

**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 **9<sup>th</sup> day of October, 2013**, in the meeting room of the City Office, 557 N 4<sup>th</sup> Street, David City, Nebraska.

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

Dated this 3<sup>rd</sup> day of October, 2013.

**AGENDA AS FOLLOWS:**

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| 1. Roll Call;   | <hr/> Mayor Alan Zavodny                 |
| 2. Pledge of Allegiance;  |  |
| 3. Inform the Public about the location of the Open Meetings Act and the Citizens Participation Rules;  | <hr/> Council President Gary L. Kroesing |
| 4. Minutes of the September 11 <sup>th</sup> , 2013 meeting of the Mayor and City Council;  |  |
| 5. Consideration of Claims;   | <hr/> Council member Michael E. Rogers   |
| 6. Committee and Officer Reports;   |  |
| 7. Consideration of Ordinance No. 1197 setting the monthly rates to be charged for water usage, customer charges, and the effective dates; (Passed 1 <sup>st</sup> Reading 9/11/13) | <hr/> Council member Ruddy L. Svoboda    |
| 8. Consideration of Ordinance No. 1198 setting the monthly rates to be charged for Sewer usage, customer charges, and the effective dates; (Passed 1 <sup>st</sup> Reading 9/11/13) | <hr/> Council member William Scribner    |
| 9. Consideration of Ordinance No. 1200 creating a Community Redevelopment Authority;  |  |
| 10. Consideration of Appointments to the Community Redevelopment Authority;   | <hr/> Council member Gary D. Smith       |
| 11. Consideration of the bids received for the "B" Street Sanitary Sewer Extension;   |  |
| 12. Consideration of an Engagement for outside Legal Services with Baird Holm;  | <hr/> Council member John P. Vandenberg  |
| 13. Consideration of the Walter Goesch property at 465 1 <sup>st</sup> Street and the James Grange property at 446 So. 6 <sup>th</sup> Street;                                      | <hr/> City Clerk Joan E. Kovar           |

14. Consideration of refunding bank charges that were charged to customers because the ACH charges were deducted on October 1<sup>st</sup> instead of October 3<sup>rd</sup>;
15. Consideration of purchasing a paint sprayer for the football field;
16. Adjournment;

## CITY COUNCIL PROCEEDINGS

October 9, 2013

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 4<sup>th</sup> Street, David City, Nebraska. The Public had been advised of the meeting by publication of notice in The Banner Press on October 3<sup>rd</sup>, and an affidavit of the publisher is on file in the office of the City Clerk. The Mayor and members of the City Council acknowledged advance notice of the meeting by signing the Agenda which is a part of these minutes. The advance notice to the Public, Mayor, and Council members conveyed the availability of the agenda, which was kept continuously current in the office of the City Clerk and was available for public inspection during regular office hours. No new items were added to the agenda during the twenty-four hours immediately prior to the opening of the Council meeting.

Present for the meeting were: Mayor Alan Zavodny, Council members Gary Kroesing, Ruddy Svoboda, Gary Smith, and John Vandenberg. Also present were City Administrator Abbie Cornett, City Attorney Jim Egr, and City Clerk Joan Kovar. Council members Mike Rogers and Bill Scribner were absent.

Also present for the meeting were: Park/Auditorium Supervisor Scott Bales, Water/Sewer Supervisor Gary Janicek, David Levy of Baird Holm, Craig Reinsch of Olsson Associates, Russell Heller, Janis Cameron, Carolyn Yates, and Banner Press Editor Larry Peirce.

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 September 11, 2013 meeting of the Mayor and City Council were approved upon a motion by Council member Vandenberg and seconded by Council member Smith. Voting AYE: Council members Svoboda, Smith, Vandenberg, and Kroesing. Voting NAY: None. The motion carried. Council members Rogers and Scribner were absent.

Mayor Zavodny asked for consideration of claims. Council member Smith made a motion to authorize the payment of claims and Council member Svoboda seconded the motion. Voting AYE: Council members Kroesing, Vandenberg, Smith and Svoboda. Voting NAY: None. The motion carried. Council members Rogers and Scribner were absent.

Mayor Zavodny called for Committee and Officer Reports.

Mayor Zavodny stated: "We have a lot of "out of commission" vehicles around town and we are going to be working on that and finding a place to put them for the required amount of time before we can dispose of them; that is something we will hopefully get to quickly before winter sets in".

Council member Kroesing stated that he has received complaints regarding the notification sirens and the fact that they cannot be heard. Kroesing stated that several citizens in the east part of town have approached him with this concern. Council member Kroesing also stated that Electric Supervisor Pat Hoeft was supposed to do an inventory of the sirens and report back to the City Council. Council member Kroesing stated: "I don't want to hear that the new sirens weren't designed to be heard inside the homes."

Mayor Zavodny stated: "I am certainly sympathetic to people who feel that they cannot be adequately warned. We can look into that further. I'm going to tell you this, after what I saw in Wayne today, we have to warn citizens when something like that is coming at us or you don't survive. We can continue to look at that; I guess we will have a policy decision to make then if we're going to try to fix some of those older ones or use them differently, but as it is now I know only certain ones are only supposed to blow during a tornado. "

Council member Kroesing stated: "Well if we get an inventory of those things and find out how bad they're hurt."

Mayor Zavodny stated: "One of the biggest offenders is that one right by Family Dollar. We had a radio problem or an antenna problem and they thought they had it fixed once and then it didn't work, so that one continues to be problematic and the problem there I would say is if you don't have something you won't hear anything in that part of town; that can be bad. You've got a big employer out there that needs to be warned. I mean in today's day and age, it'll come over your phone and a lot of things, there's a lot more stuff, but you know if you're outside working on your yard or something not paying attention...."

