

## CITY COUNCIL PROCEEDINGS

August 12, 2009

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 August 6<sup>th</sup>, and an affidavit of the publisher is on file in the office of the City Clerk. The Mayor and members of the City Council acknowledged advance notice of the meeting by signing the Agenda which is a part of these minutes. The advance notice to the Public, Mayor, and Council members conveyed the availability of the agenda, which was kept continuously current in the office of the City Clerk and was available for public inspection during regular office hours. No new items were added to the agenda during the twenty-four hours immediately prior to the opening of the Council meeting.

Present for the meeting were: Mayor Dana Trowbridge, Council members Gary Kroesing, Gary Smith, Nick Hein, Mike Rogers, Bill Scribner, and Bill Yindrick, City Administrator Joe Johnson, City Attorney Jim Egr, and Deputy City Clerk Tami Comte.

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 July 8<sup>th</sup> meeting of the Mayor and City Council were approved upon a motion by Council member Hein and seconded by Council member Rogers. Voting AYE: Council members Hein, Smith, Yindrick, Rogers, Scribner and Kroesing. Voting NAY: None. The motion carried.

Mayor Trowbridge asked for Petitions, Communications, and Citizens' Concerns in addition to those contained in the Agenda packets. Mayor Trowbridge informed the public that Citizens' Concerns cannot be acted upon or addressed as that would be a violation of Nebraska Revised Statutes #84-1411.

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

Mayor Trowbridge called for Committee and Officers' Reports in addition to those written reports contained in the Agenda packet. There were no additional reports.

Mayor Trowbridge scheduled a Committee of the Whole meeting for August 31, 2009 at 6 p.m.

Council member Smith made a motion to advance to agenda item #10. Council member Rogers seconded the motion. Voting AYE: Council members Smith, Scribner, Rogers and Kroesing. Voting NAY: Council members Hein and Yindrick. The motion carried.

Council member Rogers made a motion to accept the bid from Henningsen Foods, Inc. in the amount of \$51,001.00 for the sale of the Police Department building located at 475 N. 3<sup>rd</sup> Street. Council member Hein seconded the motion.

Council member Yindrick read a quote from the Current Interlocal Cooperation Act Agreement that formed the Butler County Economic Development Program under Section 2 D. It stated that the focus of this community economic development plan shall be to support local entrepreneurship and the development of new and existing businesses that will in turn create economic opportunity for the residents of the area, diversify the economy, expand the tax base and stimulate new investment essential for the renewal of the economy and it's communities. He stated that he quoted that to reiterate the importance of economic growth for our community.

Voting AYE: Council members Rogers, Yindrick and Hein. Voting NAY: Council members Kroesing, Scribner and Smith. The vote was a tie. Mayor Trowbridge voted AYE to break the tie and the motion carried.

Council member Yindrick stated that he was regretful that we are at this juncture tonight, that we even have to be voting on whether or not to keep a police department; that, in my opinion, was never intended to be gotten rid of in the first place. I'm regretful that the sale of a building; a piece of property, has unfortunately been twisted and misconstrued into somehow being a threat to the existence of the police department. I am regretful that some people would rather view the glass as half empty and view positive economic growth for our community as something to fear and resist at all costs and prefer to jump to negative conclusions either on the street corner or at the coffee shop instead of seeking the truth and becoming properly informed. Frankly, it's sad how few calls and letters I've gotten regarding an issue that has become so explosive. I have received some. So, to those of you who have contacted me, I appreciate your concern and responsibility. I'm regretful that personality conflicts have tainted and fueled this whole situation to where we find ourselves tonight. If we are to be a community, we cannot do it without acknowledging the last five letters of that word, unity. We have to come together, put personality differences aside, and work together for the future good of the people of David City. As for the police department, I can only speak for myself, when I say that my position has never wavered from the beginning. I've always supported the city police department and believe it is essential for the community. For me, the issue has never been, do we or do we not keep the David City Police Department; but a building is simply that, a building. That being said, Council member Yindrick made a motion to retain the services of the David City Police Department for public safety within David City. Council member Hein seconded the motion.

