

CITY COUNCIL PROCEEDINGS

February 10, 2010

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 February 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 Dana Trowbridge, Council President Gary Kroesing, Council members Gary Smith, Nick Hein, Mike Rogers, and Bill Yindrick, City Attorney Jim Egr, and City Clerk-Treasurer Joan Kovar. Council member Scribner was absent.

The meeting opened with the Pledge of Allegiance.

Mayor Trowbridge informed the public of the "Open Meetings Act" posted on the east wall of the meeting room and Resolution No. 2-2008 establishing rules and procedures for public participation at city council meetings.

The minutes of the January 13th, 2010 meeting of the Mayor and City Council were approved upon a motion by Council member Hein and seconded by Council member Smith. Voting AYE: Council members Kroesing, Yindrick, Rogers, Hein, and Smith. Voting NAY: None. Council member Scribner was absent. The motion carried.

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

Mayor Trowbridge called for Committee and Officer Reports.

Council member Kroesing stated that he would like names listed in the zoning administrator's report rather than zoning application numbers. City Attorney Egr stated this is public information so there is no reason why names shouldn't be listed.

Council member Kroesing wanted to compliment Council member Nick Hein on his comment in the following excerpt from the Government Subcommittee Meeting of January 19, 2010: *Discussion followed concerning pole shed construction, pole shed versus stick built construction costs, car ports, metal garages, and the need to meet new roofing guidelines. Council member Hein questioned when we were going to start doing things properly. It is easy for the public to scream and holler over building and zoning codes, but without them the city could become an eyesore in a short period of time.* Council member Kroesing stated, "I totally concur; that needed to be said." Council member Kroesing made a motion to approve the Committee and Officer Reports as presented. Council member Yindrick seconded the motion. Voting AYE: Council members Smith, Hein, Rogers, Yindrick, and Kroesing. Voting NAY: None. Council member Scribner was absent. The motion carried.

Mayor Trowbridge stated: "We go back to the year 2000, and prior to that, when the thoughts and dreams were put together for a swimming pool and a park renovation; cleaning up lakes that hadn't been cleaned up and had silted in and were not in very good shape, and the sales tax came about through that; an eight lane running track was put in; and everybody would concur that was quite a project. At the end of this year every last nickel of that \$2.7 or \$2.8 million dollar project will have been paid back on time through a 1% sales tax in the City of David City. Sales tax has grown on an annual basis as business became better and of course prices escalate and you pay sales tax based on price; and that sunsets; it had a ten year sunset and we are approaching that. In order to continue the benefits that we get from the sales tax, that taxes everyone that buys things in our community, a Sales Tax Committee has been put together and has been meeting and has been sharing ideas. They met last Monday with the business community throughout town and a resolution has come from that and the timing is right for that resolution to be passed this evening, we hope, and therefore it can go on the ballot at the primary election and if passed in the primary election will go toward what we consider to be a three legged stool approach. One of the legs of the stool is Downtown Redevelopment, we have infrastructure challenges around our square, we have storm water drainage that needs to be addressed; we have streets and we have parking that need to be addressed. It would be similar to what has been accomplished on the "D" Street Project, for the two blocks from 4th Street to the tracks. It is a bit hard right now to see what it looks like because most of it is under snow and ice and about 2% of that project needs to be completed but we need some weather to be in our favor to get that completed and it will be completed. The Downtown Redevelopment around the square in front of the fire hall, we have some truck issues over there with the dips and the condition of the street, and we have some significant drainage issues around the corner by the Senior Center. Those will be taken care of nicely. The second leg of the stool is a thirty year project called Northwest Drainage. I'm sure everybody has heard of that, it is an extremely complicated program. There has been a fair amount of money expended from both the County and the City and some NRD money. That will be the second leg of the stool; that will probably be a million and a half dollar project. The third leg of the stool is continued help to Park, recreation; all kinds of recreational activities for the next ten years. So we continue that ten years of helping recreation, helping the culture, helping the look David City gives to other people when they're considering where they might want to move and those are the things that help them make up their mind. To fund that, the group has come to the conclusion that it takes 1½% to fund those three legs of the stool, do it properly, and get it done within ten years. Get bonds for the first two, Downtown Redevelopment and Northwest Drainage would be bonded projects, and get them paid off on a timely basis. So that's a little bit of the background as to what's come with the resolution. If the sales tax issue fails you can't run it again for two years. This will raise 6.955 million estimated over ten years and as we look at projects we have to include the interest over that ten year period also".

Council member Kroesing introduced Resolution No. 1 - 2010 and moved for its passage and adoption. Council member Hein seconded the motion. Voting AYE: Council members Rogers, Yindrick, Smith, Hein, and Kroesing. Voting NAY: None. Council member Scribner was absent. The motion carried and Resolution No. 1 - 2010 was passed and approved as follows:

RESOLUTION NO. 1 - 2010

BE IT RESOLVED by the Mayor and Council of the City of David City, Nebraska as follows:

Section 1. The Mayor and City Council find and determine that there has not been submitted to the electors of the City of David City a proposition for the levy of a sales tax within the six (6) months last past. THERE DOES EXIST A SALES AND USE TAX THAT EXPIRES OCTOBER 1, 2010.

Section 2. A special election is hereby called and will be held in conjunction with the Statewide Primary Election to be held on May 11, 2010, at which there shall be submitted to the qualified electors of the City of David City, Nebraska the following proposition:

“Shall the governing body of the City of David City, Nebraska, impose a sales and use tax of ONE AND ONE-HALF PERCENT (1.50%) upon the same transactions within the City of David City on which the State of Nebraska is authorized to impose a tax, for a ten (10) year period ending October 1, 2020 with the proceeds collected to be used for the Northwest Drainage Project, infra-structure repair, replacement and Improvement within the City of David City, Nebraska, and for Recreational and cultural projects?”

If a majority of the votes cast upon such question shall be in favor of such tax, then the governing body of the City of David City shall be empowered as provided by Section 77-27, 142 of the Revised Statutes of Nebraska, Reissue, of 2003, and shall forthwith proceed to impose a tax pursuant to the Local Option Revenue Act. If a majority of those voting on the question shall be opposed to such tax, then the governing body of the City of David City shall not impose such tax.

The ballots to be voted upon and cast at said election shall have printed thereon the foregoing proposition, followed by the words: “FOR said sales and use tax” and “AGAINST said sales and use tax” following the proposition.

Section 3. Notice of said election shall be given to the qualified electors of said City by publication at least one time each week for three successive weeks prior to such election and a copy of the sample ballot shall be published one time not more than fifteen (15) days nor less than two (2) days prior to the election, such notice and sample ballot to be published in the Banner Press, a newspaper printed and of general circulation in said City, and the County Clerk of Butler County, Nebraska be and hereby is directed to cause such notice and sample ballot to be published.

Section 4. The City Clerk of the City of David City be and hereby is authorized and directed to certify a copy of this Resolution by March 1, 2010 to the Butler County Clerk, who shall designate the polling places, appoint the election officials and otherwise conduct the election as provided by law. The City does hereby agree to reimburse said County Clerk for the expenses of conducting the election. As required by Section 32-802 of the Revised Statutes of Nebraska, Reissue 2008, the County Clerk shall provide for publication of the Notice of Election in a newspaper designated by the County Clerk no later than forty (40) days prior to the day of said election and such notice shall be posted in the office of the County Clerk no later than forty (40) days prior to such date of election.

Section 5. Notice of submission of the question imposing the sales and use tax upon the same transactions within the City of David City, Nebraska on which the State of Nebraska is authorized to impose a tax shall be given not more than thirty (30) days nor less than ten (10) days prior to the election, by publication one (1) time in The Banner Press, a paper published in or of general circulation in the City of David City, Nebraska pursuant to Section 77-27, 142.04 of the Revised Statutes of Nebraska, Reissue 2003.

Section 6. The form of ballot and form of notice of said sales tax election shall be substantially in the form submitted to this meeting, a copy of which forms shall be made a part of the minutes. The City Clerk of the City is hereby authorized and directed, in conjunction with the County Clerk conducting the election, to arrange for the printing of the necessary ballots for said election and to do all other things and take all other action appropriate or necessary in order to cause said proposition to be submitted to the qualified electors of the City as above provided.

Resolution No. 1 - 2010 having been consented to by more than a majority of the members of the Council, was declared by the Mayor duly passed and adopted.

Passed and approved this 10th day of February, 2010.

Mayor Dana Trowbridge

City Clerk Joan E. Kovar

Mayor Trowbridge declared the Public Hearing open at 7:30 p.m. to consider the One and Six Year Street Improvement Plan for the City. Street Superintendent Jim McDonald stated that the plan needs to be turned in by March 1, it is one of the limitations they have for the Highway Allocation money. McDonald presented the forms saying they are hand written now, but they will eventually be typed and filled out properly after they have been approved. The first page shows the previous year report - Form 11 - which shows the Downtown Improvement Project estimated cost \$957,313.00 and the thirteen residential blocks totaling \$374,018.97. The second page: Form 8 - Summary of One-Year Plan year ending December, 2010 is "maintenance only". Form 9 - is the summary of the six year plan that shows the one-year plan and the next six-years to be completed. It currently shows the ones that have been completed in 2009 which will be taken off. Jim would like to add the following blocks: 10th Street from "K" to "L", 10th Street from "L" to "M", "J" Street from 6th to 7th, "J" Street from 7th to 8th, "J" Street from 8th to 9th, and "J" Street from 9th - 10th. Those would all be curb and gutter blocks that would be added to the six year plan. There being no questions or comments Mayor Trowbridge closed the Public Hearing at 7:35 p.m.