Council member Kroesing agreed saying: "With all of those employees and all of the machinery going something out there better be working in that part of town."

Mayor Zavodny stated: "We will mark that down as a concern duly noted."

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

Ordinance No. 1197 was introduced and passed on first reading on September 11, 2013. Council member Vandenberg made a motion to pass and adopt Ordinance No. 1197 on the second reading. Council member Svoboda seconded the motion. Voting AYE: Council members Smith, Vandenberg, Svoboda. Voting NAY: Council member Kroesing. Mayor Zavodny was allowed to vote pursuant to Nebraska State Statute §17-110 & §17-614 which went into effect on September 6, 2013, and he voted AYE. The motion carried. Council members Rogers and Scribner were absent. Ordinance No. 1197 was passed on 2<sup>nd</sup> reading only as follows:

**ORDINANCE NO. 1197**

AN ORDINANCE SETTING THE MONTHLY RATES TO BE CHARGED FOR WATER USAGE; CUSTOMER CHARGES; EFFECTIVE DATES AND RATES; REPEALING ALL PARTS OF THE MUNICIPAL CODE AND ORDINANCES IN CONFLICT HEREWITH; AND PROVIDING FOR PUBLICATION OF THE ORDINANCE IN PAMPHLET FORM.

WHEREAS, SECTION 3-101 OF THE MUNICIPAL CODE PROVIDES THAT THE GOVERNING BODY SHALL SET RATES TO BE CHARGED BY ORDINANCE.

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

Section 1. That the following monthly rates and customer charges shall become effective January 1, 2014. (Water used in January, billed in February, and due March 1 - 10th.)

**For 5/8" by 3/4" meters:**

Customer charge of \$22.75 per month (no water usage included)  
and \$2.73 per 1,000 gallons for First 10,000  
and \$3.10 per 1,000 gallons Over 10,000

**For 3/4" meters:**

Customer charge of \$28.60 per month (no water usage included)  
and \$2.73 per 1,000 gallons for First 10,000  
and \$3.10 per 1,000 gallons Over 10,000

**For 1" meters:**

Customer charge of \$28.60 per month (no water usage included)  
and \$2.73 per 1,000 gallons for First 10,000  
and \$3.10 per 1,000 gallons Over 10,000

**For 1 1/2" meters:**

Customer charge of \$57.00 per month (no water usage included)  
and \$2.73 per 1,000 gallons for First 10,000  
and \$3.10 per 1,000 gallons Over 10,000

**For 2" meters:**

Customer charge of \$170.00 per month (no water usage included)  
and \$2.73 per 1,000 gallons for First 10,000  
and \$3.10 per 1,000 gallons Over 10,000

**For 3" meters:**

Customer charge of \$240.00 per month (no water usage included)  
and \$2.73 per 1,000 gallons for First 10,000  
and \$3.10 per 1,000 gallons Over 10,000

**For 4" meters:**

Customer charge of \$240.00 per month (no water usage included)  
and \$2.73 per 1,000 gallons for First 10,000  
and \$3.10 per 1,000 gallons Over 10,000

- Section 2. The monthly rates to be charged for water usage and customer charges will be reviewed by the City Council on as needed basis;
- Section 3. That any other ordinance or section of any ordinance passed and approved prior to passage, approval, and publication or posting of this ordinance and in conflict with its provisions, is hereby repealed.
- Section 4. This ordinance shall be published in pamphlet form and shall be in full force and effect from and after its passage as provided by law.

PASSED AND APPROVED this \_\_\_\_ day of \_\_\_\_\_, 2013.

(ATTEST)

Passed on 2<sup>nd</sup> reading only  
Mayor Alan Zavodny

Passed on 2<sup>nd</sup> reading only  
City Clerk Joan Kovar

Ordinance No. 1198 was introduced and passed on first reading on September 11, 2013. Council member Vandenberg made a motion to pass and adopt Ordinance No. 1198 on the second reading. Council member Svoboda seconded the motion. Voting AYE: Council members Smith, Vandenberg, Svoboda. Voting NAY: Council member Kroesing. Mayor Zavodny was allowed to vote pursuant to Nebraska State Statute §17-110 & §17-614 which went into effect on September 6, 2013, and he voted AYE. The motion carried. Council members Rogers and Scribner were absent. Ordinance No. 1198 was passed on 2<sup>nd</sup> reading only as follows:

**ORDINANCE NO. 1198**

AN ORDINANCE SETTING THE MONTHS THAT WILL BE USED TO CALCULATE SEWER RATES; EFFECTIVE DATES; REPEALING ALL PARTS OF THE MUNICIPAL CODE AND ORDINANCES IN CONFLICT HEREWITH; AND PROVIDING FOR PUBLICATION OF THE ORDINANCE IN PAMPHLET FORM.

WHEREAS, SECTION 3-213 OF THE MUNICIPAL CODE PROVIDES THAT THE GOVERNING BODY SHALL SET RATES TO BE CHARGED BY ORDINANCE.

