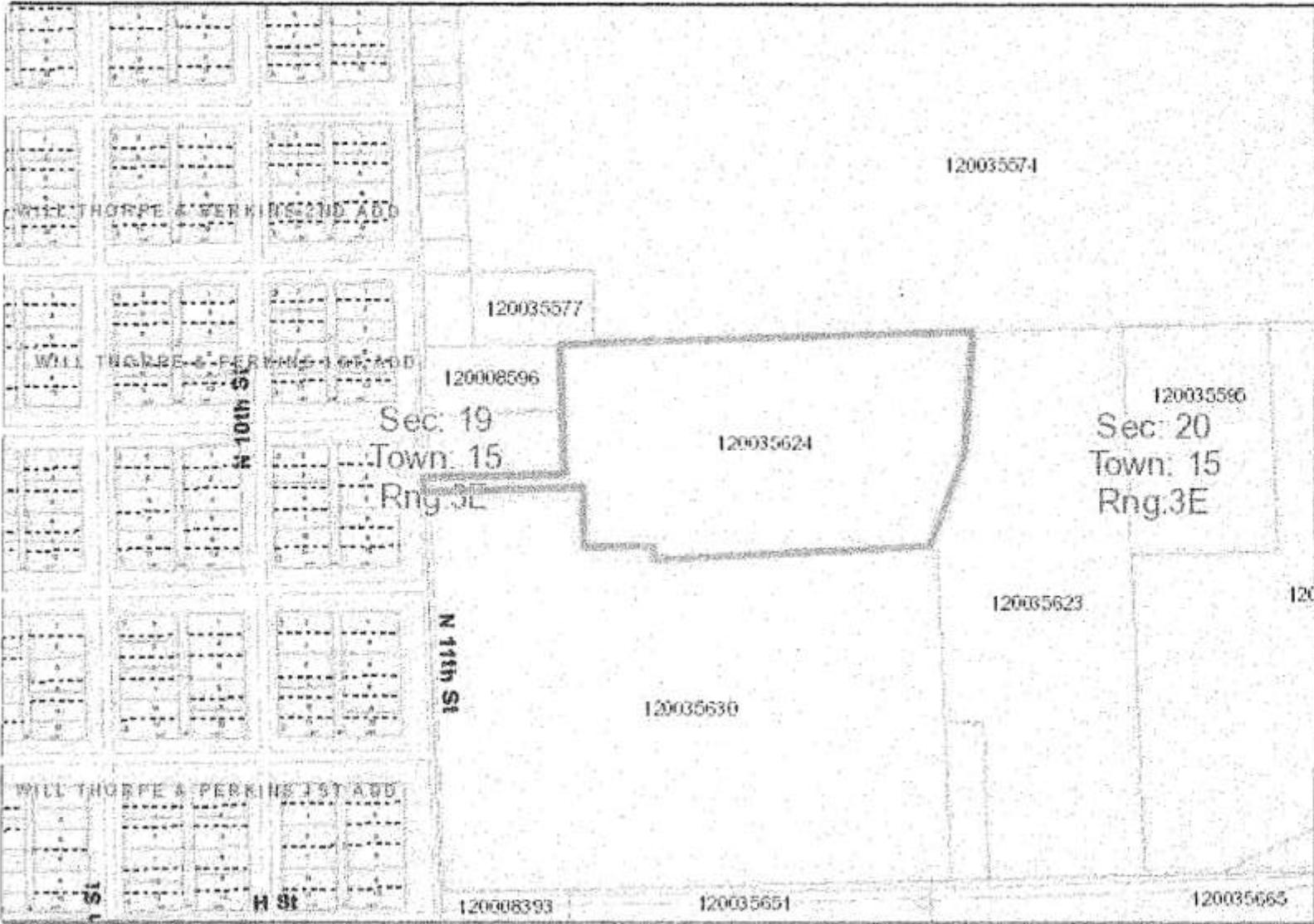
Passed and approved this _____ day of _____, 2014.

ATTEST:

Passed on 2nd reading – 9/10/14
Mayor Alan Zavodny

Passed on 2nd reading – 9/10/14
City Clerk Joan E. Kovar

ATTACHMENT "A"
McPhillips property



Mayor Zavodny opened the Public Hearing at 8:09 p.m. to hear evidence in support of, or protest against, the issuance of a Class "C" Liquor License for Kevin Orr d.b.a. Papa Tango's at 412 E Street.

Pete Tech stated: "My son-in-law Kevin Orr is opening a new restaurant here in town. It's going to be a restaurant basically styled after "Chili's", "Outback", or "Applebee's" style restaurant; a dinner restaurant. The application for a liquor license is because many people would like to have a drink, beer, wine, or a mixed drink with their dinner. It's not primarily a bar anymore. The entire décor of this business is basically about David City. The complete interior is going to be about David City and Butler County. He already possesses a temporary operating permit for this place and this is just the formal application for the new permanent liquor license."

There being no additional comments from the public, Mayor Zavodny closed the Public Hearing at 8:13 p.m.

Council member Scribner made a motion to recommended approval to the Nebraska Liquor Control Commission for the issuance of a Class "C" Liquor License for Kevin J. Orr d.b.a. Papa Tango's at 412 E Street, David City, Nebraska. Council member Smith seconded the motion. Voting AYE: Council members Svoboda, Rogers, Vandenberg, Scribner, Smith, and Kroesing. Voting NAY: None. The motion carried.

Council member Kroesing made a motion to enter into an agreement with Olsson Associates for street superintendent services. (Jerry Hain of Olsson Associates is our Class A Street Superintendent.) Council member Scribner seconded the motion. Voting AYE: Council members Smith, Vandenberg, Rogers, Svoboda, Scribner, and Kroesing. Voting NAY: None. The motion carried.



LETTER AGREEMENT FOR PROFESSIONAL SERVICES

August 14, 2014

City of David City
Mayor and City Council
Attn: Joan Kovar
P. O. Box 191
David City, Nebraska 68632-0191

Re: **AGREEMENT FOR PROFESSIONAL SERVICES**
Consulting Services Agreement – 2015, 2016 & 2017 "Project"
David City, Nebraska

Dear Mayor and City Council:

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

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

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

STREET SUPERINTENDENT SERVICES

Olsson will provide for assistance to the City in preparation and submittal of the 2015, 2016 and 2017 updates of Street Superintendent reports to the Nebraska Board of Public Roads Classifications and Standards (NBCS) and miscellaneous consultations with City representatives regarding the City street system. Jerry Hain, Olsson Associates, will be your Class A Street Superintendent.

- Review the current one and six year street plans and update the plans for submittal to the NBCS with the City Council.
- Review and update the street lane mile report and submit it to the NBCS.
- Assist the City in preparing and submitting the NBCS street system revenue, expenditure, and budget report.
- Consult with and provide professional opinions to the City Council, clerk or attorney on miscellaneous issues regarding the Village street system.
- Street Superintendent reports per NBCS submittal requirements.
- Miscellaneous consultations and professional opinions as mutually agreeable.

CONSULTING SERVICES

Olsson will provide for the performance of miscellaneous services as part of this Consulting Services Agreement.

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

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

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

SCHEDULE FOR OLSSON'S SERVICES

Unless otherwise agreed, Olsson would expect to begin performing its services under the Agreement promptly upon your signing.

Anticipated Start Date: January 1, 2015
Anticipated Completion Date: December 31, 2017

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

COMPENSATION

Client shall pay to Olsson for the performance of the Scope of Services, the actual time of personnel performing such services on an hourly cost basis times a factor of 3.085 for services rendered by our principals and employees engaged directly on the Project, and all actual reimbursable expenses in accordance with Reimbursable Expense Schedule attached to this Letter Agreement. Olsson shall submit invoices on a monthly basis and payment is due within 30 calendar days of invoice date.

Olsson's Scope of Services will be provided on an annual Time and Expenses, Not to Exceed basis as follows:

- Street Superintendent Services: \$1,000
- Consulting Services: \$5,000

Olsson will provide for the performance of miscellaneous services as part of this Consulting Services Agreement. Individual service items performed are not expected to require services which result in fee billings in excess of \$5,000 per project. A separate Exhibit will be prepared for any work assignment for which the fees are anticipated at the outset to exceed \$5,000.

TERMS AND CONDITIONS OF SERVICE

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

Client's designated Project representative shall be _____.

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

OLSSON ASSOCIATES, INC.