Board of Public Roads Classifications and Standards
**Form 11 Report of Previous Year
 Highway or Street Improvement**

Year Ending December 2009 Sheet 1 of 1

COUNTY:		CITY:		VILLAGE:		
PROJECT NUMBER	LENGTH (Nearest Tenth)	UNIT OF MEASURE	PROJECTED COST (Thousands)	CONTRACT PROJECT	OWN FORCES	DATE COMPLETED (Actual or Estimated)
M-238-128	850	Feet	ESTIMATE 957,313 ⁰⁰	X		To be Completed
(Maintenance Projects Listed below)						
M-238-130	342	feet	23			Mst 4th-5th
M-238-102	600	feet	46			1st 7-8th
M-238-117	325	feet	24			Nebr 4th-5th
M-238-135	350	feet	22			M-6-7th
M-238-119	350	feet	23			M-8-9th
M-238-109	350	feet	23			9th E-RK
M-238-132	350	feet	22			8th G to Hst
M-238-133	350	feet	23			9th G to Hst
M-238-144	350	feet	25			Mst 7-8th
M-238-134	350	feet	25			B-6-7th
M-238-152	Maintenance					9th st H-I
M-238-153	Projects		09			9th B-C
total cost			\$ 374,018 ⁹⁹			
SIGNATURE:		TITLE:			DATE:	

2 Blocks

Board of Public Roads Classifications and Standards
Form 9 Summary of Six-Year Plan

Six-Year Period Ending: 2014

Sheet 1 of 1

County:		City: David City		Village:	
PRIORITY NUMBER	PROJECT NUMBER	LENGTH (Nearest Tenth)	UNIT OF MEASURE	ESTIMATED COST (Thousands)	REMARKS
1	M-238-128	800	FEET	750,000	DST 3 RD TO RR <i>Job completed</i>
2	M-238-130	342	FEET	23	MST 4 TH TO 5 TH ✓ <i>2009</i>
3	M-238-102	600	FEET	46	IST 7 TH TO 9 TH ✓ <i>2009</i>
4	M-238-117	325	FEET	24	NEBR 4 TH TO 5 TH ✓ <i>2009</i>
5	M-238-106	350	FEET	23	MST 9 TH TO 10 TH
6	M-238-135	350	FEET	22	M 6 TH TO 7 TH ✓ <i>2009</i>
7	M-238-119	350	FEET	23	M 8 TH TO 9 TH ✓ <i>2009</i>
8	M-238-114	350	FEET	23	OAK CTODST <i>deleted</i>
9	M-238-145	70	FEET	20	AST BRIDGE
10	M-238-142	160	FEET	45	DST 5 TH TO 6 TH
11	M-238-141	40	FEET	20	11 TH KANS BRIDGE
12	M-238-109	350	FEET	23	9 TH EST TO RR ✓ <i>2009</i>
13	M-238-125	350	FEET	25	5 TH KANSTOPARK
14	M-238-121	200	FEET	15	LST 11 TH EAST
15	M-238-129	300	FEET	21	K 7 TH TO 8 TH
16	M-238-131	350	FEET	23	10 TH JST-KST
17	M-238-132	350	FEET	22	8 TH -GST-HST ✓ <i>2009</i>
18	M-238-133	350	FEET	23	9 TH -GST-HST ✓ <i>2009</i>
19	M-238-134	350	FEET	25	B M ST-6 TH -7 TH ✓ <i>2009</i>
20	M-238-137	350	FEET	21	BST-8 TH -9 TH
21	M-238-138	350	FEET	23	HST-3 RD -BNRR
22	M-238-122	1475	FEET	100	HSTBNRR-CST
23	M-238-123	1800	FEET	120	INDUSTRIAL-RD
24	M-238-124	350	FEET	22	PARK-RD-TENNIS
25	M-239-126	900	FEET	85	10 TH KAN-IOWA

Signature: *James K. McDonald*

Title: CITY STREET SUPT.

Date: 2/19/09

Board of Public Roads Classifications and Standards
Form 9 Summary of Six-Year Plan
 Six-Year Period Ending: 2014

Sheet 2 of 2

County:		City: DAVID CITY		Village:	
PRIORITY NUMBER	PROJECT NUMBER	LENGTH (Nearest Tenth)	UNIT OF MEASURE	ESTIMATED COST (Thousands)	REMARKS
26	M-238-139	470	FEET	45	11-KAN-470-S.
27	M-238-140 ✓	530	FEET	55	11-HLDYDR-CMTR
28	M-238-143 ✓	350	FEET	22	10 TH -IST-JST
29	M-238-144 ✓	350	FEET	23	MST-7 TH -8TH ✓ 2009
30	M-238-146 ✓	2750	FEET	600	OST-4 TH -11TH
31	M-238-147 ✓	1000	FEET	250	OST-4 TH -BNRR
32	M-238-149 ✓	1375	FEET	200	AST-BNRR-CRM
33	M-238-150 ✓	2550	FEET	850	NW-DRAINAGE
34	M-238-151 ✓	2640	FEET	500	11 TH -HST-AST
35	M-238-148 ✓	2800	FEET	650	11 TH -OST-HST
36	M-238-152	350	feet	29	9th H-I
37	M-238-153	350	feet	29	9th B-C
					9th st H-I ✓ 2009
		Maintenance	09		
		Projects			9th B-C ✓ 2009
			13 Blocks		374,018 ✓ 09
			average cost per Block		\$28,770 ✓ 09
		No additional blocks added to 6 year plan in 2010			
Signature: <i>James K. McDonald</i>		Title: CITY STREET SUPT.		Date: 2/19/09	

Council member Yindrick introduced Resolution No. 2 - 2010 and moved for its passage and adoption. Council member Rogers seconded the motion. Voting AYE: Council members Smith, Kroesing, Hein, Rogers, and Yindrick. Voting NAY: None. Council member Scribner was absent. The motion carried and Resolution No. 2 - 2010 was passed and approved as follows:

RESOLUTION NO. 2 - 2010

WHEREAS, The City of David City, Nebraska, has conducted a Public Hearing on February 10, 2010, in accordance with the requirements of the Board of Public Roads Classifications and Standards.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF DAVID CITY, NEBRASKA, that the One- Year and Six-Year Street Improvement Plans for Streets, as presented at the public hearing, are unanimously accepted and the City Clerk is hereby instructed to forward a certified copy of this resolution to the Board of Public Roads Classification and Standards of the State of Nebraska.

PASSED AND APPROVED this 10th day of February, 2010.

Mayor Dana Trowbridge

City Clerk Joan E. Kovar

Integrated Wireless Development would like to place cellular antennas on the hand railing around the old water tower. Jenni Kellis, an agent for US Cellular, stated: "We have a tower right when you come into town, on the south side, that does our highway coverage but we are looking to do in building coverage in the downtown area. We are looking at putting some antennas on the hand railing on the old water tower. (It is 120' to the handrail.) I do have a spec on the antenna; it is a small antenna, the length of it is 47.4", so we are not talking a huge antenna to place up there. It would be three antenna's, up to six, but the initial install would be three. There is a small building that goes on the base 12' x 24', to the west of the existing garage, it is zoned R-2 and I checked and there is a 10' setback for our building and we meet that. The engineering firm will do the structural analysis and that will show you the antenna loading, how heavy they are, and to what capacity the water tank is, and that is at no charge to the city. If it is a go, we will release it for environmental. I'll work on getting the lease language

worked out. This is moving very quickly.” Integrated Wireless Development paying \$700.00 per month for a 30 year lease on five year terms so every five years the payment goes up 10%, had been discussed.

Council member Yindrick made a motion to authorize Mayor Trowbridge to sign a “Right of Entry and Testing” concerning the proposed placement of cellular antennas (U.S. Cellular) on the old water tower and a small communications shelter at the base of the tower. Council member Smith seconded the motion. Voting AYE: Council members Kroesing, Hein, Rogers, Smith, and Yindrick. Voting NAY: None. Council member Scribner was absent. The motion carried.

Airport Improvement Program Project No. 3-31-0025-07 was discussed. Street Superintendent Jim McDonald stated: “We had HWS before and I guess I was not pleased with the work that they did out there, there were several things they should have done instead of having to come up with change orders, and I talked to Joe about it and I called Lonnie Davis and Bob Litjen who were on the Airport committee, and they thought it was fine if we wanted to change engineers so that is what this agreement is for, the next phase of the Airport capital improvements; execute that agreement, have Olsson Associates do the engineering work out there; it will probably be for the next five years so we don’t have to do this every year.”

Council member Yindrick made a motion to approve a consultant agreement contract with Olsson Associates, Inc. regarding the Airport Improvement Program Project No. 3-31-0025-07, to provide services for the following projects: Install PAPI’s on Runway 14/32, install new beacon on existing tower, and install new wind cone and segmented circle. Council member Kroesing seconded the motion. Voting AYE: Council members Smith, Hein, Rogers, Kroesing, and Yindrick. Voting NAY: None. Council member Scribner was absent. The motion carried.