Council member Kroesing wanted to make it known again that he doesn't believe that a building is just a building and that he took two choices when it came to the nine options. He stated that he did not have a third option. His first choice was to keep the police department in its present building OR option 9, which was to consolidate with the sheriffs department. He said that he has no middle ground on this issue.

Voting AYE: Council members Yindrick, Hein, Smith and Scribner. Voting NAY: Council members Kroesing, and Rogers. The motion carried.

Mayor Trowbridge stated that there were two items in front of the council members in reference to buildings in which to house the police department. He stated that under the agreement that we have with Henningsen Foods that we have up to a year to figure out what to do and this isn't something that will have to happen tomorrow afternoon. Gary Lorimor, Vice President of Operations for Henningsen Foods, Inc. stated that was correct.

Mayor Trowbridge told him that he had been gentlemanly in that, and thanked him. He also stated that he knew that Henningsen's had some pressing needs for storage which, more

than likely, could be accommodated with the Chief and his department. He said that he believes that they can coexist over there in a peaceable fashion.

Mayor Trowbridge asked the Council members if they would like to put together a blue ribbon committee to work with this; a couple of Council members and a member of the general public.

After some discussion it was decided that a committee should be formed to study both options. Council members Smith and Yindrick volunteered to be on the committee. The Council members stated that Chief Sunday should be involved. City Administrator Joe Johnson asked that he and City Clerk Joan Kovar also be on the committee.

Council member Scribner made a motion to table consideration of deconstruction and reconstruction of the current city hall building to appropriately accommodate city hall and police department services or construction of a new building to appropriately accommodate city hall and police department services. Council member Yindrick seconded the motion. Voting AYE: Council members Scribner, Yindrick, Smith, Kroesing, Hein and Rogers. Voting NAY: None. The motion carried.

Council member Scribner introduced Ordinance No. 1112. Council member Kroesing made a motion to suspend the statutory rule that requires an ordinance be read on three separate days. Council member Yindrick seconded the motion. Voting AYE: Council members Scribner, Smith, Rogers, Hein, Yindrick, and Kroesing. Voting NAY: None. The motion carried.

Council member Yindrick made a motion to pass and adopt Ordinance No. 1112 on the third and final reading. Council member Hein seconded the motion. Voting AYE: Council members Hein, Rogers, Yindrick, Scribner, Smith, and Kroesing. Voting NAY: None. The motion carried and Ordinance No. 1112 was passed and adopted as follows:

### **ORDINANCE NO. 1112**

AN ORDINANCE AUTHORIZING THE ISSUANCE OF HIGHWAY ALLOCATION FUND PLEDGE BONDS OF THE CITY OF DAVID CITY, NEBRASKA, SERIES 2009, IN THE PRINCIPAL AMOUNT OF ONE MILLION THREE HUNDRED TWENTY-FIVE THOUSAND DOLLARS (\$1,325,000) FOR THE PURPOSES OF REFUNDING, TOGETHER WITH FUNDS ON HAND, A \$195,000 PORTION OF THE CITY'S OUTSTANDING \$225,000 PRINCIPAL BALANCE OF SERIES 2004 HIGHWAY ALLOCATION FUND PLEDGE BONDS DATED

OCTOBER 1, 2004, AND PAYING THE COSTS OF CONSTRUCTION OF CERTAIN STREETS OF THE CITY IN THE AMOUNT OF \$1,130,000; PRESCRIBING THE FORM OF SAID BONDS; PLEDGING FUNDS TO BE RECEIVED BY THE CITY FROM THE STATE OF NEBRASKA HIGHWAY ALLOCATION FUND FOR THE PAYMENT OF SAID BONDS; PROVIDING FOR THE LEVY AND COLLECTION OF TAXES TO PAY THE SAME IF NECESSARY; PROVIDING FOR THE SALE OF THE BONDS; AUTHORIZING THE DELIVERY OF THE BONDS TO THE PURCHASER; AND PROVIDING FOR THE DISPOSITION OF BOND PROCEEDS; AND ORDERING THE ORDINANCE PUBLISHED IN PAMPHLET FORM.