By Justin R. Stank

By B. Dug

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

CITY OF DAVID CITY

By Alan Zavadny

Name: Alan Zavadny

Title Mayor

Dated: 9/10/2014

If different from above,

Client's Designated Project Representative

Attachments

General Provisions

Reimbursable Expense Schedule

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Council member Kroesing made a motion to enter into an agreement with Olsson Associates to study two drainage structures (the bridges located on South 11th Street and East "A" Street) and make recommendations for improvements at a cost not to exceed \$6,500. Council member Vandenberg seconded the motion. Voting AYE: Council members Scribner, Smith, Svoboda, Rogers, Vandenberg, and Kroesing. Voting NAY: None. The motion carried.



**LETTER AGREEMENT
FOR PROFESSIONAL SERVICES**

August 29, 2014

City of David City
Joan Kovar
557 N 4th Street
David City, NE 68632-0191

Re: **LETTER AGREEMENT FOR PROFESSIONAL SERVICES**
Southeast Drainage Structures Analysis (the "Project")
David City, NE

Dear Mrs. Kovar:

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

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

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

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

SCHEDULE FOR OLSSON'S SERVICES

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

Anticipated Start Date: September 15, 2014

Anticipated Completion Date: November 15, 2014

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

COMPENSATION

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

Olsson's Scope of Services will be provided on a time and expense basis not to exceed Six Thousand Five Hundred and no/100 Dollars (\$6,500.00).

TERMS AND CONDITIONS OF SERVICE

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

Client's designated Project Representative shall be Matt Rief.

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

OLSSON ASSOCIATES, INC.

By 
Matt Rier

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

CITY OF DAVID CITY

By 
Signature

Print Name Alan Zavodny

Title Mayor

Dated 9/10/2014

Attachments

- General Provisions
- Scope of Services
- Labor Rate Schedule
- Reimbursable Expense Schedule

The following bids were received for concrete work needed at the City Auditorium:

<u>Name/Company</u>	<u>with Walk</u>	<u>Curve walk</u>	<u>Garage</u>	<u>Ramp</u>	<u>BID</u>
Campbell Const.	\$2,995.00	\$1,300.00	\$2,249.00	\$1,949.00	\$8,493.00
Armagost Const.	\$3,200.00	\$1,000.00	\$2,500.00	\$2,300.00	\$9,000.00

Council member Scribner made a motion to accept the bid of Campbell Construction in the amount of \$8,493.00. Council member Kroesing seconded the motion. Voting AYE: Council members Rogers, Vandenberg, Smith, Svoboda, Kroesing, and Scribner. Voting NAY: None. The motion carried.

Council member Scribner made a motion to authorize Mayor Zavodny to sign a lease agreement that will be developed between the City of David City and the David City Golf Course. Council member Smith seconded the motion. Voting AYE: Council members Rogers, Kroesing, Vandenberg, Svoboda, Smith, and Scribner. Voting NAY: None. The motion carried.

Council member Smith made a motion to authorize the installation of a water main from 1st Street to Oak Street on West E Street. Council member Scribner seconded the motion.

Voting AYE: Council members Kroesing, Vandenberg, Rogers, Smith, Scribner, and Svoboda.
Voting NAY: None. The motion carried.

Council member Smith made a motion to hire Olsson Associates to engineer the water main from 1st Street to Oak Street on West "E" Street. Council member Rogers seconded the motion. Voting AYE: Council member Svoboda, Scribner, Kroesing, Vandenberg, Rogers, and Smith. Voting NAY: None. The motion carried.

Council member Rogers made a motion to hire Olsson Associates to engineer the water main from 5th to 8th on "I" Street and from "I" to "J" on 7th Street. Council member Scribner seconded the motion. Voting AYE: Council member Svoboda, Vandenberg, Kroesing, Smith, Scribner, and Rogers. Voting NAY: None. The motion carried.



LETTER AGREEMENT FOR PROFESSIONAL SERVICES

September 16, 2014

City of David City
Attn: Ms. Joan Kovar
557 North 4th Street
David City, Nebraska 68632

Re: **AGREEMENT FOR PROFESSIONAL SERVICES**
Water Main Improvement and Replacement (the "Project")
David City, Nebraska

Dear Ms. Cornett:

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

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

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

DESIGN SERVICES

- The project is anticipated to include water main replacement design and construction administration along 'I' Street in David City, Nebraska, from 5th to 8th Street, and along North 7th Street from 'I' to 'J' Streets.
- The project will also include the design and construction administration for a new water main connecting to the existing distribution system on N. 1st and W. 'E' Streets. The new water main will be laid along E Street and ending at the intersection of N. Oak and W. 'E' Streets.
- Both projects will be set up individually, with separate plans, specifications, bidding phase services, permit review fees, construction phase services, and other required work. Design and other meetings between the two projects will be combined, as much as possible, based on the available schedule.

- Project Initiation and Administration Services, including a project initiation meeting will be conducted with all parties involved to review the project site, identify specific goals, establish schedule for completion, and coordinate with Client's representative for the project. Olsson shall attend one design review meeting with City staff at the 90-percent design level for each project location. General administrative services to manage and support the design of the project will also be provided.
- Topographic survey data will include all necessary field and property surveys necessary for design and construction of the water main replacement. This will also provide vertical and horizontal control points. Survey data will be collected for both projects at the same time.
- Prepare detailed drawings and technical specifications for the proposed construction work and for all equipment and materials required under the contract. The documents will be prepared for construction by a private contractor selected by the Client as part of a competitive bidding process. The specifications shall contain contracts, bid forms, bidding instructions, General and Supplementary Conditions. Separate plans and specifications will be prepared for both project locations.
- Provide three (3) sets of drawings and specifications to the Client for review at 90 percent, for each project location. As part of the review of each submittal, meet with Client or Client's designee to discuss their review comments and resolve any questions.
- Perform an "in-house" quality control review of each set of drawings and specifications at 90 percent completion.
- Opinion of Probable Costs - Prepare an opinion of probable construction cost for the project work, at both locations.
- Submit to Nebraska Department of Health and Human Services (NDHHS) and Incorporate Review Comments - Olsson will coordinate the project with NDHHS and submit the project plans and specifications as required for approval and issuance of a construction permit. Permit review fees shall be the responsibility of the Client.
- Provide three (3) sets of final plans and specifications to the Client for their use.

BIDDING PHASE SERVICES

- Each project will be bid separately.
- The project engineer will coordinate the issuance of notices to bidders and the distribution of bidding documents. Notices will be placed in the official publications directed by the City, and in bidding services known to provide data to contractors in the area. In addition, invitations will be mailed directly to contractors whom the project team and/or the City staff know will be interested in the project. Documents will be available for inspection at Olsson offices.
- The project engineer will coordinate answering questions raised by bidders. Specialists will be used to address technical questions. Addenda will be prepared, as required, to provide clarification to questions. The City will be contacted regularly to keep him aware of any project changes resulting from bidders' questions.
- The project manager and/or project engineer will attend the bid opening. All bids properly received will be reviewed. Any inconsistencies or irregularities found in the bids will be reported to the City.

- Conformed copies of the contract documents, including all insurance and bond forms, will be prepared by the project engineer. The project manager will review the documents to confirm that all procedures have been properly followed. Copies of the conformed documents will be provided to the City for review. Approved copies will be distributed to the City, the contractor, regulatory agencies, and Olsson. These documents form the official contract between the City and the contractor, as well as the basis for decisions concerning the work.

CONSTRUCTION ADMINISTRATION SERVICES

- It is anticipated that each project will be constructed separately.
- Perform construction administrative services including communication with the Contractor and City personnel, two (2) site visits to verify construction activities, review of the Contractor's pay applications, shop drawing or submittal review, and other items requested by the City during construction.
- Perform construction staking services for the Client based on the plans prepared by Olsson. Fees are based on four (4) round trips to the job site, or two (2) for each project location.
- Exclusions:
 - Construction observation services.
 - The items described in the Exclusions section may be provided as additional services to the Client, if so requested.

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

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

SCHEDULE FOR OLSSON'S SERVICES

Unless otherwise agreed, Olsson would expect to begin performing its services under the Agreement promptly upon your signing.

Anticipated Start Date: October 1, 2014
Anticipated Completion Date: October 1, 2015

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

COMPENSATION

Client shall pay to Olsson for the performance of the Scope of Services a fixed fee of Thirty One Thousand Three Hundred Dollars (\$31,300.00). However, if the project were designed, submitted to NDHHS, and bid as a single plan set, the cost could be reduced to a fixed fee of Twenty Seven Thousand Seven Hundred Dollars (\$27,700.00). Combining the projects may delay the installation of the W. 'E' Street water main, but based on the time remaining this year, construction of the water main may not be possible until the spring of 2015.