CONSULTANT AGREEMENT

Airport Improvement Program (AIP) Project No. 3-31-0025-07
OA Project No. 2010-0180

David City Municipal Airport

THIS CONTRACT is made and entered into by and between the consulting firm of Olsson Associates, Inc. of Lincoln, Nebraska hereinafter called the "Consultant" and the city of David City Nebraska, hereinafter called the "Sponsor".

For and in consideration of the mutual agreements hereinafter contained, the parties hereto agree as follows:

SECTION 1: GENERAL

The Sponsor agrees to employ the Consultant to provide the services described in Sections 2 through 5 for the following project.

Install PAPIs on Runway 14/32
Install new beacon on existing tower
Install new wind cone and segmented circle

Diane Hofer, P.E. will represent the Consultant as Project Manager in the performance of this agreement. No one else will be assigned to act in this capacity without the Sponsor's prior written approval. The Project Manager shall be responsible for directing and coordinating all the activities necessary to complete this project.

The Consultant will provide all equipment and personnel necessary to do the tasks listed herein, except as otherwise provided. The Consultant shall be responsible for the quality, accuracy and coordination of the design, drawings, reports, surveys and other items furnished as part of this agreement.

SECTION 2: DESIGN PHASE

Under this phase, the Consultant agrees to prepare the necessary construction plans and contract documents that will include special and general conditions, construction specifications, contract forms, labor provisions, notice to bidders and proposal forms for the airport improvements listed in Section 1.

The Consultant will affix the seal of a registered Professional Engineer licensed to practice in the State of Nebraska to the construction plans and specification/contract bound volume. The Consultant agrees to provide the following services:

- a. Coordinate with the Sponsor, the Nebraska Department of Aeronautics (NDA) and the Federal Aviation Administration (FAA) and resolve any design issues.
- b. A geotechnical investigation of existing soils will not be conducted. Information from recent projects will be used, if needed.
- c. Conduct field survey, including topography, pavement elevations and location, and other existing features as needed. All surveys will be tied to NAVD 88 control points. The survey will not be in accordance with Advisory Circular 150/5300-18B.
- d. Prepare detailed plans, specifications, contract documents and Engineer's Design Report. FAA's current (at contract date) Advisory Circular (AC) **150/5370-10, Standards for Specifying Construction of Airports**, will be used when preparing the plans and specifications. The detailed plans, specifications, contract documents and Engineer's Design Report will be submitted to NDA (1 copy) and FAA (2 copies) for review within 90 days of this agreement.
- e. Meet with the Sponsor on-site and conduct a plan-in-hand review.
- f. The consultant agrees to follow the FAA/ACE AIP Guides (current as of the contract date) numbered below:
 - (1) Guide No. 920 – Engineering Report
 - (2) Guide No. 930 – Plans & Specifications
 - (3) Guide No. 940 – Regional Approved Modifications to AC 150/5370-10
 - (4) Guide No. 950 – Sponsor Modifications of FAA Standards
 - (5) Guide No. 951 – Use of State Standards
 - (6) Guide No. 960 – Safety Plan
- g. Revise and submit plans, specifications, contract documents and Engineer's Design Report within 14 days of receipt of comments from the NDA and FAA regarding Item d. submittals above.
- h. Prepare and submit FAA Forms 7460-1 for the two PAPIs and the new wind cone.

The original documents, such as tracings, plans, specifications, maps, basic survey notes and sketches, charts, computations and other data prepared or obtained under the terms of this contract are instruments of service and shall remain the Consultant's property. Reproducible copies of drawings and copies of other pertinent data will be made available to the sponsor upon request. Copies of disks containing all drawings will be furnished to the sponsor for their use. The Consultant will provide, without cost to the Sponsor and approving agencies, the necessary number of copies for review and approval.

This phase will be complete upon completion of all items listed above.

SECTION 3: BIDDING PHASE

Under this phase of the contract the Consultant will assist the Sponsor in advertising and securing bids. The Consultant agrees to provide the following services.

- a. Provide sufficient copies of the approved plans and specifications to permit advertising and bidding. Copies of the documents may be furnished to prospective bidders at a cost fixed by the Consultant. The Consultant shall perform in accordance with FAA/ACE AIP Guide No. 1010 – Bidding.
- b. Answer questions raised during the bidding process. Issue addenda as required.
- c. Attend the bid opening, tabulate and analyze bid results, evaluate bidders and furnish recommendations on the award of contracts.
- d. Assist the Sponsor with the submission of documents necessary to obtain construction contract approval. The Consultant shall prepare and submit a request for concurrence to NDA and FAA in accordance with FAA/ACE AIP Guide No. 1020 – Contract Award, except that the Sponsor Certification will be prepared and submitted by the NDA.
- e. After appropriate approval, prepare all executed contract documents necessary for the project including bonds, insurance, contracts, drawings, etc. Bind the contract documents with the specifications and provide one bound set each to FAA, NDA and the Sponsor.

This phase will be considered complete when the executed contracts have been approved by the Sponsor, FAA and NDA. Readvertising, if necessary, will be negotiated under a supplemental agreement to this contract.

SECTION 4: CONSTRUCTION PHASE

(INCLUDES OBSERVATION)

based on 30 working days (construction contract time)

Under this phase the Consultant agrees to perform the following services.

- a. Provide consultation and advice to the Sponsor during all construction phases.
- b. Assign a Project Engineer to the project who will periodically observe work in progress, review test reports and provide weekly working day, construction progress and testing reports to the Sponsor, FAA and NDA. The Consultant will provide written confirmation that all performance tests required by the specifications were conducted and met or exceeded the specifications.
- c. Participate in preconstruction conferences, per the latest (as of contract date) FAA/ACE AIP Guide No. 1040 - Preconstruction Conference. Submit a formal report of the conference discussions.
- d. Provide field and/or construction surveys and staking, as required under the FAA standard specification General Provision 50-06, including spot checks and final cross sections for establishing pay quantities and as-built plans.

- e. Upon receipt of NDA/FAA authorization to issue a Notice to Proceed, the Consultant will issue, for the Sponsor, the Notice to Proceed to the Contractor. NDA/FAA authorization will not be issued until all conditions are met in accordance with FAA/ACE AIP Guide No. 1050 – Notice to Proceed.
- f. Provide part-time on-site construction observation and testing in accordance with FAA/ACE AIP Guide No. 1030 – Construction Observation, except that a Construction Observation Program will not be prepared. An average of two visits for week is anticipated.
- g. Review and approve shop and erection drawings and all materials data submitted by construction contractors for compliance with design concepts.
- h. Prepare and negotiate contract modifications, change orders and supplemental agreements, according to the latest (as of contract date) FAA/ACE AIP Guide No. 1080 - Contract Modifications, 1081 – Change Orders and 1082 – Supplemental Agreements.
- i. Determine amounts owed to construction contractors and process financial documents.
- j. Ensure compliance with Labor Standards in accordance with FAA/ACE AIP Guide No. 1060 – Labor Provisions, 1061 – Contractor Responsibilities, and 1062 – Applicable Standards. Provide compliance documentation to Sponsor.
- k. Ensure compliance with Labor and Civil Rights provisions in accordance with FAA/ACE AIP Guide No. 1070 – Inspections. All compliance records shall be provided to the Sponsor.
- l. Arrange and conduct final inspections. Submit a summary of test results complete with acceptance test results and pay factor adjustments.
- m. Prepare as-built record drawings and a final construction report in accordance with FAA/ACE AIP Guide No. 1610 - Development Project Closeout. Final close-out documents shall be provided to NDA and FAA within 90 days of final acceptance date and prior to the consultant's final pay request. An as-built Airport Layout Plan is not included.
- n. Submit Sponsor Quarterly Reports.

**SECTION 5: SPECIAL SERVICES
NOT USED**

SECTION 6: FEES AND CHARGES

The Sponsor shall pay the Consultant for the services described in this agreement as follows:

Section 2: Design Phase. Payment for the items included in Section 2, Design Phase, shall be the lump sum of \$26,100 shown on Exhibit A, attached and made a part hereto. Payment shall be due monthly based on the percentage of work completed, except that 25% of the payment will be withheld until the plans and specifications are approved.

Section 3: Bidding Phase. Payment for the items included in Section 3, Bidding Phase shall be the lump sum of \$3,300 shown on Exhibit B attached and made a part hereto. Payment shall be due monthly based on the percentage of work completed.

Section 4: Construction Phase. Payment for the items included in Section 4, Construction Phase shall be made based on direct salary, overhead costs and reimbursable expenses incurred plus a fixed payment and subcontract costs. The schedule of charges and reimbursable expenses is Exhibit C attached and made a part hereto. Labor and general administration overhead percentage shall be supported by a statement of overhead expenses certified by the consultant's auditor or a governmental auditor.

The total charges for Section 4 will not be greater than the "Not-to-Exceed" (NTE) amount of \$21,000 if 1) the construction work is completed within the construction contract aggregate time allowance; and 2) the scope of work as set forth in Section 1 is not exceeded. If either of these two events occur, the "Not-to-Exceed" amount may be increased by a supplemental agreement to this contract. No payment above the Not-to-Exceed limit shall be made without prior approval of an amendment supported by proper justification.