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

- Section 1. For residential customers, the monthly sewer rate fee shall be based on the average quantity of water **used during the time period of December 20<sup>th</sup> thru February 19<sup>th</sup>, preceding April of the current year**. Customers who move within the City shall pay the same Sewer Use Fee at their new location as they paid for at their former location until which time the sewer rate fees are recalculated. For new residential customers in the City, an appropriate Sewer Use Fee will be determined by the Water/Sewer Supervisor.
- Section 2. For commercial customers, who use water in a commercial business, industrial, or other non-residential way, a monthly Sewer Use Fee will be calculated monthly based on the current month's water usage. Commercial customers who do not want to pay a sewer use fee for water used for watering lawns or shrubs will be responsible, at their own cost, to hire a licensed plumber to install a separate water meter to separately meter such water usage.
- Section 3. The following monthly Sewer Rates and customer charges became effective March 1, 2014, billed in April, and due May 1 - 10<sup>th</sup>.
- Customer charge of \$8.15 per month  
Plus @ \$3.00 per 1,000 gallons of water used
- Section 4. The monthly rates to be charged for sewer usage and customer charges will be reviewed by the City Council on an as needed basis;
- Section 5. That any other ordinance or section of any ordinance passed and approved prior to passage, approval, and publication or posting of this ordinance and in conflict with its provisions, is hereby repealed.
- Section 6. This ordinance shall be published in pamphlet form and shall be in full force and effect from and after its passage as provided by law.

PASSED AND APPROVED this \_\_\_\_ day of \_\_\_\_\_, 2013.

Passed on 2<sup>nd</sup> reading only  
Mayor Alan Zavodny

Passed on 2<sup>nd</sup> reading only  
City Clerk Joan Kovar

Mayor Zavodny stated: "Those of you that are interested in Downtown Redevelopment getting here someday will be very happy with this; this is one of the very first steps in doing it, and all the credit, and or blame, is sitting to my left (City Administrator Abbie Cornett)."

City Administrator Abbie Cornett stated: "You had passed a Redevelopment Ordinance prior, Joan do you remember what year that was?" Joan replied 1995. "No-one that was on the Board is still living or in David City basically, so we felt that it was better to re-do the ordinance so it was more up to date and reflects current State Law so I had Joan draft up a new ordinance for that. It's the first baby step on the way to what we want to do in the future. David can explain more of the legality of why we have to do this before we can ever obtain financing or anything but it will be the best way to start."

David Levy of Baird Holm, Attorneys at Law, stated: "Good Evening Mr. Mayor, members of the Council. As your City Administrator said, creating the Community Redevelopment Authority is the first step in taking action under the Nebraska Community Development Law and creating that authority, and then acting under that particular Statute gives you a variety of tools for Downtown Redevelopment that you would not otherwise have. Primarily those tools allow you to work with private developers, to incentivize them to bring their capital and expertise and so forth, property, land, buildings and redevelop that Tax Increment Financing; eminent domain for properties that are just sitting and are not moving and it also allows you special bonding authority as well for public projects, street improvements, those types of things. Creating the authority only creates the authority, it doesn't obligate you to ever do anything with it, but as the City Administrator said it is the first step, and it is a necessary step in being able to use the tools that that Statute provides to you to help you encourage downtown redevelopment."

City Administrator Cornett stated: "David, can you explain how you have done this in other communities around the State and that you are very familiar with this area?"

David Levy of Baird Holm, Attorneys at Law, stated: "We have represented many, many communities around the State with respect to this particular Statute and actions under the Statute. I don't have a number but dozens of communities around the State have these authorities. We are working with the City of Lexington, as an example right now, of a City that's probably a similar size of David City that has an authority like this, and has had one actually for well over a decade and has really been successful using it to redevelop, in their case, an area between the interstate and their town. Nebraska City is another one that we work with; it's a little bit bigger city; it uses this very extensively. It is a very common tool around the State; the bigger cities of course use it as well, but for a City such as yours it really..... Nebraska, unfortunately in my view as an old city planner, is not a State that has a lot of statutory tools to help a city encourage redevelopment and private development. This is really the only tool, the primary tool, that Nebraska law allows a City, so because it's the only one City's tend to take advantage of it. If you decide to proceed, the next step would be to adopt a Redevelopment Plan that complies with the Statute and outlines the area where you want this Authority to do its work, makes findings that allows you then to proceed, and typically the City Council would sit as the Board of that Authority.

Mayor Zavodny stated: "My feelings on this, obviously I prefer we had money sitting there; you know I had to say it. Smarter people than I have said most of what we do here around this table really won't matter in a hundred years; nobody will remember who the mayor was, no-one will remember who was on the city council but undertaking this project will matter in a hundred years, whether it is replacing sewers and upgrading those, our water mains, and certainly what our downtown will look like, so we will have a say in what this town will look like in the next, probably, one hundred years. This is an important thing; we shouldn't take it lightly. I did have the opportunity to meet with David fairly recently and my feeling is I want to make sure

we dot every “i”, cross every “t”, and I want the best of the best people working on this because I think it’s that important to our community. I don’t want to settle for the second team of developers, architects, whoever is going to be involved in this, I want this to be the best people we can certainly get to do it.”

Council member Kroesing noted that when we created a Community Redevelopment Authority in 1995 the City hired Orville Stahr, President of Stahr & Associates. {Bradley White representing Helmann, Sullivan, & White Attorneys at Law was also employed. They basically formed three analysis area boundaries that included the Northwestern, Central Southwestern, and the Southeastern Analysis Areas and they gave examples of tax increment financing.} Previously they had a hard time finding areas that were blight and substandard.

City Administrator Cornett stated: “The standard to set the bar for blighted and substandard areas has been lowered. Lincoln just declared a whole new industrial park that they built less than 10 years ago as blighted and substandard and they did that on the basis that it did not have the infrastructure in regards to fiber to provide current adequate communication to the industrial park so they were able to blight a full area that is a very recent development on the basis of infrastructure.”