Olsson shall submit invoices on a monthly basis and payment is due within 30 calendar days of invoice date.

REIMBURSABLE EXPENSE: Olsson's reimbursable expenses for this Project are included in the fixed fee set forth above.

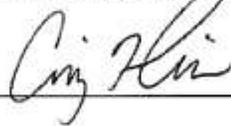
TERMS AND CONDITIONS OF SERVICE

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

Client's designated Project representative shall be: Mr. Kevin Betzen

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

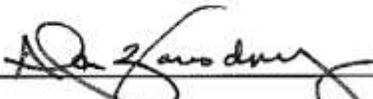
OLSSON ASSOCIATES, INC.

By 

By 

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

CITY OF DAVID CITY

By 

Name: Alan Zavadny

Title Mayor

Dated: 9/10/2014

If different from above,

Client's Designated Project Representative

In addition, please initial which design approach is selected by the City, as described above:

Two separate project plan sets: _____
(Engineer Fee of \$31,300.00)

Single project plan set: ✓
(Engineer Fee of \$27,700.00)

Attachments
General Provisions

Jared Storm of Storm Land Holdings, LLC, was present to discuss a ground lease at the David City Airport. City Attorney Egr stated that he had reviewed the lease agreement and was fine with it.

Jared stated: "The sub-leasing part is, quite frankly, I am probably going to own the facility, so I'm sub-leasing that facility to Hershey Aviation."

Mayor Zavodny stated: "I thought it said you could assign the ground lease."

City Attorney Egr stated: "There has to be prior written consent by the City, so there's no problem."

Jared stated: "We haven't been able to get a soil sample because it keeps raining. I think they are going to be hard pressed this fall, I think it's going to be a spring project. I think it's going to be a cold, wet, winter. They thought they were going to put the footing in by November, put the structure up and then heat that to do the concrete and I'm like, *"Who's going to pay for that heat? I'm not"*.

Council member Smith made a motion to authorize Mayor Zavodny to sign an Airport lease with Jared Storm. Council member Kroesing seconded the motion. Voting AYE: Council members Rogers, Vandenberg, Svoboda, Scribner, Kroesing, and Smith. Voting NAY: None. The motion carried.

GROUND LEASE

This is a GROUND LEASE dated as of September 10, 2014, by and between the **[CITY OF DAVID CITY]**, whose address is 557 N. 4th, David City, Nebraska ("Landlord") and STORM LAND HOLDINGS, LLC, a Nebraska limited liability company, whose address is _____ ("Tenant").

PRELIMINARY STATEMENT

Landlord is the owner of land comprised of approximately _____ square feet (_____ acres) which are part of the **[David City Municipal Airport]** and legally described on Exhibit "A" and attached hereto (the "Demised Premises").

Landlord desires to lease to Tenant and Tenant desires to lease from Landlord, upon the terms and conditions hereinafter set forth, the Demised Premises.

In consideration of the foregoing Preliminary Statement, which is repeated in its entirety in this portion of this Ground Lease, and other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties agree as follows:

1. **Demised Premises.**

A. **Premises.** Landlord hereby leases to Tenant and Tenant hereby leases from Landlord, for the term of this Ground Lease as hereinafter defined, at the rental, and upon the covenants, terms and conditions hereinafter set forth, the Demised Premises, together with all easements, rights, and privileges appurtenant to the Demised Premises.

B. **Use.** Tenant shall have the right, throughout the term of this Ground Lease, to improve the Demised Premises for use to operate an aerial spraying and airplane maintenance, construction and repair facility and for such other aviation purposes which are now or may be in the future related or ancillary thereto (the "Business").

2. **Term.**

A. **Initial Term.** The term of this Ground Lease ("Term") shall commence on the date of this Ground Lease (the "Commencement Date") and shall terminate at 11:59 P.M. on _____, 2068 ("Initial Term"), subject to Tenant's option to extend the Term expressed in Section 2.B. Possession of the Demised Premises shall be delivered by Landlord to Tenant on the Commencement Date.

B. **Extension.** Provided Tenant is not in default beyond any applicable cure period at the time of the exercise of its option to extend, Tenant shall have an option to extend the Term of this Ground Lease upon the terms, covenants and provisions herein contained, for a period of

fifty (50) years. Such option shall be exercisable by Tenant giving written notice to Landlord of Tenant's exercise of the same not less than six (6) months prior to the expiration date of the Term.

3. **Construction of Improvements.**

A. **Permits.** Within ninety (90) days from the Commencement Date (the "Permit Period"), Tenant, at its sole expense, (i) shall apply to the appropriate governmental authorities for such permits, licenses, and other necessary administrative approvals (collectively "Permits") as are necessary to construct and operate the Business; (ii) may procure an ALTA survey of the Demised Premises (the "Survey"); and (iii) may order an ALTA Form B Leasehold Title Insurance Commitment (the "Title Insurance Commitment"). In the event Tenant (x) has not obtained, after using diligent efforts, the Permits before the expiration of the Permit Period for construction at a cost acceptable to Tenant, and (y) has not approved, in its sole discretion, the Survey and Title Insurance Commitment, Tenant may, at its option, cancel this Ground Lease by written notice to Landlord, provided that such written notice shall be delivered to Landlord on or before the expiration of the Permit Period, in which event this Ground Lease shall terminate as of the date of such Notice without further liability to either Party.

B. **Construction Commencement.** On or before May 1, 2015, weather permitting, Tenant shall commence construction of and diligently complete a new building (the "Building") and other improvements (the Building and such other improvements are referred to collectively as the "Improvements"). The Tenant shall prosecute, at its sole cost and expense, the construction of the Improvements to completion. The Improvements shall be completed not later than that date which is eighteen (18) months from the date construction commences as defined in this Section 3.B., subject, however, to unavoidable delays as defined in Section 21 of this Ground Lease. If Tenant shall fail to commence construction of the Improvements, this Ground Lease may be terminated by Landlord on the fifteenth (15th) business day following written notice from Landlord that Tenant has failed to timely commence construction, unless prior to such fifteenth (15th) day, Tenant shall have commenced construction and shall diligently proceed toward completion of the Improvements. In the event of such termination, Tenant shall be responsible for restoring the Demised Premises to the condition which existed on the date of this Ground Lease. Tenant shall be permitted to initially construct a septic sewer to serve the Building. If Tenant requests in the future, Tenant and Landlord agree to negotiate in good faith to extend public sewer lines to the Demised Premises and the Building constructed thereon.

4. **Annual Rent.** Tenant agrees to pay the Landlord during the Term Annual Rent ("Annual Rent") of _____ (\$170 per acre), payable annually commencing on the Commencement Date (the "Rent Commencement Date") and on the same date of each succeeding year thereafter.

5. **Payment of Rent.** The Annual Rent and any other sums payable by Tenant to Landlord hereunder (sometimes referred to herein as "Additional Rent"), without credit or offset, shall be paid to Landlord at the address specified in Section 20 of this Ground Lease, or to such other address as Landlord shall designate in writing. Annual Rent received after the tenth (10th) day of

its due date shall accrue a charge of ten percent (10%) of such installment to offset the administrative expense incurred by Landlord as a result of such late payment.

6. **Impositions.** Commencing on the Commencement Date, Landlord shall pay for every Imposition, as hereinafter defined, imposed upon the Demised Premises during the Term. "Impositions" shall mean ad valorem real estate taxes, betterment assessments (special or general, ordinary or extraordinary), water and sewer taxes, and any other charges made by any public authority which, upon assessment or upon failure of payment, becomes a lien upon the Demised Premises and whose installments become delinquent during the Term of this Ground Lease. Tenant shall pay such Impositions imposed exclusively the Improvements and Tenant's personal property (the "Tenant Impositions").

7. **Tax and Regulatory Appeals.**

A. From and after the Commencement Date and continuing during the Term, Tenant shall have the right, but not the obligation, at its sole cost and expense, to apply and file applications for reappraisal of any real estate assessment upon the Improvements comprising the Demised Premises for any tax year. All of the proceeds from refunds of real estate taxes upon the Improvements paid by Tenant during the Term shall be the sole and exclusive property of Tenant.

B. Tenant shall have the right, but not the obligation, to contest in good faith at its sole cost and expense, any governmental regulation, judgment, order, statute, rule or decree pertaining to the Demised Premises ("Public Requirements"). At the request of Tenant and without cost or expense to Landlord, Landlord will join in any contest and execute any and all documents in connection therewith as Tenant may reasonably request.