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

Section 1. The Mayor and Council of the City of David City, Nebraska (the "City") hereby find and determine that there have been heretofore issued and are now outstanding and unpaid valid interest bearing bonds issued by the City of David City, Nebraska, consisting of

Highway Allocation Fund Pledge Bonds, Series 2004, dated October 1, 2004 of the total remaining principal amount of \$225,000 which mature and bear interest as follows:

<u>Principal Amount</u>	<u>Maturing</u>	<u>Interest Rate</u>
\$60,000	October 15, 2010	3.35%
60,000	October 15, 2012	3.70
70,000	October 15, 2014	4.05
35,000	October 15, 2015	4.15

which Series 2004 Bonds of the total principal amount of \$225,000 (the "2004 Bonds") became callable anytime on or after October 15, 2007, at par and accrued interest to the date fixed for call, and as provided in this ordinance are ordered called in accordance with their call provisions on September 15, 2009 (the "Series 2004 Redemption Date"); and that the 2004 Bonds are valid, interest bearing obligations of the City of David City, Nebraska.

The Mayor and Council hereby further find and determine that since the 2004 Bonds were issued, the rates of interest available in the market have so declined that by issuing its Highway Allocation Fund Pledge Bonds in the amount of \$195,000 together with other funds of the City to pay a \$30,000 principal portion of the bonds required to be paid through a mandatory call of principal not later than October 15 2009, and to pay interest on the Called Series 2004 Bonds to their date of call on September 15, 2009, to provide funds, together with the aforesaid available funds of the City, for the payment and redemption of the 2004 Bonds, all as set out above, a substantial savings in the amount of yearly running interest will be made to the City; that for the purpose of providing for the payment and redemption of the 2004 Bonds as above set out and to pay costs of issuance of said Highway Allocation Fund Pledge Bonds, it is in the best interest of the City to apply certain funds on hand and to issue Highway Allocation Fund Pledge Bonds of the City in the principal amount of \$195,000; that the City has no bond sinking funds on hand for the retirement of the 2004 Bonds not required for the timely payment of principal and interest due on the Series 2004 Redemption Date; that the City's expected receipts from the Nebraska Highway Allocation Fund for its current fiscal year are not less than \$224,000; that the City has no bonds outstanding issued pursuant to Section 66-4,101, R.R.S. Neb., Reissue of 2007, (or any other predecessor statute thereto), other than the Series 2004 Bonds now being refunded pursuant to

this ordinance; and, that all conditions, acts, and things required to exist or to be done precedent to the issuance of highway allocation fund pledge Bonds, of the City of David City, Nebraska, in the principal amount of 195,000 pursuant to Sections 10-142 and 66-4,101, R.R.S. Neb., Reissue of 2007, do exist and have been done as required by law.

Section 2. The Mayor and City Council hereby determine, direct and order that the following bonds are hereby called for redemption at par plus accrued interest on September 15, 2009, after which date said bonds shall cease to bear interest:

Highway Allocation Fund Pledge Bonds, Series 2004, date of original issue – October 1, 2004, in the principal amount of \$225,000, maturing October 15, 2010 through October 15, 2015, both inclusive, issued by the City for the purpose of construction of certain streets and other appurtenant related improvements within the City and to pay costs of issuance of said bonds.

Said bonds are payable at the office of the Treasurer of the City of David City in David City, Nebraska as Paying Agent and Registrar.

A copy of this Section 2 of this ordinance shall be filed at least 30 days prior to the date of call with the Treasurer of the City of David City, in David City, Nebraska, as Paying Agent and Registrar and said Paying Agent and Registrar is hereby instructed and directed to give notice of redemption in the manner provided for in the ordinance authorizing said bonds.