David Levy stated: “I’m hesitating to call your downtown area Blight and Substandard; it is a very unfortunate term. In terms of what it affects, it would affect the area, or the areas which you designate within the City as your redevelopment areas; so probably downtown but it could be other areas such as if there is an industrial park or something like that. I believe it also affects the entire town in a positive way because if you bring in development you increase your property tax, your assessed valuation, your property tax base and ultimately your income from property taxes, your revenue.”

Mayor Zavodny stated: “We know downtown needs to be worked on, but there are people who are interested in more RV areas; there are a lot of projects people would like to see, but how do we determine what we should be focusing on?”

David Levy stated: “That’s a good question; really a policy question. That’s something for you as the City Council to decide what areas of the City you want to focus on, what areas you think this is useful for. For a single project area typically it doesn’t make sense to go through all the steps and spend the money on making the blighted and substandard findings that you would need to make, so it probably really only lends itself to downtown and if there’s a big industrial park or something like that. It’s not worth the time and money for a single project.”

Mayor Zavodny stated: “Downtowns clear, the voters have spoken on that. They want downtown and that’s why the sales tax was passed, but I wonder about that bridge down there in the park.”

Council member Kroesing introduced Ordinance No. 1200.

Mayor Zavodny stated: “Ordinance No. 1200; An ordinance creating a Community Redevelopment Authority; Providing for membership to the Authority; Creating the Position of Director of the Authority; Providing for the handling of funds; providing an effective date; and providing for publication of the ordinance in pamphlet form.”

Mayor Zavodny questioned: "So this stays in effect until we say it doesn't anymore? So it doesn't sunset in five years or ten years?"

David Levy stated: "That's correct, until you pass another ordinance to undue it."

City Clerk Kovar stated: "And you said that the Council would sit as the Board? Previously we had representatives from the local banks and individuals from the community."

David Levy stated: "That's how most communities set it up, because to the Mayor's question, it's really a critical policy decision for the City as to what areas you use this, so most communities feel like that's something they want the City Council to be making. Some cities have committees also that they set up to advise the Council. There are a lot of different ways you can do it but in most cases the Council sits as the Board."

Mayor Zavodny stated: "That would be item #10 and I do want to spend some time discussing that because there are probably some people downtown who are passionate about this who would want to be involved. I'm not trying to say that it shouldn't be the Council but I'd hate to just jump in to limit and be sure that's how we go; we should discuss that."

Council member Kroesing made a motion to suspend the statutory rule that requires an ordinance be read on three separate days. Council member Smith seconded the motion. Voting AYE: Council members Svoboda, Kroesing, Smith, and Vandenberg. Mayor Zavodny was allowed to vote pursuant to Nebraska State Statute §17-110 & §17-614 which went into effect on September 6, 2013, and he voted AYE. The motion carried. Voting NAY: None. Council members Rogers and Scribner were absent.

Council member Kroesing made a motion to pass and adopt Ordinance No. 1200 on the third and final reading. Council member Svoboda seconded the motion. Voting AYE: Council members Vandenberg, Kroesing, Smith, and Svoboda. Voting NAY: None. Council members Rogers and Scribner were absent. Mayor Zavodny stated that he would also like to vote AYE. The motion carried and Ordinance No. 1200 was passed on third and final reading.

Mayor Zavodny asked for consideration of appointments to the Community Redevelopment Authority. Mayor Zavodny asked: "Do we want to use the Council and use an advisory committee approach?"

Council member Svoboda stated: "I would like to have all of the City Councilmen and two or three from the public."

City Attorney Egr stated: "The only problem is the ordinance you just passed says you can have five members and you've got six council members."

Following discussion Council members Kroesing and Svoboda rescinded their motions to pass Ordinance No. 1200 on 3<sup>rd</sup> and final reading. Voting AYE: Council members Vandenberg, Kroesing, Smith, and Svoboda. Voting NAY: None. Council members Rogers and Scribner were absent. The motion carried.

Council member Kroesing and Smith rescinded their motions to suspend the statutory rule that requires an ordinance be read on three separate days. Voting AYE: Council members Svoboda, Kroesing, Smith, and Vandenberg. Mayor Zavodny was allowed to vote pursuant to

Nebraska State Statute §17-110 & §17-614 which went into effect on September 6, 2013, and he voted AYE. The motion carried. Voting NAY: None. Council members Rogers and Scribner were absent.

Council member Kroesing re-introduced Ordinance No. 1200 noting a change from five (5) members to seven (7) members to constitute the Authority.

Council member Kroesing made a motion to suspend the statutory rule that requires an ordinance be read on three separate days. Council member Smith seconded the motion. Voting AYE: Council members Svoboda, Kroesing, Smith, and Vandenberg. Mayor Zavodny was allowed to vote pursuant to Nebraska State Statute §17-110 & §17-614 which went into effect on September 6, 2013, and he voted AYE. The motion carried. Voting NAY: None. Council members Rogers and Scribner were absent.

Council member Kroesing made a motion to pass and adopt Ordinance No. 1200 on the third and final reading. Council member Smith seconded the motion. Voting AYE: Council members Svoboda, Smith, Kroesing, and Vandenberg. Voting NAY: None. Council members Rogers and Scribner were absent. The motion carried and Ordinance No. 1200 was passed on third and final reading as follows:

**ORDINANCE NO. 1200**

AN ORDINANCE CREATING A COMMUNITY REDEVELOPMENT AUTHORITY; PROVIDING FOR MEMBERSHIP TO THE AUTHORITY; CREATING THE POSITION OF DIRECTOR OF THE AUTHORITY; PROVIDING FOR THE HANDLING OF FUNDS, PROVIDING AN EFFECTIVE DATE; AND PROVIDING FOR PUBLICATION OF THE ORDINANCE IN PAMPHLET FORM.