8. **Maintenance and Repair.**

A. **Tenant Maintenance.** Subject to the Landlord Maintenance Items, as provided for in Section 8.B Tenant, at its sole cost and expense, shall maintain and keep in good repair and condition the Demised Premises to include all Improvements installed by Tenant upon the Demised Premises.

B. **Landlord Maintenance.** Landlord, shall provide maintenance of the following (the "Landlord Maintenance Items"): (i) utilities constructed to the Demised Premises; (ii) airfield apron and taxiway/tie down area securing the Demised Premises; and (iii) maintain and repair the airfield in a condition suitable for Tenant to allow its Business to be fully operational at all times. In the event Landlord fails to maintain and repair the airfield or Landlord Maintenance Items as required, upon fifteen (15) days written notice and Landlord's failure to act, Tenant may perform the necessary repairs and maintenance at Landlord's sole cost and expense. Landlord shall be required to reimburse Tenant for such costs and expenses within thirty (30) days after invoice from Tenant.

9. **Removal of Improvements.** All Improvements constructed upon the Demised Premises by Tenant as permitted under this Ground Lease shall be owned by Tenant until the expiration or termination of the Term at which time Tenant hereby assigns, transfers and conveys to Landlord, all right and title to such Improvements, and the same shall become the property of Landlord without further conveyance. Except for Tenant's furniture, trade fixtures and equipment which may be removed as provided in Section 13_ of this Ground Lease, Tenant shall not remove any Improvements from the Demised Premises, nor commit any waste, destruction or modification of any Improvements, except as permitted under this Ground Lease. Tenant agrees that it will, upon the expiration or other termination of the Term, yield up peaceably to Landlord, the Demised Premises and all permanent improvements and fixtures thereon or therein, other than the furniture, trade fixtures, trade equipment and personal property of Tenant, vacant, free of tenancies or rights of possession, broom clean and in good condition and repair except for ordinary wear and tear.

10. **Landlord Work.** Landlord shall, in conjunction with the construction of Tenant's Improvements, (i) construct a taxiway from Tenant's building to the apron; (ii) provide electricity, water and any other utilities to the Demised Premises necessary or appropriate for Tenant's business; and (iii) install the entrance drive and, any sidewalks required, along the exterior of the lot constituting the Demised Premises (the "Landlord's Work"). Landlord agrees that it will submit for Tenant's review the proposed plans for construction of Landlord's Work within thirty (30) days following Landlord's approval of Tenant's plans for the Improvements. In the event that Landlord and Tenant are unable to agree on the plans for Landlord's Work within thirty (30) days after Landlord's submittal of such plans and cost estimates, this Lease shall terminate and the parties shall have no further liability or obligation hereunder. In the event that Landlord and Tenant agree on the plans for construction of such Landlord's Work, Landlord shall coordinate the construction of Landlord's Work to be completed in conjunction with the Improvements to be constructed by Tenant. All Landlord's Work shall be at Landlord's sole cost and expense.

11. **Gross Lease.** This Ground Lease is a gross lease and the payment of Annual Rent described in Section 4 above by Tenant shall constitute payment of all amounts due from Tenant to Landlord under this Ground Lease. For avoidance of doubt, Landlord shall be responsible for all costs, expenses, maintenance, repairs, improvements, taxes, Impositions, insurance and any other amounts to be paid and any actions to be taken in respect to the Demised Premises except for Tenant's insurance, Tenant Impositions under Section 6 and any utilities or alterations to be paid for by Tenant.

12. **Utilities.** Tenant agrees to pay all fees, costs and charges for heat, air conditioning, water, gas, electricity and other utilities and services used by Tenant in connection with the Demised Premises.

13. **Alterations.** Subject to compliance with provisions of applicable law, and provided Tenant is not in default beyond any applicable cure period, Tenant may, at Tenant's sole cost and expense, from time to time, make such alterations or improvements, interior and exterior, to the Demised Premises as Tenant may deem necessary or desirable. All installations, alterations and improvements made to or upon the Demised Premises, whether made by Tenant or any other

person, shall be deemed part of the Demised Premises and, subject to the provisions of Section 9 of this Ground Lease, upon expiration or other termination of the Term shall be surrendered with the Demised Premises as a part thereof. Tenant's furniture, trade fixtures and trade equipment and personal property shall not be deemed part of the Demised Premises and may be removed by Tenant at any time or times during the Term, provided Tenant shall make all repairs to the Demised Premises caused by or resulting from such removal. Notwithstanding the foregoing, Tenant shall have the right to enter the Demised Premises, upon reasonable prior written notice to Landlord, within thirty (30) days after the expiration or earlier termination of the Term to remove signage and all other items bearing any servicemarks or trademarks of Tenant.

14. **Indemnity; Liability Insurance.**

A. Except for the negligence of Landlord and its contractors, agents, and employees, Tenant shall indemnify, defend and save Landlord and its directors, officers, shareholders, agents and employees, harmless from any or all losses, damages, claims, liabilities, judgments, costs and expenses (including reasonable attorney's fees and expenses) arising out of or in connection with Tenant's possession, use, occupancy, management, repair, maintenance or control of the Demised Premises; (ii) any act or omission of Tenant or Tenant's agents, employees, contractors, licensees, invitees, subtenants or assignees; (iii) any default, breach, violation or non-performance of this Ground Lease or any provision hereof by Tenant; and (iv) any injury to persons or property or loss of life sustained in or about the Demised Premises or any part thereof.

B. Except for the negligence of Tenant and its contractors, agents, and employees, Landlord shall indemnify, defend and save Tenant and its directors, agents and employees harmless from any or all losses, damages, claims, liabilities, judgments, costs and expenses (including reasonable attorneys' fees and expenses) arising out of or in connection with (i) Landlord's failure to perform the obligation imposed on it under this Ground Lease, or (ii) any negligence, omission or intentional act of Landlord or Landlord's agents, employees and contractors.

C. During the Term, Tenant shall maintain insurance providing reasonable assurance for the performance by Tenant of the indemnity and hold harmless agreement contained in Section 14.A of this Ground Lease. Such insurance shall include workmen's compensation and employer's liability coverage, as well as commercial general liability insurance and contractual liability coverage in at least the amounts specified in Section 4. All such insurance shall be in form and content reasonably satisfactory to Landlord and written by insurers authorized to do business in the State of Nebraska. Liability insurance (i) shall name Landlord as an additional insured, and upon the request of Landlord, the holders of any mortgages or deeds of trust or any other parties in interest; and (ii) shall provide that the policy will not be canceled or modified without at least thirty (30) days prior written notice to Landlord. Tenant shall obtain waivers of all rights of subrogation against Landlord. During the Term, Tenant shall continuously furnish to Landlord duplicate original policies or certificates thereof and proof that the same have been fully paid for and are in full force and effect. Upon the failure of Tenant to deliver the policies or certificates or failure to pay the charges therefor, Landlord may secure additional policies and Tenant shall pay to Landlord as Additional Rent all sums expended by Landlord therefor together

with interest thereon from the date of payment by Landlord to the date of reimbursement by Tenant at the Default Rate. Upon request of Landlord's lender, Tenant will deliver to such lender a certified copy of its policies or an uncertified memorandum copy of such policies (including all declaration pages, policy forms and endorsements) together with an original certificate of insurance.

15. **Damage and Destruction.**

A. **Restoration.** If the Demised Premises or any part thereof shall be damaged or destroyed by fire, the elements or other casualty, Annual Rent due under this Ground Lease shall abate while such damage or destruction is being repaired, restored or replaced. Tenant shall commence the repair, restoration or replacement of the Demised Premises as soon as reasonably practicable after such casualty, but in no event shall completion take more than twelve (12) months. The Demised Premises shall be repaired, restored or replaced to the condition or better than that which existed immediately prior to the casualty. All insurance proceeds recovered on account of such damage, destruction or other casualty shall be made available directly to Tenant for the payment of the cost of such repair, restoration and replacement. If the insurance proceeds shall be less than the cost of repair, restoration and replacement, Tenant shall pay the excess cost. If the insurance proceeds shall be greater than the cost of repair or restoration, the excess shall belong to Tenant.