Section 3. The Mayor and City Council further find and determine: that the City of David City, Nebraska (the "City") requires the construction of certain streets and other appurtenant related improvements within the City; specifically including Street Improvement District No. 2008-1 which consists of improvements to D Street within the City; that the City's Engineers heretofore prepared plans, specifications and estimates of cost in the anticipated amount of \$465,978 for the said improvements; that bids have been taken and the Council has awarded a contract for the construction of the aforesaid street improvements; that upon completion of the project, special assessments shall be levied against properties benefited by said improvements as provided by law and the ordinance creating Street Improvement District No. 2008-1; that in lieu of the issuance of district improvement bonds and intersection improvement bonds, the City has to authority to fund the project costs through issuance of highway allocation fund pledge bonds; that in addition, the City finds and determines it is necessary and in the best interests of the City to construct certain other street improvements , which street improvements shall be of general benefit to all citizens in the City and as such shall not give rise to the levy of special assessments and therefore the City has determined to advertise for bids and to construct said improvements through issuance of the City's highway allocation fund pledge bonds for estimated project costs of \$664,022; that that the City has no other funds on hand for the cost of such improvements as set out above in the combined amount of \$1,130,000; and that funds are required by the City with respect to said improvements in an amount not less than \$1,130,000, and that it is necessary and advisable for the City to provide financing for such street improvements and related improvements and appurtenances by the issuance of its bonds and it is necessary and advisable to borrow the sum of \$1,130,000; that the City's expected receipts from the Nebraska Highway Allocation Fund for its current fiscal year are not less than \$224,000 as heretofore found in Section 1 hereof; that the only bonds which the City has outstanding as of the date of this ordinance issued pursuant to Section 66-4,101, R.R.S. Neb. 2003 (or any predecessor statute thereto) are the City's Highway Allocation Fund Pledge Bonds, Series 2004, issued in the original principal amount of \$305,000, of which the remaining \$225,000 principal amount of bonds remain outstanding have been ordered called as set out in Section 3 hereof; that to provide a \$195,000 portion of the funds required for redemption of the Called Series 2004 Bonds as set out in Section 1 hereof, and to provide for the costs of improvements as set out in this Section 2 in the principal amount of \$1,130,000, it is necessary that the City issue its highway allocation fund pledge bonds in the combined principal amount of \$1,325,000; that annual debt service on the Series 2009 Bonds herein authorized averages \$153,952, and that the greatest annual debt service is \$171,225, which requirement is less than the expected annual revenues from the highway allocation funds; that all conditions, acts and things required by law to exist or to be done precedent to the issuance of Highway Allocation Fund Pledge Bonds in the amount of \$1,325,000 pursuant to Section 10-142, R.R.S. Neb. 2007 and Section 66-4,101, R.R.S. Neb. 2003, and other applicable statutes, do exist and have been done as required by law.

Section 4. To provide a portion of the funds required to refund the Called Series 2004 Bonds as set out in Section 1 hereof, and to provide funds to pay the costs of the improvements specified in Section 3 hereof, there shall be and there are hereby ordered issued the Highway Allocation Fund Pledge Bonds of the City of David City, Nebraska, Series 2009, in the principal amount of One Million Three Hundred Twenty-Five Thousand Dollars (\$1,325,000) (the "Bonds" or the "Series 2009 Bonds") with said Bonds bearing interest at the rates per annum and with principal payments to become due on September 15 of each year as follows:

<u>Principal Amount</u>	<u>Maturing September 15</u>	<u>Interest Rate</u>
\$130,000	2010	1.20%
135,000	2011	1.50%
135,000	2012	1.75
140,000	2013	2.05
145,000	2014	2.50

150,000	2015	2.80
115,000	2016	3.10
120,000	2017	3.35
125,000	2018	3.60
130,000	2019	3.80