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

Section 1. Community Redevelopment Authority; Creation. There is hereby created the Community Redevelopment Authority of the City of David City, Nebraska.

Section 2. Officers. Seven persons, the Mayor and City Council, shall constitute the Authority. The Mayor shall designate the term of office for each member, as provided in Neb. Rev. Stat. Section 18-2102.01. The Authority shall select one of its members as Chairman and one as Vice Chairman. A total of four members of the Authority shall constitute a quorum for the transaction of its business and shall keep a record of its resolutions, transactions, findings and determinations, which records shall be made available for public inspection during regular business hours.

Section 3. Director. The Authority shall organize by electing one of its member's chairperson and another vice-chairperson of the Community Redevelopment Authority, and that person shall perform such duties as may be assigned by the Authority, including the necessary administrative functions described in Neb. Rev. Stat. Section 18-2101.01 et seq.

Section 4. Funds. All income, revenue, profits, and other funds received by the Authority shall be deposited with the City Treasurer as Ex Officio Treasurer of such Authority without commingling such money with any other money under said Treasurer's control and

disbursed by check or draft only upon warrants, orders, or requisitions by the Chairman of the Authority or other person authorized by the Authority, which shall state distinctly the purpose for which the same are drawn; and a permanent record shall be kept by the Authority of any such activity.

Section 5. Any ordinance or section of any ordinance passed and approved prior to the passage, approval, and publication or posting of this ordinance and in conflict with its provisions, is hereby repealed.

Section 6. 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.

Section 7. The provisions of this ordinance are separable, and the invalidity of any phrase, clause, or part of this ordinance shall not affect the validity or effectiveness of the remainder of the ordinance.

PASSED AND APPROVED this 9<sup>th</sup> day of October, 2013.

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Mayor Alan Zavodny

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City Clerk Joan E. Kovar

Council member Kroesing made a motion to designate the Mayor and Council members to the Community Redevelopment Authority concurrent with their terms in office. State Statute states: The terms of office of the members of a seven-member authority initially appointed shall be one member each for one year, two years, and five years, and two members each for three years and four years. Council member Smith seconded the motion. Voting AYE: Council members Svoboda, Smith, Vandenberg, and Kroesing. Voting NAY: None. Council members Rogers and Scribner were absent. The motion carried

Council member Svoboda nominated Council President Gary Kroesing to serve as Chairperson of the Community Redevelopment Authority. Council member Vandenberg seconded the motion. Voting AYE: Council members Smith, Vandenberg, and Svoboda. Council member Kroesing abstained. Mayor Zavodny was allowed to vote pursuant to Nebraska State Statute §17-110 & §17-614 which went into effect on September 6, 2013, and he voted AYE. Voting NAY: None. Council members Rogers and Scribner were absent. The motion carried.

Council member Kroesing nominated Council member Gary Smith to serve as Vice-chairperson of the Community Redevelopment Authority. Council member Vandenberg seconded the motion. Voting AYE: Council members Kroesing, Vandenberg, and Svoboda. Council member Smith abstained. Mayor Zavodny was allowed to vote pursuant to Nebraska State Statute §17-110 & §17-614 which went into effect on September 6, 2013, and he voted AYE. Voting NAY: None. Council members Rogers and Scribner were absent. The motion carried.

On Friday, October 4, 2013, bids were received and opened for the "B" Street Sanitary Sewer Extension project as follows:

Obrist & Company, Inc. Columbus, Nebraska	\$30,122.00
M.E. Collins Contracting Co. Wahoo, Nebraska	\$36,514.56

Council member Kroesing made a motion to accept the bid of Obrist and Company, Inc. in the amount of \$30,122.00 for the "B" Street Sanitary Sewer Extension project. Council member Smith seconded the motion. Voting AYE: Council members Vandenberg, Svoboda, Smith, and Kroesing. Voting NAY: None. Council members Rogers and Scribner were absent. The motion carried.

The engagement for outside legal services to advise and represent the City in connection with the formation of a Community Redevelopment Authority was discussed. Mayor Zavodny stated that he knew the hourly rate was quoted at \$310 and questioned what they estimated the total cost to be.

David Levy stated that he would estimate around \$3,500 plus or minus.

City Administrator Abbie Cornett stated: "David could you also explain how you worked in other communities to actually bring in developers and work on financing tools. That will be important moving forward after we get this developed, when we pass the additional half cent in the Spring for the sewer then we actually need to start identifying developers for the Community Redevelopment and that's an area that your firm works very heavily in also, correct?"

David Levy stated: "Correct, we work with a lot of developers in the state. In terms of the substance of the project, designing the redevelopment plan, those kinds of things, that would be a consultant. That said, in a prior life I was a city planner so I do try to lend that experience a little bit too as we're talking about this making sure we've got all the legal i's and t's; we're kind of looking at it too to make sure that it makes sense and if somebody came and challenged it, it would all hold together. As the City Administrator said we represent developers all over the state, both Nebraska companies and out of state companies and certainly have the opportunity from time to time to direct them to places where there a, you can get a credit against your federal income tax for monies bettering and developing historic buildings. About 32 states have a state version of that as well, Nebraska does not, and so about three years ago I got the idea that Nebraska should have one of those too; as I talked about this state is limited in its tools for attracting developers and we had Nebraska developers, clients of ours saying you know we are spending our money investing in Missouri, and in Kansas, and in Iowa because they have a State Historic Tax credit, so a friendly state senator and I got together and drafted legislation