B. **Fire Insurance.** As long as the Improvements exist upon the Demised Premises, Tenant will maintain, at all times during the Term, Special Form Building and Personal Property insurance coverage with respect to the Demised Premises. Such insurance shall (i) contain a replacement cost endorsement, be written by insurers authorized to do business in the State of Nebraska, and (ii) be in an amount not less than the full replacement value of the Improvements located upon the Demised Premises. Such insurance shall also include an agreed value endorsement and may be written with a co-insurance clause which is not more than ninety percent (90%). The policies of such insurance shall name Landlord and Tenant as insureds, and shall be payable in the case of loss to such named insureds, as their interests may appear, subject, however, to the provisions of Section 15.A. The policies shall provide that losses payable shall be payable notwithstanding any act, omission or negligence of any named insured, or its agents or employees, and shall provide that the policy will not be canceled or modified without at least thirty (30) days prior written notice to Landlord. Tenant agrees that on or prior to the Commencement Date and not less than thirty (30) days prior to the expiration of each policy of such insurance, Tenant will deliver to Landlord policies of such insurance or the renewals thereof, as the case may be, and proof that the same have been paid in full and are in full force and effect.

16. **Eminent Domain.**

A. If after the execution of this Ground Lease and prior to the expiration of the Term, the whole of the Demised Premises shall be taken under the power of eminent domain, then the Term shall cease as of the time when Landlord shall be divested of its title in the Demised Premises, and Annual Rent and any Additional Rent shall be apportioned and adjusted as of the time of termination. Tenant shall have the right, at its election, to continue to occupy the

Demised Premises to the extent permitted by law, for the period between the time of appropriation and the time when physical possession of the Demised Premises shall be taken, subject to the provisions of this Ground Lease, insofar as the same may be made applicable to such occupancy by Tenant.

B. If by right of eminent domain:

(i) A portion of the Improvements and/or Demised Premises shall be appropriated and as a result thereof, shall be reduced so as to render it unsuitable in Tenant's reasonable judgment for use for the Business; or

(ii) Any part of the Improvements or Demised Premises shall be appropriated during the last two (2) years of the Term, then Tenant may, if Tenant shall so elect, terminate this Ground Lease by giving Landlord written notice of such election within twenty (20) days after the receipt of written notice of such appropriation. In the event of a termination under the provisions of this Section, the termination shall be effective as of the time that physical possession of the Demised Premises so appropriated shall be taken, and Annual Rent and Additional Rent shall be apportioned and adjusted as of the date of termination. If there shall be an appropriation by right of eminent domain of the land underlying or the Improvements situated on the Demised Premises, and if the Term shall continue in full force and effect, Tenant shall, within a reasonable time after physical possession is taken of the appropriated premises, restore what may remain of the Building and the Demised Premises to substantially the same condition they, respectively, were in prior thereto, subject to a reduction in size thereof; the Annual Rent and Additional Rent shall be reduced in proportion to the extent of the part of the land within the Demised Premises so taken.

C. In the event of taking by right of eminent domain, which results in the termination of this Ground Lease, the award shall be divided as follows:

(i) To Tenant an amount equal to the value of the cost to Tenant of any improvements made by Tenant to the Demised Premises; and

(ii) The balance thereof shall be paid to Landlord.

D. In the event that any such taking shall not result in the termination of the Term as above provided, such award shall be allocated as follows:

(i) To Tenant an amount equal to the cost of restoration required to be made by Tenant; and

(ii) To the extent that the award is in excess of the amounts required under (i) the balance shall be paid to Landlord.

E. Tenant agrees to execute any instruments reasonably required by Landlord in connection with any petition for the recovery of damages. It is agreed and understood, however, that Landlord does not reserve to itself, and Tenant does not assign to Landlord, any damages payable for trade fixtures installed by Tenant at its own cost and expense and damages separately awarded to Tenant for relocation or moving expenses and the like.

17. **Assignment and Subletting.** Provided that Tenant is not then in default, Tenant shall have the right to assign this Ground Lease or sublet the whole or any part of the Demised Premises solely related to the Business with Landlord's prior written consent, which will not be unreasonably withheld, and Tenant shall be released from liability hereunder. No sublease or assignment of this Ground Lease shall become effective unless and until an original executed copy is provided to Landlord, and in the case of an assignment of this Ground Lease, the assignee assumes and agrees to pay, perform and observe all of the terms, conditions and provisions of this Ground Lease to be paid, performed and observed by Tenant. Notwithstanding the foregoing, Tenant shall be able to sublease the Demised Premises and this Ground Lease to any entity affiliated with Tenant or owned in part by Jared Storm or his immediate family members or a trust established in part for the benefit of Jared Storm and/or his immediate family members.

18. **Default.**

A. **Landlord's Right to Cure.** If Tenant shall default in the performance or observance of any term, condition or provision in this Ground Lease contained on its part to be performed or observed, other than obligation to pay Annual Rent or any other payment required to be made by Tenant under this Ground Lease, and shall not cure such default within thirty (30) days after written notice from Landlord specifying the default (or shall not within such period, commence to cure such default and thereafter prosecute the curing of such default to completion in good faith with due diligence), Landlord may, at its option, without waiving any claim for damages for breach of agreement, at any time thereafter, cure such default for the account of Tenant, and any amount paid or any contractual liability incurred by Landlord in so doing shall be deemed paid or incurred for the account of Tenant, and Tenant agrees to reimburse Landlord therefor (together with interest thereon at the Default Rate from the date paid or incurred to the date of repayment) and save Landlord harmless therefrom; provided that Landlord may cure any such default as aforesaid prior to the expiration of such waiting period, but after notice to Tenant, if the curing of such default prior to the expiration of such waiting period is reasonably necessary to protect the Demised Premises or Landlord's interest therein, or to prevent injury or damage to persons or property. If Tenant shall fail to reimburse Landlord upon demand for any amount paid for the account of Tenant hereunder, Landlord shall have the right to include and make such amount due as a part of the next monthly installment of Annual Rent due hereunder.

B. **Default by Tenant.** (1) If any installment of Annual Rent or any other payment required to be made by Tenant under this Ground Lease shall remain unpaid for more than ten (10) days after Tenant shall have received written notice from Landlord of such non-payment; or (2) if there shall be a failure in the performance or observance of any other term, condition or provision (except any payment required hereunder) contained herein on the part of Tenant to be performed or observed and such failure shall not be corrected within thirty (30) days after Tenant

shall receive written notice from Landlord of such failure (or such longer period as may be reasonably required to correct such failure if within such thirty (30) day period Tenant shall commence to correct the same and thereafter diligently pursue the correction thereof in good faith), the Landlord shall have the right, at its election to terminate this Ground Lease and/or Tenant's possession only (with the Ground Lease to remain in full force and effect otherwise), by giving written notice to Tenant of the exercise of such election, and in the event the election is to terminate this Ground Lease and Tenant's right of possession hereunder, this Ground Lease and Tenant's right of possession shall terminate on the date designated therefor in such notice, which date shall not be less than three (3) days after the receipt of such notice by Tenant, and thereupon, or any time thereafter and without any further notice or demand, Landlord may reenter the Demised Premises, as permitted by law, and have possession thereof, as of its former estate and/or may recover possession thereof in the manner prescribed by law. In the event, however, that Landlord elects to terminate Tenant's right of possession only, (i) such possessory interest shall terminate, but all other obligations of Tenant under the Ground Lease including, but not limited to, the obligation to pay Annual Rent and Additional Rent shall remain in full force and effect; and (ii) Landlord shall use reasonable efforts to mitigate damages.

C. Reletting. In case of any such termination of this Ground Lease or Tenant's right of possession only, Tenant will remain liable to Landlord for all loss of rent and other payments provided herein to be paid by Tenant to Landlord between the termination and expiration of the Term. It is understood and agreed that at the time of termination, or at any time thereafter, Landlord may rent the Demised Premises without releasing Tenant from any liability whatsoever; that Tenant shall be liable for any expenses incurred by Landlord in connection with any reletting, including, but not limited to, the reasonable costs of preparing the Demised Premises for reletting, reasonable attorneys' fees and brokers' fees; and that any monies collected from any reletting shall be applied first to the foregoing expenses, and then to payment of rent and all other payments due from Tenant to Landlord.

D. Bankruptcy, etc. It shall also be a default under this Ground Lease, pursuant to which Landlord may exercise its remedies set forth in this Section 18, if the Tenant shall make an assignment for the benefit of creditors, or if a receiver is applied for or appointed for the Tenant, or if there be filed a petition in bankruptcy or insolvency, or for an arrangement or reorganization by or against the Tenant, or consented to by the Tenant, or if the Tenant is adjudicated a bankrupt or is adjudged to be insolvent, or if the Tenant is advertised to be sold out by any sale under process of law, or if the assets or property of the Tenant in the Demised Premises shall be attached or levied upon, or if this Ground Lease or the estate of Tenant shall pass to another by virtue of any court proceedings, writ or execution or operation of law.