**The Bonds shall be issued in fully registered form in the denomination of \$5,000 or any integral multiple thereof. The date of original issue for the Bonds shall be dated date of delivery. Interest on the Bonds, at the respective rates for each maturity, shall be payable semi-annually on March 15 and September 15 of each year beginning March 15, 2010 (each an "Interest Payment Date"), and the Bonds shall bear such interest from the date of original issue or the most recent Interest Payment Date, whichever is later. The interest due on each Interest Payment Date shall be payable to the registered owners of record as of the fifteenth day immediately preceding the Interest Payment Date (the "Record Date"), subject to the provisions of Section 6 hereof. The Bonds shall be numbered from 1 upwards in the order of their issuance. No Bond shall be issued originally or upon transfer or partial redemption having more than one principal maturity. The initial bond numbering and principal amounts for each of the Bonds issued shall be as directed by the initial purchaser thereof. Payments of interest due on the Bonds prior to maturity or earlier redemption shall be made by the Paying Agent and Registrar, as designated pursuant to Section 5 hereof, by mailing a check or draft in the amount due for such interest on each Interest Payment Date to the registered owner of each Bond, as of the Record Date for such Interest Payment Date, to such owner's registered address as shown on the books of registration as required to be maintained in Section 5 hereof. Payments of principal due at maturity or at any date fixed for redemption prior to maturity, together with unpaid accrued interest thereon, shall be made by said Paying Agent and Registrar to the registered owners upon presentation and surrender of the Bonds to said Paying Agent and Registrar. The City and said Paying Agent and Registrar may treat the registered owner of any Bond as the absolute owner of such Bond for the purpose of making payments thereon and for all other purposes and neither the City nor the Paying Agent and Registrar shall be affected by any notice or knowledge to the contrary, whether such Bond or any installment of interest due thereon shall be overdue or not. All payments on account of interest or principal made to the registered owner of any Bond in accordance with the terms of this ordinance shall be valid and effectual and shall be a discharge of the City and said Paying Agent and Registrar, in respect of the liability upon the Bonds or claims for interest to the extent of the sum or sums so paid.**

Section 5. The Treasurer of the City of David City, Nebraska, is hereby designated to serve as Paying Agent and Registrar for the Bonds. Said Treasurer shall serve in such capacities under the terms of this Ordinance subject to replacement as may be determined by the Mayor and Council. The City Treasurer, as Paying Agent and Registrar, shall keep and maintain for the City books for the registration and transfer of the Bonds at said Treasurer's office. The names and registered addresses of the registered owner or owners of the Bonds shall at all times be recorded in such books. Any Bond may be transferred pursuant to its provisions at the office of said Paying Agent and Registrar by surrender of such Bond for cancellation, accompanied by a written instrument of transfer, in form satisfactory to said Paying Agent and Registrar, duly executed by the registered owner in person or by such owner's duly authorized agent, and thereupon the Paying Agent and Registrar, on behalf of the City, will deliver at its office (or send by registered mail to the transferee owner or owners thereof at such transferee owner's or owners' risk and expense), registered in the name of the transferee owner or owners, a new Bond or Bonds of the same series, interest rate, aggregate principal amount and maturity. To the extent of the denominations authorized for the Bonds by this ordinance, one Bond may be transferred for several such Bonds of the same series, interest rate and maturity, and for a like aggregate principal amount, and several such Bonds may be transferred for one or several such Bonds, respectively, of the same series, interest rate and maturity and for a like aggregate principal amount. In every case of transfer of a Bond, the surrendered Bond shall be canceled and destroyed. All Bonds issued upon transfer of the bonds so surrendered shall be valid obligations

of the City evidencing the same obligation as the Bonds surrendered and shall be entitled to all the benefits and protection of this ordinance to the same extent as the Bonds upon transfer of which they were delivered. The City and said Paying Agent and Registrar shall not be required to transfer any Bond during any period from any Record Date until its immediately following Interest Payment Date or to transfer any Bond called for redemption for a period of 30 days next preceding the date fixed for redemption.

Section 6. In the event that payments of interest due on the Bonds on an Interest Payment Date are not timely made, such interest shall cease to be payable to the registered owners as of the Record Date for such Interest Payment Date and shall be payable to the registered owners of the Bonds as of a special date of record for payment of such defaulted interest as shall be designated by the Paying Agent and Registrar whenever monies for the purpose of paying such defaulted interest become available.

Section 7. Bonds maturing on or after September 15, 2015 shall be subject to redemption, in whole or in part, prior to maturity at any time on or after five years from date of original delivery, at par plus accrued interest on the principal amount redeemed to the date fixed for redemption. The City may select the Bonds to be redeemed for optional redemption in its sole discretion. The Bonds shall be redeemed only in amounts of \$5,000 or integral multiples thereof. Bonds redeemed in part only shall be surrendered to said Paying Agent and Registrar in exchange for a new Bond evidencing the unredeemed principal thereof. Notice of redemption of any Bond called for redemption shall be given, at the direction of the City in the case of optional redemption and without further direction in the case of mandatory redemption, by said Paying Agent and Registrar by mail not less than 30 days prior to the date fixed for redemption, first class, postage prepaid, sent to the registered owner of such Bond at said owner's registered address. Such notice shall designate the Bond or Bonds to be redeemed by maturity or otherwise, the date of original issue, series and the date fixed for redemption and shall state that such Bond or Bonds are to be presented for prepayment at the office of said Paying Agent and Registrar. In case of any Bond partially redeemed, such notice shall specify the portion of the principal amount of such Bond to be redeemed. No defect in the mailing of notice for any Bond shall affect the sufficiency of the proceedings of the City designating the Bonds called for redemption or the effectiveness of such call for Bonds for which notice by mail has been properly given and the City shall have the right to further direct notice of redemption for any such Bond for which defective notice has been given.