that we create a State Historic Tax credit in Nebraska. That bill didn't pass, so we came back with a second version of it which is now sitting on General File, and knock on wood, will pass this year, or in 2014 this upcoming Legislative session. It would provide a 20% credit to a developer against their State income tax liability, 20% of the money that they spend redeveloping one of your historic buildings downtown for example up to five million dollars of qualified expenses so they come in and do a five million dollar project on one of those buildings, from the state they would have credits for a million dollars in state income tax which then they would be able to transfer so it's really a financing tool to help developers come in and redevelop historic buildings. We drafted it very carefully so that it would be very useful for cities exactly like David City for two reasons: 1) because it was important to me as a Nebraskan that it worked that way and 2) you get criticized in the Legislature if something is only for Omaha and Lincoln, so it was candidly a political thinking but also wanting to make sure it worked. It gets a little bit easier to use than the Federal credit, is one of the things that makes it important for small towns; you don't have to have the same requirements, it doesn't have to be a National registered historic building for example, the City Council could adopt an ordinance identifying downtown as a historic district and then somebody who did development in that district would be eligible for that credit. We've tried to simplify the process so that it's much easier to get and like I said we work with a number of developers who, part of trying to get this legislation passed we created a grassroots group that includes a lot of developers but also investors, we did this pro-bono the first time around, the second time around we had some banks and investors, developers, contributed a little bit so we have a long list of people who have expertise in this area and who are very interested in this, looking for opportunities exactly like you have across the street here."

City Administrator Abbie Cornett stated: "And I was going to say I have been on those committee meetings for a year now so I've been having direct contact with the developers particular the ones working currently in Iowa one of them being America First; and they also did a great auditorium in Council Bluffs."

Council member Kroesing made a motion to engage Baird Holm, Attorneys at Law to advise and represent the City in connection with the formation of a Community Redevelopment Authority. Council member Smith seconded the motion. Voting AYE: Council members Vandenberg, Svoboda, Smith, and Kroesing. Voting NAY: None. Council members Rogers and Scribner were absent. The motion carried.

**BAIRDHOLM**<sup>LLP</sup>  
ATTORNEYS AT LAW

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October 1, 2013

**VIA ELECTRONIC MAIL**

Ms. Abbie Cornett  
City Administrator  
City of David City  
557 4th Street  
PO Box 191  
David City, Nebraska 68632-0131

**Re: Engagement for Legal Services – City of David City, Nebraska**

Dear Ms. Cornett:

We are pleased that the City of David City, Nebraska, has asked Baird Holm to serve as its outside legal counsel. In accordance with our standard procedures and ethical rules, this letter will confirm your engagement of this firm and, together with the enclosed *Standard Terms of Representation*, will describe the basis on which we will provide legal services to you. Our goal is to assure that the services we provide are timely, professional and responsive to your needs, and that our fees are fair and reasonable. I would be happy to discuss with you any of the matters addressed in this letter or in the *Standard Terms of Representation*.

1. *Client; Scope of Representation.* Our client in this matter will be the City of David City, Nebraska (the "City"). The City is engaging the firm to advise and represent you in connection with the formation of a Community Redevelopment Authority. Our engagement will be limited to the matters described above, and will not include representation of you or your interests in any other matter unless otherwise mutually agreed.

I will serve as your principal contact with the firm, and I will be primarily responsible for our legal services to the City. Other lawyers or legal assistants in the firm may perform portions of our work for the City, as necessary, based on their special expertise in a given area or to provide services in the most efficient and timely manner.

2. *Fees and Expenses.* Our *Standard Terms of Representation* generally describe the basis upon which our legal fees are determined, and the expense items for which you will be charged in addition to legal fees. Our billing rates for attorneys currently range from \$150 to \$380 per hour. My currently hourly rate for this matter is \$310. As we discussed, all fees billed on this matter will be discounted 10 percent prior to billing. Therefore, my effective hourly rate

Ms. Abbie Cornett  
October 1, 2013  
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at this time is \$279. These rates are subject to change from time to time and are typically adjusted annually effective July 1.

As with most legal matters, the fees and costs relating to this matter are not predictable. Accordingly, we have made no commitment to you concerning the maximum fees and costs that will be necessary to resolve or complete this matter. Also, this is not a contingent fee arrangement. Should you ever have a question or concern about our bills, please do not hesitate to contact me.

3. *Conflicts.* The firm represents many other companies and individuals. It is possible that while we are representing the City, some of our present or future clients will have disputes or transactions with the City. The City agrees that we may continue to represent or may undertake in the future to represent existing or new clients in any matter that is not substantially related to our work for you, even if the interests of such clients in those other matters are directly adverse to your interests. We agree, however, that this understanding shall not apply in any instance where, as a result of our representation of you, we have obtained confidential information directly related to the matter on which we represent the other client and which, if known to the other client, could be used by such client to your material disadvantage.

Once again, we are pleased to have this opportunity to work with you. Please call me if you have any questions or comments about the contents of this letter or the enclosed Standard Terms of Representation, or if any concerns arise during the course of our representation.

Please sign and return a copy of this letter, reflecting your agreement to these terms. To avoid any misunderstanding, we will not proceed with our engagement on behalf of the City until we receive back a countersigned copy of this letter. If you elect not to agree to these terms, or if you have any questions, please contact me at your earliest convenience. Thank you.

**The above Engagement for Legal Services letter and the *Standard Terms of Representation* are hereby agreed to and accepted:**

Signed: \_\_\_\_\_

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

Date: \_\_\_\_\_

Very truly yours,



David C. Levy

Enclosure (Standard Terms of Representation)

Whenever possible, we will furnish such an estimate based upon our professional judgment, but unless otherwise specified, it is not a maximum or fixed-fee quotation. The ultimate cost frequently is more or less than the amount estimated.