19. Tenant's Leasehold Mortgage.

A. Tenant shall have the right at any time, and from time to time, to mortgage or otherwise hypothecate its interest in the leasehold estate, provided that any debt instruments Tenant may execute in connection with such mortgage or hypothecation shall have a maturity date no later than the expiration of the Term plus any remaining options to extend the Term. If Tenant shall grant a mortgage or deed of trust with respect to leasehold estate (any such leasehold

mortgage or deed of trust herein referred to as a "Leasehold Mortgage") and if the owner and holder of such Leasehold Mortgage (herein referred to as a "Leasehold Mortgagee") shall send to Landlord at its address herein above set forth, a copy of the Leasehold Mortgage together with written notice specifying the name and address of such Leasehold Mortgagee, Landlord agrees that until such Leasehold Mortgage is released of record or written notice of satisfaction is given by the Leasehold Mortgagee to Landlord (at the address and in the manner described in this Lease), the provisions of this Section 19 shall apply with respect to such Leasehold Mortgage. Notwithstanding anything seemingly to the contrary contained in this Section 19, the cure periods and cure rights set forth in this Section 19 shall inure solely to the benefit of the Leasehold Mortgagee in the first recorded position against the Leasehold Estate such that Landlord shall not be obligated to provide duplicate cure rights to multiple Leasehold Mortgagees. The cure periods and cure rights, if any, of Leasehold Mortgagees who are in a subordinate position to the first position Leasehold Mortgagee shall be derivative of those granted the first priority position Leasehold Mortgagee and shall be contained in an intercreditor agreement among such Leasehold Mortgagees.

B. Landlord will promptly give each Leasehold Mortgagee (including any subordinate Leasehold Mortgagee as to which Tenant has given notice to Landlord as aforesaid) notice of any default by Tenant under the Lease by providing the Leasehold Mortgagee with a copy of any notice of default given by Landlord to Tenant under the Lease. Such copy of the of default notice shall be sent (by personal delivery, by prepaid certified or registered mail, return receipt requested or by nationally recognized overnight courier service) to the address or addresses designated by the Leasehold Mortgagee in a written notice given from time to time to Landlord. No notice of default sent by Landlord to Tenant shall be effective as against the Leasehold Mortgagee unless a copy thereof is also sent to the Leasehold Mortgagee as provided herein. Landlord will not exercise any right, power or remedy with respect to any default hereunder (including any rights or obligations Landlord may have to terminate this Lease and/or purchase the Leasehold Improvements under the Contemporaneous Agreement) unless the Tenant or the Leasehold Mortgagee shall have failed to remedy such default within any applicable grace period set forth in this Lease (which grace period shall commence, with respect to the Leasehold Mortgagee, upon receipt by such Leasehold Mortgagee of the copy of the notice of default) and for an additional sixty (60) days thereafter (the "Leasehold Mortgagee Grace Period"), provided that (i) if such default is of such a nature that it cannot, with the exercise of due diligence, be cured within a period of sixty (60) days, Landlord shall not be entitled to re-enter the Premises or serve a notice of termination upon Tenant or the Leasehold Mortgagee, nor shall such default be regarded as a default for any of the purposes of the Lease, if Tenant or the Leasehold Mortgagee shall have commenced the cure of such default within the sixty (60) days referred to herein and so long as Tenant or the Leasehold Mortgagee shall thereafter proceed with all due diligence to complete the cure of such default and the time of Tenant or Leasehold Mortgagee within which to cure the default shall be extended from such period as may be necessary to complete the cure with all due diligence provided that Tenant or Leasehold Mortgagee shall continue to pay all Annual Rents and Additional Rents and otherwise perform all other obligations hereunder throughout such period and (ii) if the default is of a nature that possession of the Demised Premises by the Leasehold Mortgagee is reasonably necessary for the Leasehold Mortgagee to remedy the default, the Leasehold Mortgagee Grace Period shall not be

deemed to have commenced until such time as the Leasehold Mortgagee shall have obtained possession of the Demised Premises, provided that Tenant or Leasehold Mortgagee shall continue to pay all Annual Rents and Additional Rents hereunder throughout such period. Notwithstanding anything contained herein to the contrary, a Leasehold Mortgagee shall not be required to cure or remedy any default which is of a nature that cannot be cured by the Leasehold Mortgagee (including, but not limited to, Tenant's bankruptcy), and upon foreclosure or other acquisition of the Tenant's interest in the Lease by the Leasehold Mortgagee or its designee, all such incurable defaults under the Lease shall be deemed to have been fully cured as to Leasehold Mortgagee, its designee and its successors and assigns provided that the foregoing shall not waive or release Tenant with respect to such default.

C. Except for a termination of this Lease as the result of a default not cured pursuant to the provisions of Subsection (a) above, Landlord shall not terminate, cancel or permit or accept a surrender of the Lease for any reason whatsoever or amend or modify the Lease to shorten its Term or increase the monetary obligations of the Tenant hereunder without the Leasehold Mortgagee's prior written consent and any such purported action without the Leasehold Mortgagee's consent shall not be binding on the Leasehold Mortgagee.

D. Any Leasehold Mortgagee, its designee or agent may, but is not required to, make any payment or perform any act as required hereunder to be made or performed by Tenant with the same effect as if made or performed by Tenant, provided that no entry by the Leasehold Mortgagee upon the Demised Premises for such purpose shall constitute or be deemed to be an eviction of Tenant and shall not waive or release Tenant from any obligation or default hereunder (except any obligation or default which shall have been fully performed or corrected by such payment or performance by the Leasehold Mortgagee).

E. In the event of the termination of the Lease, or of any succeeding lease made pursuant to the provisions of the Lease, prior to its stated expiration date by reason of a default of Tenant or rejection of the Lease by Tenant in a bankruptcy proceeding or otherwise, notice thereof shall be given by Landlord to the Leasehold Mortgagee, and Landlord shall enter into a new lease of the Demised Premises with the Leasehold Mortgagee or, at the request of such Leasehold Mortgagee, with a corporation or other entity formed by or on behalf of such Leasehold Mortgagee, for the remainder of the term, effective as of the date of such termination, at the rent and upon the covenants, agreements, terms, options, provisions and limitations herein contained and with the same priority as the Lease, provided such Leasehold Mortgagee makes written request to Landlord for such new lease within sixty (60) days from the date it receives notice of such termination and such written request is accompanied by payment to Landlord of all amounts that would have been due to Landlord from Tenant from the date of termination through the date of the Leasehold Mortgagee's giving of such notice had the Lease not been terminated, less any amounts received by Landlord from subtenants after deducting from any such amounts collected the costs of collection and the costs of operating the Building incurred by Landlord during such period. The execution of any new lease between Landlord and the Leasehold Mortgagee or its designee pursuant to this subparagraph shall not release or be deemed to release Tenant from any liability for failure to perform any past covenant, duty or obligation under the

terminated Lease. In the event Landlord enters into such new lease, Landlord shall assign all of its right, title and interest as Landlord under any subleases of the Demised Premises or any portion thereof to such Leasehold Mortgagee and Landlord agrees not to terminate, modify, or take any action that would otherwise affect any such subleases.

F. There shall be no merger of this Lease nor of the Leasehold Estate created by this Lease with the fee simple estate in the Demised Premises or any part thereof by reason of the fact that the same person, firm, corporation or other entity may acquire or own or hold, directly or indirectly (i) the Lease or the leasehold estate created by the Lease or any interest in the Lease or in any such leasehold estate, and (ii) the fee simple estate in the Demised Premises or any part thereof or any interest in such fee estate. For any such merger to occur, all persons, corporations, firms and other entities, having (A) any interest in the Lease or the leasehold estate created by the Lease (excluding Subtenants but including any Leasehold Mortgagee) and (B) any fee simple interest in the Demised Premises or any part thereof, must join in a written instrument effecting such merger which shall be duly recorded in the appropriate public records.

G. No Leasehold Mortgagee (or its designee as may have acquired Tenant's leasehold estate) shall become personally liable under the agreements, terms, covenants or conditions of the Lease unless and until it becomes the holder of Tenant's leasehold estate, and then only from and after such date. Upon any assignment of the Lease by a Leasehold Mortgagee, or such designee, the assignor shall be relieved of any further liability which may accrue hereunder from and after the date of such assignment provided that the assignee shall execute and deliver to Landlord a recordable instrument of assumption wherein such assignee shall assume and agree to perform and observe the covenants and conditions in the Lease contained on Tenant's part to be performed and observed, it being the intention of the parties that once the Leasehold Mortgagee (or such designee) shall succeed to Tenant's interest under the Lease, a subsequent assignment by such Leasehold Mortgagee (or such designee) shall effect a release of such Leasehold Mortgagee's liability hereunder.