Section 8. If the date for payment of the principal or interest on the Bonds shall be a Saturday, Sunday, legal holiday or a day on which banking institutions in David City, Nebraska, are authorized by law or executive order to close, then the date for such payment shall be the next succeeding day which is not a Saturday, Sunday, legal holiday or a day on which such banking institutions are authorized to close, and payment on such day shall have the same force and effect as if made on the nominal date of payment.

Section 9. The Bonds shall be in substantially the following form:

UNITED STATES OF AMERICA  
STATE OF NEBRASKA  
COUNTY OF BUTLER

HIGHWAY ALLOCATION FUND PLEDGE BOND OF  
THE CITY OF DAVID CITY, NEBRASKA  
SERIES 2009

No. \_\_\_\_\_ \$ \_\_\_\_\_

Interest Rate  
%

Maturity Date  
September 15,

Date of Original Issue  
, 2009

CUSIP

Registered Owner:

Principal Amount:

KNOW ALL PERSONS BY THESE PRESENTS: That the City of David City, Nebraska, hereby acknowledges itself to owe and for value received promises to pay to the registered owner specified above, or registered assigns, the principal amount specified above in lawful money of the United States of America on the date of maturity specified above with interest thereon to maturity (or earlier redemption) from the date of original issue or most recent Interest Payment Date, whichever is later, at the rate per annum specified above, payable on March 15, 2010, and semiannually thereafter on September 15 and March 15 of each year (each of said dates an "Interest Payment Date"). Said interest shall be computed on the basis of a 360-day year consisting of twelve 30-day months. The principal hereof, together with unpaid accrued interest due at maturity or upon earlier redemption, is payable upon presentation and surrender of this bond at the office of the Treasurer of the City of David City, as the Paying Agent and Registrar, in David City, Nebraska. Interest on this bond due prior to maturity or earlier redemption will be paid on each Interest Payment Date by a check or draft mailed by the Paying Agent and Registrar to the registered owner of this bond, as shown on the books of record maintained by the Paying Agent and Registrar, at the close of business on the fifteenth day immediately preceding the Interest Payment Date, to such owner's registered address as shown on such books and records. Any interest not so timely paid shall cease to be payable to the person entitled thereto as of the record date such interest was payable, and shall be payable to the person who is the registered owner of this bond (or of one or more predecessor bonds hereto) on such special record date for payment of such defaulted interest as shall be fixed by the Paying Agent and Registrar whenever monies for such purposes become available.

This bond is one of an issue of fully registered bonds of the total principal amount of One Million Three Hundred Twenty-Five Thousand Dollars (\$1,325,000), of even date and like tenor except as to date of maturity, rate of interest and denomination which were issued by the City for the purpose of providing a portion of the funds required to redeem and retire the outstanding \$225,000 principal balance of the City's Highway Allocation Fund Pledge Bonds, Series 2004, dated October 1 2004, maturing from October 15, 2010 through October 15, 1015, both inclusive, called for redemption on September 15, 2009, in pursuance of Sections 10-142, R.R.S. 2007 and 66-4,101, R.R.S. 2003, and for paying the costs of constructing streets and other related and appurtenant improvement in said City, in strict compliance with Section 66-4,101, R.R.S. 2003. The issuance of said bonds has been authorized by proceedings duly had and an ordinance legally passed and approved by the Mayor and City Council of said City (the "Ordinance").