Payment shall be due monthly for incurred charges and expenses based on detailed invoices. Invoices shall include a pro rata portion of the fixed fee with the final invoice adjusted to include the remaining unpaid balance of the fixed fee.

If Special Services are added during the course of this contract, a supplemental agreement will be executed to cover any added fees when the services are authorized. All supplemental agreements are subject to the same approvals as this agreement.

Payment Provisions and Adjustments

All payments shall be made based on the lump sum amounts or unit charges and fixed fees, as provided. If the scope of consultant services changes, causing an increase or decrease to the Consultant's costs, this contract shall be adjusted to cover the increase or decrease in costs. If circumstances beyond the control of the Consultant require more than 18 months from the date of this agreement to complete the work specified herein, this contract may be adjusted to cover any increase in the Consultant's costs yet to be incurred. All adjustments shall be negotiated in the same manner as this contract and shall be executed as a Supplemental Agreement to the original contract. The Sponsor will not reduce the Consultant's final payment for any part of the project designed but not actually constructed.

The Consultant shall attach a separate Exhibit to this agreement for each subconsultant used in each phase for any part of the services to be performed by subconsultant. Subconsultant Exhibits shall break out hours, rates and fees necessary for determination of reasonableness of cost.

SECTION 7: TITLE VI ASSURANCES. During the performance of this contract, the Consultant, for itself, its assignees and successors in interest (hereinafter referred to as the "consultant") agrees as follows:

1. Compliance with Regulations. The Consultant shall comply with the Regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to

time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

2. Nondiscrimination. The Consultant, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, sex, religion, creed, age, marital status, physical or mental disability, political affiliation, national origin or ancestry in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The Consultant shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

3. Solicitations for Subcontracts, Including Procurement of Materials and Equipment. In all solicitations either by competitive bidding or negotiation made by the Consultant for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Consultant of the Consultant's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, sex, religion, creed, age, marital status, physical or mental disability, political affiliation, national origin or ancestry.

4. Information and Reports. The Consultant shall provide all information and reports required by the Regulations or directives issued pursuant thereto and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the Sponsor, NDA or the FAA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of the Consultant is in the exclusive possession of another who fails or refuses to furnish this information, the Consultant shall so certify to the Sponsor, NDA, or the FAA, as appropriate, and shall set forth what efforts it has made to obtain the information.

5. Sanctions for Noncompliance. In the event of the Consultant's noncompliance with the nondiscrimination provisions of this contract, the Sponsor shall impose such contract sanctions as it, the NDA or the FAA may determine to be appropriate, including, but not limited to:

- a) withholding of payment to the Consultant under the contract until the Consultant complies, and/or
- b) cancellation, termination or suspension of the contract, in whole or in part.

6. Incorporation of Provisions. The Consultant shall include the provisions of paragraphs 1 through 5 of this Section in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The Consultant shall take such action with respect to any subcontract or procurement as the Sponsor, NDA, or the FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event the Consultant becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Consultant may request the Sponsor to enter into such litigation to protect the interests of the Sponsor and, in addition, the Consultant may request the State of Nebraska or the United States to enter into such litigation to protect the interests of the State of Nebraska or the United States.

SECTION 8: DISADVANTAGED BUSINESS ENTERPRISE (DBE) REQUIRED STATEMENTS.

The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT assisted contracts. Failure by the

contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

SECTION 9: TRADE RESTRICTION CLAUSE. The contractor or subcontractor, by submission of an offer and/or execution of a contract, certifies that it:

- a. is not owned or controlled by one or more citizens or nationals of a foreign country included in the list of countries that discriminate against U.S. firms published by the Office of the United States Trade Representative (USTR);
- b. has not knowingly entered into any contract or subcontract for this project with a contractor that is a citizen or national of a foreign country on said list, or is owned or controlled directly or indirectly by one or more citizens or nationals of a foreign country on said list.
- c. has not procured any product nor subcontracted for the supply of any product for use on the project that is produced in a foreign country on said list.

Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 CFR 30.17, no contract shall be awarded to a contractor or subcontractor who is unable to certify to the above. If the contractor knowingly procures or subcontracts for the supply of any product or service of a foreign country on the said list for use on the project, the Federal Aviation Administration may direct, through the sponsor, cancellation of the contract at no cost to the Government.

Further, the contractor agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification without modification in each contract and in all lower tier subcontracts. The contractor may rely upon the certification of a prospective subcontractor unless it has knowledge that the certification is erroneous.

The contractor shall provide immediate written notice to the sponsor if the contractor learns that its certification or that of a subcontractor was erroneous when submitted or has become erroneous by reason of changed circumstances. The subcontractor agrees to provide immediate written notice to the contractor, if at any time it learns that its certification was erroneous by reason of changed circumstances.

This certification is a material representation of fact upon which reliance was placed when making the award. If it is later determined that the contractor or subcontractor knowingly rendered an erroneous certification, the Federal Aviation Administration may direct, through the sponsor, cancellation of the contract or subcontract for default at no cost to the Government.

Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by this provision. The knowledge and information of a contractor is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

This certification concerns a matter within the jurisdiction of an agency of the United States of America and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code, Section 1001. (Reference: 49 CFR Part 30).

SECTION 10: RIGHTS TO INVENTIONS. All rights to inventions and materials generated under this contract are subject to regulations issued by the FAA and the Sponsor of the Federal grant under which this contract is executed. Information regarding these rights is available from the FAA and the Sponsor. (Reference: 49 CFR Part 18).

SECTION 11: CERTIFICATION FOR PROJECT PLANS AND SPECIFICATIONS. The Consultant certifies that:

1. The plans and specifications will be developed in accordance with all applicable Federal standards and requirements and there will be no deviation from or modification to standards set forth in the advisory circulars without prior FAA approval;
2. The specifications for equipment will not be proprietary or written so as to restrict competition;
3. The development included in the plans is depicted on an airport layout plan approved by FAA;
4. Development which is ineligible for AIP funding will be omitted from the plans and specifications or will be depicted in a separate section;
5. Process control and acceptance tests required for the project by standards contained in Advisory Circular 150/5370-10 will be included in the project specifications;
6. A value engineering clause will not be incorporated into the contract without FAA concurrence;
7. The plans and specifications will incorporate applicable requirements and recommendations set forth in the Federally-approved environmental finding;
8. For construction activities within or near aircraft operational areas, the requirements contained in the latest (as of bid date) Advisory Circular 150/5370-2 will be discussed with FAA and incorporated into the specifications and a safety or phasing plan will be prepared with FAA's concurrence.

SECTION 12: CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION. The consultant certifies, by submission of this proposal or acceptance of this contract, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. It further agrees by submitting this proposal that it will include this clause without modification in all lower tier transactions, solicitations, proposals, contracts and subcontracts. Where the consultant or any lower tier participant is unable to certify to this statement, it shall attach an explanation to this proposal or contract. (Reference: 49 CFR Part 29).

SECTION 13: LOBBYING AND INFLUENCING FEDERAL EMPLOYEES. No federal appropriated funds shall be paid, by or on behalf of the consultant, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant and the amendment or modification of any Federal grant.

If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in

connection with any Federal grant, the consultant shall complete and submit Standard Form-LLL, "Disclosure of Lobby Activities," in accordance with its instructions.

SECTION 14: GENERAL CIVIL RIGHTS PROVISIONS. The consultant assures that it will comply with pertinent statutes, Executive orders and such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, handicap, religion, marital status, physical or mental disability, political affiliation, national origin or ancestry, be excluded from participating in any activity conducted with or benefiting from Federal assistance. This provision obligates the consultant or its transferee for the period during which Federal assistance is extended to the airport program, except where Federal assistance is to provide, or is in the form of personal property or real property or interest therein or structures or improvements thereon. In these cases the provision obligates the party or any transferee for the longer of the following periods: (a) the period during which the property is used by the airport sponsor or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits or (b) the period during which the airport sponsor or any transferee retains ownership or possession of the property. In the case of contractors, this provision binds the contractors from the bid solicitation period through the completion of the contract. The consultant assures that it will not discriminate against any employees or applicant for employment on the basis of race, color, sex, religion, creed, age, marital status, physical or mental disability, political affiliation, national origin or ancestry. (Reference: Airport and Airway Improvement Act of 1982, Section 520 and State of Nebraska).

SECTION 15: BREACH OF CONTRACT TERMS. Any violation or breach of the terms of this contract on the part of the consultant or subcontractor may result in the suspension or termination of this contract or such other action which may be necessary to enforce the rights of the parties of this agreement. (Reference: Sanctions - 49 CFR Part 18).

SECTION 16: TERMINATION OF CONTRACT. The Sponsor may, by written notice, terminate this contract in whole or in part at any time, either for the Sponsor's convenience or because of failure to fulfill the contract obligations. Upon receipt of such notice services shall be immediately discontinued (unless the notice directs otherwise) and all materials as may have been accumulated in performing this contract, whether completed or in progress, delivered to the Sponsor.

If the termination is for the convenience of the Sponsor, an equitable adjustment in the contract price shall be made, but no amount shall be allowed for anticipated profit on unperformed services. If the termination is due to failure to fulfill the consultant's obligations, the Sponsor may take over the work and prosecute the same to completion by contract or otherwise. In such case, the contractor shall be liable to the Sponsor for additional cost occasioned to the Sponsor thereby.