H. Landlord shall from time to time, within twenty (20) days after receipt of written request therefore from Tenant or from any Leasehold Mortgagee, deliver, a duly executed certificate or statement to the parties requesting said certification or statement or to such other party, firm or corporation designated by Tenant, certifying to the following to the extent such statements are true: (1) that the Lease is in full force and effect and unmodified or, if there has been any modifications, that the same is in full force and effect as modified; (2) the expiration date of the Term of the Lease; (3) the Annual Rent currently payable under the Lease; (4) the dates to which the Annual Rent and other charges payable hereunder by Tenant have been paid, and the amount of Annual Rent and other charges, if any, paid in advance; (5) whether or not to Lessor's knowledge Tenant is in default under the Lease and, if a default is alleged, specifying the nature thereof; and (6) to Lessor's knowledge, as to any other matters relating to the status of this Lease as shall be reasonably requested by Tenant or any such Leasehold Mortgagee.

20. **Notices.** All notices sent or required to be sent hereunder shall be in writing and either personally delivered, or sent by nationally recognized overnight courier or by registered or

certified mail, return receipt requested, postage prepaid or courier fee prepaid; if to Landlord, the same shall be addressed to:

Storm Land Holdings, LLC _____
c/o Jared Storm
390 E. Sloup Drive _____

Wahoo _____, Nebraska 68066 _____

With copy to: Matthew T. Payne _____
PANSING HOGAN ERNST & BACHMAN, LLP
10250 Regency Circle, Suite 300
Omaha, Nebraska 68114

or such other person or address as Landlord may designate by notice to Tenant; if to Tenant, the same shall be addressed to:

With copy to: _____

or such other person or address as Tenant may hereafter designate by notice to Landlord.

Any such notice shall be deemed delivered on the date of personal delivery or if sent by mail, three (3) business days after the date of mailing, or if sent by courier on the next business day after the date of deposit of such notice with such courier service.

21. **Delays.** In any case where either Party is required to do any act (other than make a payment of money), delays caused by or resulting from an act of God, war, civil commotion, fire or other casualty, labor difficulties, general shortages of labor, materials or equipment, governmental regulations, or other causes beyond such Party's reasonable control shall not be counted in determining the time when the performance of such act must be completed, whether such time be designated by a fixed time, a fixed period of time, or "a reasonable time."

22. **Waiver.** Failure on the part of either Party to complain of any action or non-action on the part of the other shall never be deemed to be a waiver by such Party of any of its rights hereunder. No waiver at any time of any of the provisions hereof by either Party shall be construed as a waiver of any of the other provisions hereof. A waiver at any time of any of the provisions hereof shall not be construed as a waiver at any subsequent time of the same provisions. The

consent or approval by either Party to, or of any action by the other requiring such Party's consent or approval, shall not be deemed to waive or render unnecessary such consent or approval to or of any subsequent similar act by the other Party.

23. **Covenant of Quiet Enjoyment.** Tenant, upon payment of the rent and observing, keeping and performing of all of the terms and provisions of this Ground Lease on its part to be observed, kept and performed, shall lawfully, peaceably and quietly have, hold, occupy and enjoy the possession of the Demised Premises without hindrance or ejection by Landlord or anyone acting under, or in succession to the Landlord.

24. **Estoppel.** Recognizing that both Parties may find it necessary to establish to third parties the then current status of performance hereunder upon request of Landlord or Tenant, the other Party, within twenty (20) days of the date of such written request, agrees to execute and deliver to the Party requesting, without charge, a written statement (a) ratifying this Ground Lease; (b) certifying that this Ground Lease is in full force and effect, if such is the case, and has not been modified, assigned, supplemented or amended, except as shall be stated; (c) certifying that all conditions and agreements under this Ground Lease to be satisfied and performed have been satisfied and performed, except as shall be stated; (d) reciting the amount of advance rental, if any, paid by Tenant and the date to which Annual Rent has been paid; and (e) confirming such other provisions as are reasonably required by such Party.

25. **Invalidity.** If any term or provision of this Ground Lease, or the application thereof, to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Ground Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Ground Lease shall be valid and be enforced to the fullest extent permitted by law.

26. **Terms.** The words "Landlord" and "Tenant" and the pronouns referring thereto, as used in this Ground Lease, shall mean, where the context requires or admits, Landlord and Tenant, respectively, and their respective heirs, legal representatives, successors and assigns, irrespective of whether singular or plural, masculine or feminine or neuter. Except as otherwise provided in this Ground Lease, the agreements and conditions in this Ground Lease contained on the part of either Party to be performed and observed shall be binding upon such Party and its heirs, legal representatives, successors and assigns, and shall inure to the benefit of the other Party and its heirs, legal representatives, successors and assigns.

27. **Governing Law and Recordation.** This Ground Lease shall be governed and controlled exclusively by the provisions hereof and by the laws of the State of Nebraska. Tenant agrees not to record this Ground Lease, but each Party agrees, on the request of the other, to execute and record a Memorandum of Lease in the form annexed to this Ground Lease as Exhibit "B."

28. **Miscellaneous.**

A. **When Ground Lease Becomes Binding.** The submission of this document for examination and negotiation does not constitute an offer to lease, or a reservation of, or option for, the Demised Premises, and this document shall become effective and binding only upon the execution and delivery hereof by both Landlord and Tenant. Execution of this Ground Lease may be made by counterpart signatures of the parties.

B. **Amendments.** All negotiations, considerations, representations and understandings between Landlord and Tenant are incorporated herein and may be modified or altered only by agreement in writing between Landlord and Tenant, and no act or omission of any employee or agent of Landlord or Tenant shall revoke or modify any of the provisions hereof.

C. **Paragraph Headings.** The paragraph headings throughout this Ground Lease are for convenience and reference only, and the words contained therein shall in no way be held to explain, modify, amplify, or aid in the interpretation, construction or meaning of the provisions of this Ground Lease.

D. **Binding Effect.** The terms, covenants and conditions contained in this Ground Lease shall inure to the benefit of and be binding upon Landlord and Tenant and their respective successors, assigns, personal representatives, and heirs except as may be otherwise expressly provided in this Ground Lease.

29. **Holdover by Tenant.** In the event Tenant remains in possession of the Demised Premises after the termination of this Ground Lease, and without the execution of a new lease, Tenant, at the option of the Landlord, shall be deemed to be occupying the Demised Premises as a tenant from month-to-month, subject to all other conditions, provisions and obligations of this Ground Lease insofar as the same are applicable to month-to-month tenancy, except that the Annual Rent during such holdover period shall be one hundred and fifty percent (150%) of the Annual Rent and Additional Rent applicable at the end of the Term.

30. **Partnership Negated.** It is the intention of the Parties to create the relationship of Landlord and Tenant and no other.

31. **Brokerage.** Landlord represents and warrants that Landlord has not engaged or dealt with any real estate broker or agent in connection with this Ground Lease. Landlord shall indemnify, defend and hold Tenant harmless from and against any claim for brokerage commission or finder's fees asserted by any third party in connection with this Ground Lease. Tenant represents and warrants to Landlord that Tenant has not engaged or dealt with any real estate broker or agent in connection with this Ground Lease. Tenant shall indemnify and hold Landlord harmless from and against any claim for brokerage commission or finder's fees asserted by any person, firm or corporation claiming to have been engaged by Tenant in connection with this Ground Lease.

32. **Airport Development.** The Landlord reserves the right to further develop or improve the Airport. If the physical development of the Airport requires the relocation of Tenant-owned facilities, the Landlord agrees to provide a comparable location reasonably acceptable to Tenant, and agrees to relocate all Tenant-owned buildings (including but not limited to Tenant's trade fixtures, trade equipment, and personal property) or provide similar facilities for the Tenant and provide for Tenant's moving expenses at no cost to the Tenant. The Landlord will provide a minimum of sixty (60)-day notice of intention to relocate.

33. **Airport Layout.** The Landlord reserves the right to approve or disapprove the location of any proposed new construction or facilities enhancements based on the Airport Layout Plan or intended modifications to the Airport Layout Plan. Landlord and Tenant agree to enter into good faith negotiations to allow future expansion of the Demised Premises.