**Bonds of this issue maturing on or after September 15, 2015 are subject to redemption at the option of the City, in whole or in part, at any time on or after five years from date of original delivery, at par plus interest accrued on the principal amount redeemed to the date fixed for redemption**

Notice of redemption shall be given by mail to the registered owner of any bond to be redeemed at said registered owner's address in the manner specified in the Ordinance authorizing said issue of bonds. Individual bonds may be redeemed in part but only in \$5,000 amounts or integral multiples thereof.

This bond is transferable by the registered owner or such owner's attorney duly authorizing in writing at the office of the Paying Agent and Registrar upon surrender and cancellation of this bond, and thereupon a new bond or bonds of the same aggregate principal amount, interest rate and maturity will be issued to the transferee as provided in the Ordinance authorizing said issue of bonds, subject to the limitations therein prescribed. The City, the Paying Agent and Registrar and any other person may treat the person in whose name this bond is registered as the absolute owner hereof for the purpose of receiving payment due hereunder and for all purposes and shall not be affected by any notice to the contrary, whether this bond be overdue or not.

If the date for payment of the principal of or interest on this bond shall be a Saturday, Sunday, legal holiday or a day on which banking institutions in the City of David City, Nebraska, are authorized by law or executive order to close, then the date for such payment shall be the next succeeding day which is not a Saturday, Sunday, legal holiday or a day on which such banking institutions are authorized to close, and payment on such day shall have the same force and effect as if made on the nominal date of payment.

For the prompt payment of the principal and interest on this bond and the other bonds of the same issue, the City of David City, Nebraska, has pledged funds received and to be received from the Highway Allocation Fund of the State of Nebraska with receipts from such fund to be allocated by the City to payment of principal and interest as the same fall due. In addition, the City hereby covenants and agrees that it shall levy ad valorem taxes upon all the taxable property in the City of David City, Nebraska, at such rate or rates, within applicable statutory and constitutional limitations, as will provide funds which together with receipts from the Highway Allocation Fund, as pledged to the payment of such principal and interest and any other money made available and used for such purpose, will be sufficient to make payment of the principal of and interest on this bond and the other bonds of the same issue as the same fall due.

AS PROVIDED IN THE ORDINANCE REFERRED TO HEREIN, UNTIL THE TERMINATION OF THE SYSTEM OF BOOK-ENTRY-ONLY TRANSFERS THROUGH THE DEPOSITORY TRUST COMPANY, NEW YORK, NEW YORK (TOGETHER WITH ANY SUCCESSOR SECURITIES DEPOSITORY APPOINTED PURSUANT TO THE ORDINANCE, "DTC"), AND NOTWITHSTANDING ANY OTHER PROVISIONS OF THE ORDINANCE TO THE CONTRARY, A PORTION OF THE PRINCIPAL AMOUNT OF THIS BOND MAY BE PAID OR REDEEMED WITHOUT SURRENDER HEREOF TO THE PAYING AGENT AND REGISTRAR. DTC OR A NOMINEE, TRANSFEREE OR ASSIGNEE OF DTC OF THIS BOND MAY NOT RELY UPON THE PRINCIPAL AMOUNT INDICATED HEREON AS THE PRINCIPAL AMOUNT HEREOF OUTSTANDING AND UNPAID. THE PRINCIPAL AMOUNT HEREOF OUTSTANDING AND UNPAID SHALL FOR ALL PURPOSES BE THE AMOUNT DETERMINED IN THE MANNER PROVIDED IN THE ORDINANCE.

UNLESS THIS BOND IS PRESENTED BY AN AUTHORIZED OFFICER OF DTC (A) TO THE PAYING AGENT AND REGISTRAR FOR REGISTRATION OF TRANSFER OR EXCHANGE OR (B) TO THE PAYING AGENT AND REGISTRAR FOR PAYMENT OF PRINCIPAL, AND ANY BOND ISSUED IN REPLACEMENT HEREOF OR SUBSTITUTION HEREFOR IS REGISTERED IN THE NAME OF DTC AND ANY PAYMENT IS MADE TO DTC OR ITS NOMINEE, ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR



Dated: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Registered Owner(s)

Signature Guaranteed

By \_\_\_\_\_

\_\_\_\_\_

Authorized Officer(s)

Note: The signature(s) on this assignment MUST CORRESPOND with the name(s) as written on the face of the within bond in every particular, without alteration, enlargement or any change whatsoever, and must be guaranteed by a commercial bank or a trust company or by a firm having membership on the New York, Midwest or other stock exchange.