If, after notice of termination for failure to fulfill contract obligations, it is determined that the contractor had not so failed, the termination shall be deemed to have been effected for the convenience of the Sponsor. In such event, adjustment in the contract price shall be made as provided in the second paragraph of this Section. The rights and remedies of the Sponsor provided in this clause are in addition to any other rights and remedies provided by law or under this contract. (Reference: 49 CFR Part 18).

SECTION 17: ACCESS TO RECORDS. The consultant shall maintain an acceptable cost accounting system. The Sponsor, the Federal Aviation Administration, the Comptroller General of the United States, the Nebraska Department of Aeronautics or any of their duly authorized representatives shall have access to any of the Consultant's books, documents, papers and records of the consultant which are pertinent to this contract, for the purposes of making an audit,

examination, excerpt and transcriptions. The consultant shall maintain all required records for three years after the Sponsor makes final payment and all pending matters are closed.

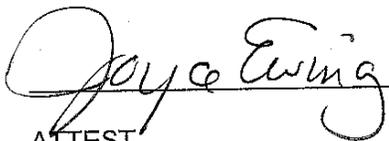
SECTION 18: PROMPT PAYMENT CLAUSE. The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance no later than 30 days from receipt of payment from the Sponsor. The prime contractor agrees further to return retainage payments to each subcontractor within 30 days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the Sponsor. This clause applies to both DBE and non-DBE subcontractors.

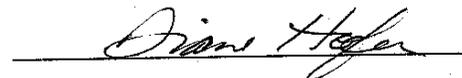
SECTION 19: VETERAN'S PREFERENCE (FEB 96). In the employment of labor (except in executive, administrative, and supervisory positions), preference shall be given to Veterans of the Vietnam era and disabled veterans as defined in Section 515(c)(1) and (2) of the Airport and Airway Improvement Act of 1982. However, this preference shall apply only where the individuals are available and qualified to perform the work to which the employment relates.

SECTION 20: APPROVALS. It is understood and agreed that this contract and any subcontracts or supplemental agreements are subject to approval by the Nebraska Department of Aeronautics and the Federal Aviation Administration before any state or federal funds are obligated.

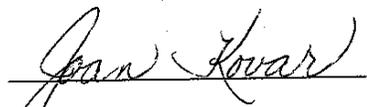
IN TESTIMONY WHEREOF, the parties hereto have caused this contract to be executed by their duly authorized representatives on this _____ day of _____, 2010, with copies to be filed with the Nebraska Department of Aeronautics and the Federal Aviation Administration.

OLSSON ASSOCIATES, INC.
P.O. Box 84608
Lincoln, NE 68501


ATTEST


Team Leader

City of David City
P.O. Box 191
David City, NE 68632


ATTEST


Mayor



EXHIBIT A

DESIGN PHASE
 David City Municipal 3-31-0025-07

1. <u>Direct Salary Costs</u>			
	<u>Total</u>	<u>Direct Salary</u>	<u>Total</u>
<u>Title</u>	<u>Hours</u>	<u>Rate/Hour</u>	<u>Costs (\$)</u>
Team Leader	0.00	\$62.50	\$0.00
Sr. Project Engineer	12.00	\$45.50	\$546.00
Project Engineer	38.00	\$39.50	\$1,501.00
Elec. or Mech. Engineer	20.00	\$43.75	\$875.00
Assistant Engineer	66.00	\$29.50	\$1,947.00
Registered Surveyor	6.00	\$36.30	\$217.80
Sr. Technician	12.00	\$23.50	\$282.00
Assoc. Technician	56.00	\$19.50	\$1,092.00
Asst. Technician	60.00	\$17.50	\$1,050.00
Clerical	26.00	\$17.00	\$442.00
			<hr/>
	Total Direct Salary Costs:		\$7,952.80
2. <u>Labor and General & Administrative Overhead</u>			
Percentage of Direct Salary Costs**	160.62%		\$12,773.79
3. <u>Direct Nonsalary Expenses</u>			
Travel		\$550.00	
Meals & Motel		\$250.00	
Copies & Prints		\$835.00	
Supplies, Phone, Misc.		\$320.00	
			<hr/>
	Total Expenses:		\$1,955.00
4. Subtotal of Items 1, 2 & 3			\$22,681.59
5. Fixed Fee: 15% of Item 4			\$3,402.24
6. Subcontract costs			\$0.00
7. Lump Sum Amount - Total Items 4, 5, & 6			\$26,083.83
			<hr/>
	Rounded:		\$26,100.00

** For Item 2, the consultant should submit a statement of auditable overhead expenses, certified by the consultant's auditor, the sponsor's auditor, the state's auditor, or a Federal government auditor.

EXHIBIT B

BIDDING PHASE
 David City Municipal 3-31-0025-07

1. <u>Direct Salary Costs</u>			
		Direct Salary	
<u>Title</u>	<u>Hours</u>	<u>Rate/Hour</u>	<u>Costs (\$)</u>
Team Leader	0.00	\$62.50	\$0.00
Sr. Project Engineer	2.00	\$45.50	\$91.00
Project Engineer	8.00	\$39.50	\$316.00
Elec. or Mech. Engineer	4.00	\$43.75	\$175.00
Assistant Engineer	2.00	\$29.50	\$59.00
Registered Surveyor	0.00	\$36.30	\$0.00
Sr. Technician	0.00	\$23.50	\$0.00
Assoc. Technician	4.00	\$19.50	\$78.00
Asst. Technician	0.00	\$17.50	\$0.00
Clerical	12.00	\$17.00	<u>\$204.00</u>
	Total Direct Salary Costs:		\$923.00
2. <u>Labor and General & Administrative Overhead</u>			
Percentage of Direct Salary Costs*	160.62%		\$1,482.52
3. <u>Direct Nonsalary Expenses</u>			
Travel		\$100.00	
Meals & Motel		\$15.00	
Copies & Prints		\$310.00	
Supplies, Phone, Misc.		\$50.00	
	Total Expenses:		<u>\$475.00</u>
4. Subtotal of Items 1, 2 & 3			\$2,880.52
5. Fixed Fee: 15% of Item 4			\$432.08
6. Subcontract costs			\$0.00
7. Lump Sum Amount - Total Items 4, 5, & 6			\$3,312.60
		Rounded:	<u>\$3,300.00</u>

* For Item 2, the consultant should submit a statement of auditable overhead expenses, certified by the consultant's auditor, the sponsor's auditor, the state's auditor, or a Federal government auditor.

EXHIBIT C

CONSTRUCTION PHASE SERVICES
 David City Municipal 3-31-0025-07
 Based on estimated 30 working days

1. <u>Direct Salary Costs</u>	<u>Hours</u>	<u>Direct Salary Rate/Hour</u>	<u>Total Costs (\$)</u>
<u>Title</u>			
Team Leader	0.00	\$62.50	\$0.00
Sr. Project Engineer	4.00	\$45.50	\$182.00
Project Engineer	46.00	\$39.50	\$1,817.00
Elec. or Mech. Engineer	8.00	\$43.75	\$350.00
Assistant Engineer	22.00	\$29.50	\$649.00
Registered Surveyor	0.00	\$36.30	\$0.00
Sr. Technician	0.00	\$23.50	\$0.00
Assoc. Technician	114.00	\$19.50	\$2,223.00
Asst. Technician	20.00	\$17.50	\$350.00
Clerical	20.00	\$17.00	\$340.00
		Total Direct Salary Costs:	\$5,911.00
2. <u>Labor and General & Administrative Overhead</u>			
Percentage of Direct Salary Costs*	160.62%		\$9,494.25
3. <u>Direct Nonsalary Expenses</u>			
Travel			\$1,200.00
Meals & Motel			\$225.00
Copies & Prints			\$260.00
Testing, Supplies, Phone, Misc.			\$430.00
		Total Expenses:	\$2,115.00
4. Subtotal of Items 1, 2 & 3			\$17,520.25
5. Contingency - 5% of Item 4			\$876.01
6. Fixed Fee: 15% of Item 4			\$2,628.04
7. Subcontract costs			\$0.00
Not-to-Exceed Total (Items 4 through 7)			\$21,024.30
		Rounded:	\$21,000.00

* For Item 2, the consultant should submit a statement of auditable overhead expenses, certified by the consultant's auditor, the sponsor's auditor, the state's auditor, or a Federal government auditor.



Tier One Center
1221 N Street, Suite 600
Lincoln, NE 68508-2042
402.473.7600 Fax 402.473.7698 www.bkd.com

July 15, 2009

Mr. Mike Hodge
Olsson Associates
1111 Lincoln Mall
Lincoln, Nebraska 68508

RE: Overhead Expense Factor

Dear Mike:

In response to your request, we have provided a recap of the computed amount of overhead expenses incurred in 2008 based on the December 31, 2008 audited Schedules of Indirect Costs and Costs with Adjustments. Summarized below is your FAR Combined Overhead Rate that is detailed in the audit:

Combined FAR Overhead Rate (Including Computer) – 160.62%

Total fringe benefits	\$ 11,632,698
Total general and administrative expenses	22,021,480
Computer expenses (as described in Note 5 of the financial statements)	<u>3,224,750</u>
	36,878,928
Less computer expenses already included in general and administrative expenses	<u>(379,411)</u>
	36,499,517
Divided by direct labor	<u>22,724,104</u>
	<u>\$ 1.61</u>

In summary, for every \$1.00 of direct labor paid, there is \$1.61 in overhead expenses attributable to that labor.