IN WITNESS WHEREOF, the Parties have executed this Ground Lease as of the day and year above written.

LANDLORD:

CITY OF DAVID CITY

By: _____

TENANT:

Storm Land Holdings, LLC, a Nebraska limited liability company

By: _____

Name: Jared Storm

Title: Manager

EXHIBIT "A"
LEGAL DESCRIPTION



A legal description was not provided;

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[Cite your source here.]



EXHIBIT "B"

MEMORANDUM OF LEASE

This is a Memorandum of Lease by and between **CITY OF DAVID CITY**, a Nebraska limited liability company, hereinafter called **LANDLORD**, and **STORM LAND HOLDINGS, LLC**, a Nebraska limited liability company, hereinafter called **TENANT** upon the following terms:

1. Date of Lease: _____, 2014
2. Description of Demised Premises: _____
3. Date of Commencement: The "Initial Term" (herein so called) of this Lease shall begin on the "Commencement Date" of the Lease and shall terminate at 11:59 p.m. on the date which immediately precedes the fifty-fourth (54th) anniversary of the Commencement Date.
4. Extension Option(s): One (1) renewal option of fifty (50) years.

The purpose of this Memorandum of Lease is to give record notice of the Lease and of the rights created thereby, all of which are hereby confirmed.

IN WITNESS WHEREOF, the parties have executed this Memorandum of Lease as of the dates set forth in their respective acknowledgements.

LANDLORD:

CITY OF DAVID CITY

By: _____

TENANT:

STORM LAND HOLDINGS, LLC, a Nebraska limited liability company

By: _____

Name: _____

Title: _____

Council member Kroesing introduced Resolution No. 21 - 2014 and moved for its passage and adoption. Council member Vandenberg seconded the motion. Voting AYE: Council members Svoboda, Scribner, Smith, Rogers, Vandenberg, and Kroesing. Voting NAY: None. The motion carried and Resolution No. 21 – 2014 was passed and adopted as follows:

RESOLUTION NO. 21 – 2014

A RESOLUTION ADOPTING AND APPROVING THE DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM FOR THE DAVID CITY MUNICIPAL AIRPORT.

WHEREAS, the Disadvantaged Business Enterprise (DBE) Program is a Federal requirement for each fiscal year in which the City of David City, Nebraska, anticipates awarding contracts totaling \$250,000 or more for airport planning or development, and

WHEREAS, THE City of David City does anticipate awarding contracts totaling \$250,000 or more for airport planning or development.

THEREFORE, BE IT RESOLVED by the Mayor and City Council of David City, Nebraska, that the City of David City, Nebraska, hereby adopts and approves the Disadvantaged Business Enterprise (DBE) Program for the David City Municipal Airport as outlined in the following Policy Statement.

Passed and approved this 10th day of September, 2014.

Mayor Alan Zavodny

City Clerk Joan E. Kovar

Council member Scribner introduced Resolution No. 22 - 2014 and moved for its passage and adoption. Council member Smith seconded the motion. Voting AYE: Council members Kroesing, Vandenberg, Rogers, Svoboda, Smith, and Scribner. Voting NAY: None. The motion carried and Resolution No. 22 – 2014 was passed and adopted as follows:

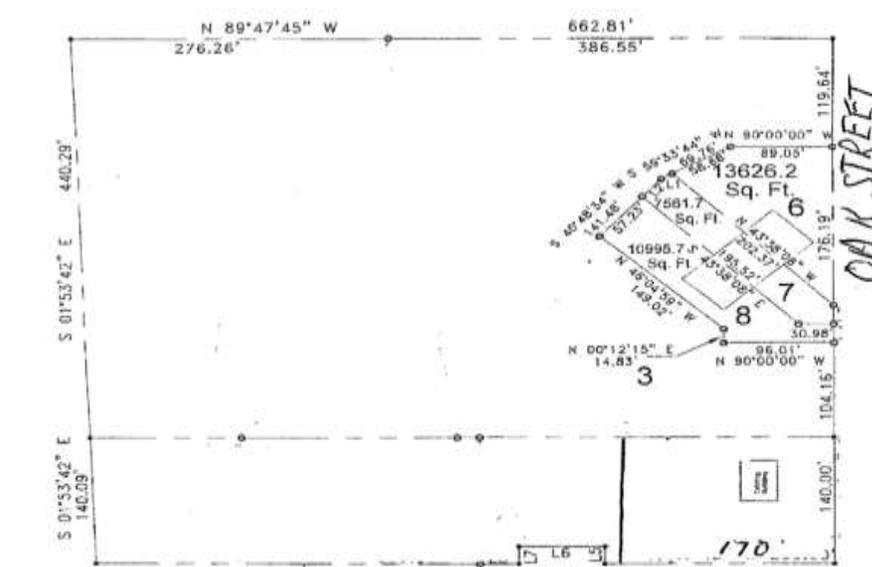
RESOLUTION NO. 22 - 2014

WHEREAS, Steve Maguire, is the owner of property which is approximately 600' x 140', legally described as: Parcel ID #120007840 referred to as follows: All that part of the West ½ of the SW Quarter (W½ SW¼) of Section 19, Township 15 North, Range Three East of the 6th P.M., known as Outlot 3 in the West Addition of David City, Butler County, Nebraska, beginning at a point on the west line of Oak Street in Miles 4th Addition to David City, Nebraska, 320' South of the South line of Right-of-way of Fremont, Elkhorn, and Missouri Valley Railroad Company across said west ½ of the SW Quarter of Section 19, thence running west in a direct line 637' more or less to the West section line of said Section 19, thence running South on said

section line 187' more or less, thence running East 637' to the West line of Oak Street, thence running North on said West line of Oak Street 187' more or less, to the place of beginning, less that portion of said real estate deeded in Book 82, Page 238 described as follows: Beginning at the NE corner of Lot 5, Block 1, Hall's Addition to David City, running thence North at right angles to said Block 1, a distance of 20'; running thence West in a line parallel to the North line of said Block 1, a distance of 75', running thence South, a distance of 20' to the NW corner of the East ½ of Lot 6, in said Block 1, Hall's Addition to David City, running thence East along the North line of said Block 1, a distance of 75' to the point of beginning; and

WHEREAS, Steve Maguire has submitted a request to divide the property legally described above into two (2) lots as follows:

- One lot approximately 140' x 170' and
- One lot approximately 140' x 430'



WHEREAS, there were no objections expressed concerning the request of Steve Maguire;

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF DAVID CITY, NEBRASKA, that the request of Steve Maguire to divide his property legally described above, into two lots approximately 140' x 170' and 140' x 430', is hereby approved.

Passed and adopted this 10th day of September, 2014.

Mayor Alan Zavodny

City Clerk Joan E. Kovar

Jason Lavicky was present to ask who would pay for the appraisal of the David City Ball Fields. Normally the buyer pays for the appraisal, however, the City hasn't decided if they are

buying the ball field complex. Discussion followed. City Attorney Egr stated that he knew someone who recently did an appraisal of a ball field and he will contact them.

Council member Scribner made a motion to authorize spending up to \$3,000 of Keno Funds to pay for an appraisal to be done on the David City Ball Fields. Council member Smith seconded the motion. Voting AYE: Council members Rogers, Vandenberg, Kroesing, Smith, Scribner, and Svoboda.

Council member Scribner made a motion to go into executive session to discuss possible litigation and a personnel issue. Council member Smith seconded the motion. Voting AYE: Council members Scribner, Svoboda, Smith, Kroesing, Vandenberg, and Rogers. Voting NAY: None. The motion carried.

Mayor Zavodny stated: "At 8:47 p.m. we are going into executive session to discuss possible litigation and a personnel matter."

Mayor Zavodny, all of the Council members, City Attorney Jim Egr, and City Clerk Kovar went into executive session at 8:47 p.m.

Mayor Zavodny declared the City Council out of executive session at 9:05 p.m.

There being no further business to come before the Council, Council member Kroesing made a motion to adjourn. Council member Rogers seconded the motion. Voting AYE: Council members Svoboda, Smith, Scribner, Vandenberg, Rogers, and Kroesing. Voting NAY: None. The motion carried and Mayor Zavodny declared the meeting adjourned at 9:06 p.m.



CERTIFICATION OF MINUTES
September 10, 2014

I, Joan E. Kovar, duly qualified and acting City Clerk for the City of David City, Nebraska, do hereby certify with regard to all proceedings of September 10th, 2014; 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 E. Kovar, City Clerk