We will occasionally undertake representation on a contingent fee basis, for example, in the representation of a client with a personal injury claim. Any contingent fee arrangement must be reflected in a written contingent fee agreement.

Payment for our services is due upon receipt of our statement. We ask and expect payment of our statements on a current basis, since delayed payment adds to our overall costs of providing services.

#### **Additional Charges**

Typically, we will charge our clients not only for legal services rendered, but also for other ancillary services provided and expenses incurred on behalf of the client. Examples include charges for filing fees and costs of public offices, transcript and deposition fees, travel expenses, outside consultant fees, expert witness fees, long-distance telephone calls, in-house or contracted messenger deliveries, computerized research services, the use of our facsimile and photocopy machines and, in certain instances, secretarial overtime expenses. While our charges for these services are measured by use, they do not always reflect our actual out-of-pocket costs. Some expense charges include an approximation of applicable overhead incurred by the Firm as itemized to the particular expense. For many of these items, the true cost of providing the service is difficult to establish, and in some instances, the amounts charged are estimates which may exceed the actual cost to the Firm. We would be pleased to discuss the specific schedule of charges with you and to answer any questions that you may have. If you would prefer, in some situations we can arrange for ancillary services to be provided by third parties with direct billing to you.

#### **Retainer and Trust Deposits**

Clients are sometimes asked to deposit a retainer with the Firm. If you deposit a retainer with us, unless otherwise agreed, the retainer deposit will be credited toward your unpaid invoices, if any, at the conclusion of services. At the conclusion of our legal representation or at such time as the deposit is unnecessary, the remaining balance or an appropriate part of it will be returned to you. If the retainer deposit proves insufficient to cover current expenses and reasonably anticipated fees, it may have to be increased.

Deposits which are received to cover specific items will be disbursed as provided in our agreement with you, and you will be notified from time to time of the amounts applied or withdrawn. Any amount remaining after disbursement will be returned to you.

All trust deposits we receive from you, including retainers, will be placed in a trust account. Your deposit may be placed in a pooled account, and any interest earned on that account will not be paid to you but will be paid to a charitable fund established by court rule. Interest earned on any segregated trust account will be added to the deposit for your benefit and will be includable in your taxable income.

#### **Termination**

You may terminate our representation at any time, with or without cause, by notifying us. Your termination of our services will not affect your responsibility for payment of legal fees and additional charges incurred before termination and in connection with an orderly transition of the matter.

We are subject to the rules of professional responsibility for the jurisdictions in which we practice, which list several types of conduct or circumstances that require or allow us to withdraw from representing a client, including for example: non-payment of fees or costs, misrepresentation or failure to disclose material facts, action contrary to our advice, and conflict of interest with another client. We try to identify in advance and discuss with our client any situation which may lead to our withdrawal, and if withdrawal ever becomes necessary, we give the client written notice of our withdrawal. In the event that we terminate the engagement, we will take those steps which are reasonably practicable to protect your interests in the matters we are handling for you and to assist you in transition to successor counsel as necessary. If permission for withdrawal is required by a court, we will promptly apply for such permission, and you agree to engage successor counsel to represent you.

In addition, unless the representation is mutually understood to be continuing and not limited to one or more specific matters, our representation of you will terminate upon sending you our final statement for services rendered to you.

Upon termination, your papers and property will be returned to you promptly at your request. Our own files pertaining to the matter will be retained by the Firm. These Firm files include, for example, Firm administrative records, time and expense reports, personnel and staffing materials, and credit and accounting records; and internal lawyer work product such as drafts, notes, internal memoranda, and legal and factual research, including investigative reports, prepared by or for the internal use of lawyers. All documents retained by the Firm will be transferred to the person responsible for administering our records retention program. For various reasons, including the minimization of unnecessary storage expenses, we reserve the right to destroy or otherwise dispose of any such documents or other materials retained by us following a reasonable time after the termination of the engagement.

After completion of the transaction or matter for which you have engaged us, changes may occur in the applicable laws or regulations that could have an impact upon your future rights and liabilities. Unless you engage us to provide additional advice on issues arising from the original engagement, the Firm has no continuing obligation to advise you with respect to future legal developments.

#### **Your Responsibilities**

In addition to payment of our fees, as described above, you agree to cooperate with us in the matters we are handling for you and to provide all information known or available to you relevant to our representation.

**BAIRDHOLM<sup>LLP</sup>**  
ATTORNEYS AT LAW

1700 Farnam Street  
Suite 1500  
Omaha, NE 68102-2068  
Tel: 402.344.0500  
Fax: 402.344.0588  
www.bairdholm.com

## Standard Terms of Representation

This statement sets forth the standard terms of our representation as your lawyers. Unless modified in writing, these terms will be an integral part of our agreement with you. Therefore, we ask that you review this statement carefully and contact us promptly if you have any questions. We suggest that you retain this statement in your file.

### The Scope of Our Work

You should have a clear understanding of the legal services we will provide. Any questions that you have should be brought to our attention promptly.

We will at all times act on your behalf to the best of our ability. Any expressions on our part concerning the outcome of your legal matters are expressions of our best professional judgment, but are not guarantees. Such opinions are necessarily limited by our knowledge of the facts and are based on the state of the law at the time they are expressed.

It is our policy that unless otherwise agreed, the person or entity that we represent is the person or entity that is identified in our engagement letter and does not include any persons or entities affiliated with that person or entity (i.e., if our client is a corporation or partnership, our representation does not extend to any parents, subsidiaries, employees, officers, directors, shareholders or partners of the corporation or partnership, or commonly owned corporations or partnerships; or, if our client is a trade association, our representation does not extend to any members of the trade association). Accordingly, for conflict of interest purposes, we may represent another client with interests adverse to any such affiliated entities or persons without obtaining your consent.