Sincerely,

BKD, LLP

Robyn A. Devore
Partner

RAD/RJW/dkm
Enclosure

Council member Yindrick introduced Ordinance No. 1122. Council member Kroesing made a motion to suspend the statutory rule that requires an ordinance be read on three separate days. Council member Hein seconded the motion. Voting AYE: Council members Rogers, Hein, Smith, Kroesing and Yindrick. Voting NAY: None. Council member Scribner was absent. The motion carried.

Council member Kroesing made a motion to pass and adopt Ordinance No. 1122 on the third and final reading. Council member Hein seconded the motion. Voting AYE: Council members Yindrick, Smith, Kroesing, Hein, and Rogers. Voting NAY: None. Council member Scribner was absent. The motion carried and Ordinance No. 1122 was passed and adopted as follows:

ORDINANCE NO. 1122

AN ORDINANCE AMENDING CHAPTER 6, ARTICLE 4, OF THE CITY OF DAVID CITY, NEBRASKA, MUNICIPAL CODE BOOK REQUIRING ANY PERSON USING ARCHERY EQUIPMENT, INCLUDING CROSSBOWS, WITHIN THE CORPORATE LIMITS TO HAVE A MINIMUM SIZE BACKSTOP OF SIX FOOT (6') BY EIGHT FOOT (8') PLYWOOD, THREE-QUARTERS INCH (3/4") THICK, OR OF A COMPARABLE MATERIAL OF AT LEAST THE SAME DIMENSIONS AND DEPTH TO PROVIDE THE NECESSARY STOPPING POWER FOR THE EQUIPMENT BEING USED; 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. Chapter 6, Article 4, of the David City Municipal Code Book shall be amended to read:

Article 4. Miscellaneous Misdemeanors

§6-401 **MISDEMEANORS; IMPERSONATING AN OFFICER.** It shall be unlawful for any person other than a Municipal or State Police Officer to wear an official badge or uniform, or to falsely and willfully impersonate the said officials. (*Ref. 28-608, 28-609, 28-610 RS Neb.*)

§6-402 **MISDEMEANORS; RESISTING OFFICER.** It shall be unlawful for any person to resist any Municipal Officer when lawfully requested to do so by him. Any person who refuses to assist an officer when lawfully requested to do so shall be fined in any amount not exceeding fifty (\$50.00) dollars. (*Ref. 28-904 to 28-906 RS Neb.*)

§6-403 **MISDEMEANORS; ABUSING OFFICER.** It shall be unlawful for any person to abuse a police officer or Municipal official in the execution of his office. (*Ref. 28-929, 28-931, 28-931.01 RS Neb.*)

§6-404 **MISDEMEANORS; TRESPASSING.** It shall be unlawful for any person to trespass upon any private grounds within the Municipality, or to break, cut, or injure any tree, shrub, plant, flower, or grass growing thereon, or without the consent of the owner or

occupant to enter upon an improved lot or grounds occupied for residence purposes and to loiter about the same. (Ref. 28-550 to 28-522 RS Neb.)

- §6-405 **MISDEMEANORS; MALICIOUS DESTRUCTION OF PROPERTY.** It shall be unlawful for any person within the corporate limits to purposely, willfully, or maliciously injure in any manner, or destroy real or personal property of any description belonging to another. (Ref. 28-519 RS Neb.)
- §6-406 **MISDEMEANORS; LARCENY.** It shall be unlawful for any person within the corporate limits to steal any money, goods, or chattels of any kind whatever. Any person who shall steal property of any kind, whether the same be entirely in money or entirely property of the value of two hundred (\$200.00) dollars or less shall be deemed to be guilty of a misdemeanor. (Ref. 28-512, 28-514 RS Neb.)
- §6-407 **MISDEMEANORS; INJURY TO TREES.** It shall be unlawful for any person to purposely or carelessly, and without lawful authority, cut down, carry away, injure, break down, or destroy the fruit of any trees planted or growing in the corporate limits. Any public service company desiring to trim or cut down any tree, except on property owned and controlled by them, shall make an application to the Governing Body to do so, and the written permit of the Governing Body in accordance with their decision to allow such an action shall constitute the only lawful authority on the part of the company to do so.
- §6-408 **MISDEMEANORS; FIRE EQUIPMENT.** It shall be unlawful for any person who is not an active member of the Fire Department to deface, destroy, handle, or loiter about the equipment and property of the Fire Department.
- §6-409 **MISDEMEANORS; FIRE HOSE.** It shall be unlawful for any person, without the consent of the Fire Chief, or the Assistant Fire Chief to drive any vehicle over the unprotected hose of the Fire Department at any time.
- §6-410 **MISDEMEANORS; DRINKING IN PUBLIC.** It shall be unlawful for any person to consume alcoholic beverages in the public streets, alleys, roads, highways, or upon any property owned by the Municipality or other governmental subdivision thereof, or inside vehicles while upon the public streets, alleys, roads, or highways, except when said consumption is in accordance with the provisions of the Nebraska Liquor Control Act and the licensing requirements of the State of Nebraska (Ref. 53-186, 53-186.01 RS Neb.)
- §6-411 **MISDEMEANORS; MINOR IN POSSESSION.**
Except as provided in Section 53-168.06, no minor may sell, dispense, consume, or have in his or her possession or physical control any alcoholic liquor in any tavern or in any other place, including public streets, alleys, roads, or highways, upon property owned by the State of Nebraska or any subdivision thereof, or inside any vehicle while in or on any other place, including, but not limited to, the public streets, alleys, roads, or highways, or upon property owned by the State of Nebraska or any subdivision thereof, except that a minor may consume, possess, or have physical control of alcoholic liquor in his or her permanent place of residence or on the premises of a place of religious worship on which premises alcoholic liquor is consumed as a part of a religious rite, ritual, or ceremony

The governing body shall have the power to, and may by applicable resolution or ordinance, regulate, suppress, and control the transportation, consumption, or knowing possession of or having under his or her control beer or other alcoholic liquor in or transported by any motor vehicle, by any person under twenty-one years of age, and may provide penalties for violations of such resolution or ordinance.

- §6-412 **MISDEMEANORS; POSTED ADVERTISEMENTS.** It shall be unlawful for any person to wrongfully and maliciously tear, deface, remove, or cover up the posted advertisement or bill of any person, firm, or corporation when said bill or advertisement is rightfully and lawfully posted, and the same remains of value.
- §6-413 **MISDEMEANORS; POSTING.** It shall be unlawful for any person to post, paste, or paint any sign, advertisement, or other writing of any nature upon a fence, pole, building, or other property without the written permission of the owner of the said property.
- §6-414 **MISDEMEANORS; DISCHARGE OF FIREARMS.** It shall be unlawful for any person, except an officer of the law in the discharge of his official duty, to fire or discharge any gun, pistol, or other fowling piece within the Municipality; provided, nothing herein shall be construed to apply to officially sanctioned public celebrations if the persons so discharging firearms have written permission from the Governing Body. (*Ref. 17-556, 28-1239.01, 28-1252 RS Neb.*)
- §6-415 **MISDEMEANORS; CONCEALED WEAPONS.** It shall be unlawful for any person or persons to carry about their person any concealed pistol, revolver, knife, billy club, sling-shot, metal knuckles, or other dangerous weapon of any kind. Nothing herein shall be construed to apply to the Municipal Police. (*Ref. 28-1202, 28-1204 RS Neb.*)
- §6-416 **MISDEMEANORS; SLINGSHOTS, AIR GUNS, BB GUNS, ARCHERY EQUIPMENT, INCLUDING CROSSBOWS AND ANY OTHER PROJECTILE WEAPONS OR DEVICES.**
- (1) It shall be unlawful for any person to discharge a slingshot, air gun, BB gun, paint ball gun or the like loaded with rock or other dangerous missiles at any time or under any circumstances within the municipality.
 - (2) It shall be unlawful for any person using archery equipment including crossbows, within the corporate limits, without having at least a 6' x 8' plywood backstop, three-quarters inch (3/4") thick or of a comparable material of at least the same dimensions and depth to provide the necessary stopping power for the equipment being used.
- §6-417 **MISDEMEANORS; FIRECRACKERS.** It shall be unlawful for any person to ignite or cause to be exploded fireworks or firecrackers of any description whatsoever, except sparklers, Vesuvius fountains, spray fountains, torches, color fire cones, star and comet type color aerial shells without explosive charges for the purpose of making a noise, color wheels, lady fingers, not exceeding seven-eighths inch (f") in

length or one-eighth inch (c") in diameter, and which do not contain more than one-half (½) grain each in weight of explosive material. (Ref. 28-1242 to 28-1250 RS Neb.)

- §6-418 **MISDEMEANORS; ASSAULTS.** It shall be unlawful for any person to assault or threaten any other person or persons. Any person who assaults another person or persons shall be deemed to be guilty of a misdemeanor.
- §6-419 **MISDEMEANORS; PROVOKING ASSAULT.** It shall be unlawful for any person or persons within the Municipality to intentionally provoke or attempt to provoke an assault upon himself or another by the uttering of insulting words, cursing and swearing, or to use slander against any other person. Upon conviction a fine not to exceed ten dollars (\$10.00) shall be assessed.
- §6-420 **MISDEMEANORS; MENACING THREATS.** It is hereby declared unlawful for any person within the corporate limits of this Municipality to assault or threaten another in a menacing manner or strike or injure another.
- §6-421 **MISDEMEANORS; ASSAULT AND BATTERY.** It shall be unlawful for any person to assault, threaten, strike, or injure any other person or persons. Any person who assaults or batters another person or persons shall be deemed to be guilty of a misdemeanor. (Ref. 28-309, 28-310, 28-393 RS Neb.)
- §6-422 **MISDEMEANORS; DISTURBING THE PEACE.** It shall be unlawful for any person or persons to assemble or gather within the Municipality with the intent to do an unlawful or disorderly act or acts, by force or violence against the Municipality, or resident therein, or who shall disturb the public peace, quiet, security, repose, or sense of morality. Any person or persons so assembled or gathered shall be deemed to be guilty of a misdemeanor. (Ref. 28-1322, 55-474 RS Neb.)
- §6-423 **MISDEMEANORS; DISORDERLY CONDUCT.** Any person who shall knowingly start a fight, fight, commit assault or battery, make unnecessary noise, or otherwise conduct themselves in such a way as to breach the peace shall be deemed to be guilty of a misdemeanor. (Ref. 17-129, 17-556 RS Neb.)
- §6-424 **MISDEMEANORS; LITTERING.** It shall be unlawful for any person to drop, or cause to be left, upon any municipal highway, street, or alley, except at places designated by the Governing Body, any rubbish, debris, grass, leaves, or waste, and any person so doing shall be guilty of littering. (Ref. 39-683, 28-523 RS Neb.)
- §6-425 **MISDEMEANORS; PROHIBITED FENCES.** It shall be unlawful for any person to erect, or cause to be erected, and maintain any barbed wire or electric fence within the corporate limits.
- §6-426 **MISDEMEANORS; APPLIANCES IN YARD.** (1) It shall be unlawful for any person to permit a refrigerator, icebox, freezer, stove, range, clothes washing machine, clothes dryer, dish washing machine, or any other dangerous appliance to be in the open and accessible to children whether on private or public property and possession of the same shall be deemed a nuisance.

(2) Upon the report being received by a City employee of a refrigerator, icebox, freezer or any other dangerous appliance being in the open and accessible to children, whether on private or public property, or, upon observation by a police officer of a refrigerator, icebox, freezer, stove, range, clothes washing machine, clothes dryer, dish washing machine, or any other dangerous appliance being in the open and accessible to children, whether on private or public property, the police Department shall serve notice to the owner of said refrigerator, icebox, freezer, or any other dangerous appliance to remove same within five (5) days. In the event that the refrigerator, icebox, freezer, stove, range, clothes washing machine, clothes dryer, dish washing machine, or other dangerous appliance is not removed within the five (5) days, the City will remove or cause to be removed said appliance(s) and assess the expense of the removal to the owner of said appliance(s). (Ref. 17-563, 18-1720 RS Neb.)

§6-427 **MISDEMEANORS; OBSTRUCTION OF PUBLIC.** It shall be unlawful for any person to erect, maintain, park, or suffer to remain on any street, alley, or public sidewalk a stand, wagon, display, or other obstruction inconvenient to, or inconsistent with, the public use of the same.

§6-428 **MISDEMEANORS; OBSTRUCTING WATER FLOW.** It shall be unlawful for any person to stop or obstruct the passage of water in a street gutter, culvert, water pipe, or hydrant.

§6-429 **MISDEMEANORS; REMOVING DIRT.** It is hereby declare unlawful for any person to remove, disturb, or take away from any street, alley, or public grounds any dirt, earth, stones, or other materials forming a part of such street, alley, or public grounds without first having obtained written permission to do so from the Governing Body.

§6-430 **MISDEMEANORS; WEED REMOVAL.**

(1) It shall be a nuisance to permit or maintain any growth of twelve inches or more in height of weeds, grasses, or worthless vegetation. It shall the duty of each owner or owner's duly authorized agent or occupant of real estate in the Municipality to cut and clear such real estate, together with one-half (½) of the streets and alleys abutting thereon, of all weeds, grasses or worthless vegetation that are noxious, obstruct travel on public ways, or create a fire or health hazard. Such weeds, grasses and worthless vegetation shall be cut so as not to extend more than twelve inches (12") in height above the ground. Subsequent to the cutting of the said weeds, grasses and worthless vegetation, all loose vegetation shall be immediately removed. Upon the failure of the owner or owner's duly authorized agent or occupant having control of any real estate to cut and clear the said weeds, grasses and worthless vegetation as set forth hereinbefore, the Municipal Police shall give notice to abate and remove such nuisance to each owner or owner's duly authorized agent or occupant, if any, by personal service or certified mail. If notice by personal service or certified mail is unsuccessful after three (3) days, notice shall be given by publication in a newspaper of general circulation in the city or by conspicuously posting the notice on the lot or ground upon which the nuisance is to be abated and removed. In the event that the weeds grasses, and vegetation have not been removed after a period of five

(5) days from personal service or certified mail or after a period of five (5) days from publication in a newspaper of general circulation in the city or by conspicuously posting the notice on the lot or ground, the City Administrator shall have the nuisance abated and removed by directing the Street Department to have such work done, and the cost thereof shall be paid by the owner. (Ref. 17-563 RS Neb.)

- (2) The cost and expenses of any such work shall be paid by the property owner. If unpaid for two months after such work is done, the Municipality may either (a) levy and assess the costs and expenses of the work upon the lot or piece of ground so benefited in the same manner as other special taxes for improvements are levied and assessed or (b) recover in a civil action the costs and expenses of the work upon the lot or piece of ground. (Ref. 17-563 RS Neb.)
- (3) If, within the same calendar year, the city has, pursuant to subsection (1) of this section, acted to remove grass, weeds or worthless vegetation exceeding twelve (12) inches in height on the same lot or piece of ground, it shall be declared a nuisance to permit or maintain any growth of eight (8) inches or more in height of grass, weeds or worthless vegetation. (Ref. 17-563 RS Neb.) (Ordinance No. 1109 8-12-09)

§6-431 **MISDEMEANORS; ABANDONED AUTOMOBILES.** It shall be unlawful to abandon any automobile on the Municipal Streets, highways, alleys, parks or other property. An automobile shall be deemed to be abandoned if left unattended for more than six (6) hours on any public property without current license plates; for more than twenty-four (24) hours on any public property, except where parking is legally permitted, for more than forty-eight (48) hours after the parking of such vehicle shall have become illegal; and for more than seven (7) days on private property if left initially without the permission of the owner, or after the permission of the owner shall have been terminated. Any automobile so abandoned shall immediately become the property of the Municipality if the automobile is unlicensed and if, in the estimation of the Municipal Police, the said automobile is of a wholesale value of one hundred dollars (\$100.00) or less. In the event the automobile is licensed or is of an estimated value of over one hundred dollars (\$100.00), the Municipal Police shall make a reasonable effort to contact the owner of the said automobile by sending a notice to the registered owner, if known; by sending an inquiry to the County it is registered in, if the owner is unknown; or by contacting the Director of Motor Vehicles, if the car is without license plates and the owner is unknown. If the owner is known, and does not claim the automobile within five (5) days after the date when the notice was mailed, or upon receiving word from the Director of Motor Vehicles that the owner is unknown, title will immediately vest in the Municipality and the automobile may be sold. Any proceeds from the sale of the automobile less any expenses incurred by the Municipality in such sale shall be held without interest for the benefit of the owner of such vehicle for a period of two (2) years. If not claimed within such period of time, the proceeds shall then be paid into the General Fund.

Any person who abandons an automobile as hereinbefore defined shall be deemed to be guilty of a misdemeanor. (Ref. 50-1901 through 60-1911 RS Neb.)

§6-432 **MISDEMEANORS; UNLICENSED OR INOPERABLE VEHICLES.** It shall be unlawful for any person in charge or control of any property within the Municipality, other than Municipal property, whether as owner, tenant, occupant, lessee, or otherwise, shall allow any unlicensed, partially dismantled, wrecked, junked, inoperable or discarded vehicle to remain on property longer than seven (7) days; sixty (60) days for businesses; provided this section shall not apply to a vehicle in an enclosed building; a vehicle legally in transit; or to a vehicle in an appropriate storage place or depository maintained in a lawful place and manner by the Municipality. Licensed car dealers are exempt from licensing new or used vehicles being held for resale. Any vehicle allowed to remain on property in violation of this section shall constitute a nuisance and shall be abated, and any person violating this section shall be guilty of a misdemeanor.

§6-433 **MISDEMEANORS; DISCHARGING PROJECTILES.** It shall be unlawful for any person to discharge or release any instrument which propels a projectile across or into any public place or in the private property of another person.

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 appealed.