It is also our policy that our representation is limited to performance of the services described in the engagement letter, and does not include representation of you or your interests in any other matter, unless our engagement is subsequently expanded by mutual consent. Any questions you have about the scope of our engagement should be brought to our attention promptly.

### Who Will Provide the Legal Services

Customarily, each client of the Firm is served by a principal lawyer contact. The principal lawyer should be someone in whom you have confidence and with whom you enjoy working. You are free to request a change of principal lawyer at any time. Subject to the supervisory role of the principal lawyer, your work or parts of it may be performed by other lawyers and paralegals in the Firm. This may be done because other lawyers or paralegals have special expertise in a given area, or because it will enable us to provide services in the most effi-

cient and timely manner. Whenever practicable, we will advise you of the names of those lawyers and paralegals who work on your matters.

### How Fees Will Be Set

Unless some other specific arrangement has been agreed to with a client, this Firm bills for services rendered and expenses incurred on the following basis.

We normally submit periodic statements to our clients during the course of an engagement. This procedure ensures that our clients have a current understanding of our charges and that they are not surprised by a bill covering services for an extended period of time.

The fees which the Firm bills to its clients are subject to criteria for reasonableness as recognized in established rules of professional ethics. These criteria include, depending on the nature of the engagement and services rendered, the time and labor required for tasks performed; the difficulty, novelty or complexity of the problem presented; any unusual experience or expertise of the Firm which enhances the legal service in a particular matter; the skill required to perform the tasks in a professional manner; the time constraints imposed by the client or the nature of the matter; other representations or opportunities which are foreclosed by the engagement; and the nature of the results obtained for the client. The Firm has established for each of its lawyers, paralegals, and staff personnel, current hourly billing rates and, in most circumstances, unless otherwise specified, the fees billed to clients are closely related to the amount of time expended and the established hourly billing rate for the personnel involved in the particular matter.

Our time is generally recorded in increments of one-tenth of an hour. For each periodic statement on account, the billing attorney reviews the time recorded to the client's account since the last billing, and other applicable factors, to determine whether the statement should be based solely on the amount of time expended, or adjusted to ensure that the fee charged is reasonable in light of the criteria described above.

In some situations, based on the subject matter of our representation, you may agree to be billed on a "flat fee" basis, contingency fee basis or other special fee arrangement rather than on a normal hourly rate, or may be asked for a cash retainer. In those situations, we will enter into a written agreement with you outlining those additional terms of the engagement.

We are frequently asked to estimate the amount of fees and costs likely to be incurred in connection with a particular matter.

The Board of Health have been dealing with the properties at 465 1<sup>st</sup> Street and 446 So. 6<sup>th</sup> Street. It appears the property owners have abandoned the properties and both properties have delinquent taxes.

Council member Kroesing made a motion to advertise for bids to demolish and clean up the properties located at 465 1<sup>st</sup> Street and 446 So. 6<sup>th</sup> Street. Council member Smith seconded the motion. Voting AYE: Council members Svoboda, Kroesing, Smith, and Vandenberg. Voting NAY: None. Council members Rogers and Scribner were absent. The motion carried.

Consideration of refunding bank charges that were charged to customers because the ACH charges were deducted on October 1<sup>st</sup> instead of October 3<sup>rd</sup>. The ACH utility billings were sent to the bank with the incorrect date of October 1<sup>st</sup> instead of October 3<sup>rd</sup>. As some people had not yet received their social security checks, some had insufficient funds. The banks kindly agreed to waive the additional fees. This matter has been resolved so no action is needed by the council.

Park Supervisor Scott Bales presented the following bids for the purchase of a paint sprayer for the football field:

Odeys Inc. Omaha, NE	\$1,780.00
Pioneer Athletics Ohio	\$1,569.00

Park Supervisor Bales stated that the 10' hose with the Graco from Pioneer Athletics is not long enough. Scott stated that the Kombi Battery Powered Liner from Odeys Inc. is more expensive but they are located in Omaha, Nebraska and they can provide any length of hose that he needs.

Council member Smith made a motion to authorize the purchase of the Kombi Battery Powered Liner, Wand, and Wheeled Knib from Odeys Inc. in the amount of \$1,780.00. Council member Svoboda seconded the motion. Voting AYE: Council members Kroesing, Vandenberg, Svoboda, and Smith. Voting NAY: None. Council members Rogers and Scribner were absent. The motion carried.

There being no further business to come before the Council, Council member Kroesing made a motion to adjourn. Council member Smith seconded the motion. Voting AYE: Council members Vandenberg, Svoboda, Smith, and Kroesing. Voting NAY: None. Council members Rogers and Scribner were absent. The motion carried and Mayor Zavodny declared the meeting adjourned at 7:50 p.m.



CERTIFICATION OF MINUTES  
October 9, 2013

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 October 9, 2013; that all of the subjects included in the foregoing proceedings were contained in the agenda for the meeting, kept continually current and available for public inspection at the office of the City Clerk; that such subjects were contained in said agenda for at least twenty-four hours prior to said meeting; that

the minutes of the meeting of the City Council of the City of David City, Nebraska, were in written form and available for public inspection within ten working days and prior to the next convened meeting of said body; that all news media requesting notification concerning meetings of said body were provided with advance notification of the time and place of said meeting and the subjects to be discussed at said meeting.

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Joan E. Kovar, City Clerk