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 February, 2010

Mayor Dana Trowbridge

City Clerk Joan E. Kovar

Mayor Trowbridge stated: "This is a request to authorize me to strike an agreement with previous City Administrator Joe Johnson on an hourly basis, plus expenses I would like to add to this if Joe has to come back here, and expenses are generally whatever mileage is at the Federal level which is currently fifty cents a mile. With three ongoing projects, Northwest Drainage; the possibility of the sales tax - Downtown Redevelopment; we have a Methane Generation Project that I'll announce tonight is conditionally approved to receive a \$777,800 grant award from the U.S. Department of Energy American Recovery and Reinvestment Act State Energy Program that has been sent to the U.S. Department of Energy for final approval. The fellow that knows all of these, that has worked with these, isn't here any longer but he is

willing to work with us by phone, or by electronic means, or by driving to David City if need be and we would try to keep that at an absolute minimum because he is two hours away.”

Discussion followed. Citizens were concerned about an hourly rate and leaving an open end wage. They suggested hiring a part-time city administrator. It was noted that methane has not been done in other communities. There are people out there, but they would not know where we are at this point. Only Joe would have that pre-existing knowledge, know where the information is located, and who he has talked to at various organizations. Council member Kroesing suggested monthly reports that would say what it is costing us for his services; accountability. City Attorney Egr stated that Joe would have to submit itemized bills.

Council member Hein made a motion to authorize Mayor Trowbridge to contract with Joe Johnson, our previous City Administrator, on an hourly basis not to exceed \$75/hour plus a mileage rate as set by the Federal Government (which today is 50¢ /mile). Council member Yindrick seconded the motion. Council member Yindrick stated: “In any conversations that I have had with Joe regarding his true, honest concern for these projects that he got started, I’ve always felt that he would be happy to see them to completion and in no way would I ever have any suspicion he would try to take advantage of the City of David City. I am very confident in that.” Voting AYE: Council members Kroesing, Rogers, Smith, Yindrick, and Hein. Voting NAY: None. Council member Scribner was absent. The motion carried.

Council member Hein made a motion to change the subcommittee meeting dates to the 4th week of the month instead of the 3rd week of the month, effective immediately. Council member Kroesing seconded the motion. Voting AYE: Council members Smith, Yindrick, Roger, Kroesing, and Hein. Voting NAY: None. Council member Scribner was absent. The motion carried.

City Clerk Kovar stated the City Administrator’s help wanted ad was sent to the Nebraska Municipal Review which will be published the first week of March, and also to Rhonda Sheibal-Carver, Staff Assistant at the School of Public Administration, University of Nebraska at Omaha who will send the help wanted ad in an e-mail to all of their recent graduates, both free of charge. The Lincoln Journal Star is \$732.14 for one Sunday and they also offer online-only postings for 7 days for \$250 or 30 days for \$300. The Omaha World Herald is \$654.16 for one Sunday and \$99.00 for an online posting for 7 days. The Council stated that the Search Committee has the leeway to place ads, etc.; they were instructed to use their own judgment.

Council member Gary Smith asked for volunteers to serve on the Search Committee for a new city administrator. The Search Committee currently consists of Council members Gary Smith, Gary Kroesing, and Mike Rogers, City employees Street Superintendent Jim McDonald, and City Clerk Kovar. Council member Smith stated he would like 3 council members, 3 employees, and 3 citizens. A Search Committee meeting will be held on Wednesday, February 17, at 6:00 p.m.

Council member Hein introduced Resolution No. 3 - 2010 and moved for its passage and adoption. Council member Rogers seconded the motion. Mayor Trowbridge stated if a council member would like to volunteer to fill in for the city administrator until we have one, that would be fine. Voting AYE: Council members Smith, Hein, Kroesing, Rogers, and Yindrick. Voting NAY: None. Council member Scribner was absent. The motion carried and Resolution No. 3 - 2010 was passed and adopted as follows:

RESOLUTION NO. 3 - 2010

A RESOLUTION OF THE CITY OF DAVID CITY, AUTHORIZING THE CITY ADMINISTRATOR AND THE CITY COUNCIL PRESIDENT TO SERVE AS REPRESENTATIVES OF THE CITY OF DAVID CITY ON THE BUTLER COUNTY DEVELOPMENT BOARD AS PART OF THE INTERLOCAL COOPERATION ACT AGREEMENT WITH BUTLER COUNTY, NEBRASKA.

WHEREAS, the City of David City, Nebraska (hereinafter referred to as "City") is an independent body of government, and

WHEREAS, the County of Butler County, Nebraska (hereinafter referred to as "County") is an independent body of government, and

WHEREAS, the City and County have entered into a relationship to sustain the Butler County Development Board referred to as "BCDB" to make efficient use of the powers of the parties by enabling them to cooperate with each other on a basis of mutual advantage and thereby provide services and facilities in a manner and pursuant to forms of governmental organizations that will accommodate economic development, and other needs of the public as served by the County and City; to create a comprehensive, effective, and accountable community development program for individuals and communities within Butler County and David City.

NOW, THEREFORE, be it resolved by the Mayor and City Council of the City of David City, Nebraska, that:

1. The **City Administrator and the City Council President** are hereby selected and authorized to serve as the representatives for the City of David City on the Butler County Development Board.

PASSED AND APPROVED this 10th day of February 2010.

Mayor Dana Trowbridge

ATTEST

City Clerk Joan E. Kovar

Mayor Trowbridge stated: "Matt Rief from Olsson Associates has been charged with the responsibility of jumping through the environmental hoops because the Southern XV property (315 So. 4th Street) has underground tanks on it and it once upon a time dispensed gasoline."

The following e-mail was received from Matt Rief of Olsson Associates:

We are currently finishing up with the Phase 1 ESA which will be prepared in accordance with ASTM Practice E 1527-05 which will help the City satisfy one of the requirements to qualify for either the innocent landowner, contiguous property owner, or bona fide prospective purchaser limitations on CERCLA liability (hereinafter, the "landowner liability protections," or LLPs")

In English the City will be able to prove that they completed an "all appropriate inquiry" into past uses of the property. The Phase 1 ESA will help provide this proof. The Phase 1 ESA documents the potential for contamination to impact the assessment property from past use and uses of the assessment property, adjacent properties, and up gradient properties. If contamination is discovered in the future, the reports will indicate the City is innocent and the identified responsible party will be liable for the clean-up to the associated contamination.

Preliminary findings are as follows:

There are 2 - 6,000 gallon gasoline tanks on site. The tanks are registered as "temporarily out of use" with the State Fire Marshal. They are registered under the name of Westland Enterprises Inc.

A tank overflow spill has occurred at the site in 1994 and is on record with the Department of Environmental Quality.

The Phase 1 ESA will recommend that the on-site tanks be removed and/or a Phase 2 ESA be performed. Associated costs are as follows

Option 1 5 - 15 foot continuous sampled borings. 3 borings will be placed around the tanks. 2 borings will be placed near the two removed dispensers. This option will investigate if soil contamination exists on site. Costs include 2 soil samples from each boring for lab analysis. Cost \$5,820

Option 2 5 - 25 foot continuous sampled borings. Borings will be in the same locations as stated above. Once the borings are completed temporarily monitor wells will be installed. This option will investigate if soil and ground water contamination exist on site. Cost include 2 soil samples from each boring and 1 ground water sample from each temporarily monitor well (5). This option assumes ground water is around 20-22'. Cost \$7,571

Option 3 Remove on site tanks, dispensers and associated product lines. This option would investigate conditions of the existing tanks/lines and if soil contamination has occurred on site under tanks lines and dispensers. Cost includes Certified Closure Contractor and Certified Closure Individual to perform the work and submit required tank pull report to the State Fire Marshal. Cost \$20,000 to 25,000. This cost does not include removal of gasoline if tanks are not empty. Cost does not include over-excavation beyond the limits to remove the tanks or removal of contaminated soils if encountered, this would be an additional cost.

If you plan on removing the tanks, we would recommend option 3 saving the cost of a Phase 11 Investigation.

Mayor Trowbridge stated, "At this point in time, if we want to buy the property from the fellow up in O'Neill we could do so. We don't have to remove the tanks right now; we have

done our Environmental Phase 1. We have identified the potential problems that are there. If we wish to resell that property we would need to have them oversee the removal of the tanks. I think we could do more with removing the tanks ourselves Jim, than we may know right now, to moderate some of those costs.”

Street Superintendent Jim McDonald stated, “We’ve done the same thing out at the Airport, we’ve done the same thing at the maintenance building. We’ve had underground storage tanks. So, it’s not something we haven’t done before. The only problem that I would see is the 6,000 gallons tanks, getting them out of the ground. The Fire Marshal has to be on site.”

Council member Smith made a motion to approve Option 3 as listed above to remove the tanks from the Southern XV Property located at 315 So. 4th Street, David City, Nebraska. Council member Hein seconded the motion. Voting AYE: Council members Yindrick, Kroesing, Rogers, Hein, and Smith. Voting NAY: None. Council member Scribner was absent. The motion carried.

There being no further business to come before the Council, Council member Hein made a motion to adjourn. Council member Yindrick seconded the motion. Voting AYE: Council members Hein, Kroesing, Rogers, Smith, and Yindrick. Voting NAY: None. Council member Scribner was absent. The motion carried and Mayor Trowbridge declared the meeting adjourned at 8:45 p.m.

Mayor Dana Trowbridge

ATTEST:

City Clerk Joan E. Kovar



CERTIFICATION OF MINUTES
February 10, 2010

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 February 10, 2010; 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