Section 10. Each of the Bonds shall be executed on behalf of the City with the manual or facsimile signatures of the Mayor and City Clerk of the City. The Bonds shall be issued initially as "book-entry-only" bonds under the services of The Depository Trust Company (the "Depository"), with one typewritten bond per maturity being issued to the Depository. In such connection said officers of the City are authorized to execute and deliver a letter of representations and inducement (the "Letter of Representations") in the form required by the Depository, (including any blanket letter previously executed and delivered by the City) for and on behalf of the City, which shall thereafter govern matters with respect to registration, transfer, payment and redemption of the Bonds. Upon the issuance of the Bonds as "book-entry-only" bonds, the following provisions shall apply:

(a) The City and the Paying Agent and Registrar shall have no responsibility or obligation to any broker-dealer, bank or other financial institution for which the Depository holds Bonds as securities depository (each, a "Bond Participant") or to any person who is an actual purchaser of a Bond from a Bond Participant while the Bonds are in book-entry form (each, a "Beneficial Owner") with respect to the following:

(i) the accuracy of the records of the Depository, any nominees of the Depository or any Bond Participant with respect to any ownership interest in the Bonds,

(ii) the delivery to any Bond Participant, any Beneficial Owner or any other person, other than the Depository, of any notice with respect to the Bonds, including any notice of redemption, or

(iii) the payment to any Bond Participant, any Beneficial Owner or any other person, other than the Depository, of any amount with respect to the Bonds. The Paying Agent and Registrar shall make payments with respect to the Bonds only to or upon the order of the Depository or its nominee, and all such payments shall be valid and effective fully to satisfy and discharge the obligations with respect to such Bonds to the extent of the sum or sums so paid. No person other than the Depository shall receive an authenticated Bond, except as provided in (e) below.

(b) Upon receipt by the Paying Agent and Registrar of written notice from the Depository to the effect that the Depository is unable or unwilling to discharge its responsibilities, the Paying Agent and Registrar shall issue, transfer and exchange Bonds requested by the Depository in appropriate amounts. Whenever the Depository requests the Paying Agent and Registrar to do so, the Paying Agent and Registrar will cooperate with the Depository in taking appropriate action after reasonable notice (i) to arrange, with the prior written consent of the City, for a substitute depository willing and able upon reasonable and customary terms to maintain custody of the Bonds or (ii) to make available Bonds registered in whatever name or names the Beneficial Owners transferring or exchanging such Bonds shall designate.

(c) If the City determines that it is desirable that certificates representing the Bonds be delivered to the ultimate Beneficial Owners of the Bonds and so notifies the Paying Agent and Registrar in writing, the Paying Agent and Registrar shall so notify the Depository, whereupon the Depository will notify the Bond Participants of the availability through the Depository of bond certificates representing the Bonds. In such event, the Paying Agent and Registrar shall

issue, transfer and exchange bond certificates representing the Bonds as requested by the Depository in appropriate amounts and in authorized denominations.

(d) Notwithstanding any other provision of this Ordinance to the contrary, so long as any Bond is registered in the name of the Depository or any nominee thereof, all payments with respect to such Bond and all notices with respect to such Bond shall be made and given, respectively, to the Depository as provided in the Letter of Representations.

(e) Registered ownership of the Bonds may be transferred on the books of registration maintained by the Paying Agent and Registrar, and the Bonds may be delivered in physical form to the following:

(i) any successor securities depository or its nominee;

(ii) any person, upon (A) the resignation of the Depository from its functions as depository or (B) termination of the use of the Depository pursuant to this Section and the terms of the Paying Agent and Registrar's Agreement (if any).

(f) In the event of any partial redemption of a Bond unless and until such partially redeemed Bond has been replaced in accordance with the provisions of this Ordinance, the books and records of the Paying Agent and Registrar shall govern and establish the principal amount of such Bond as is then outstanding and all of the Bonds issued to the Depository or its nominee shall contain a legend to such effect.

If for any reason the Depository resigns and is not replaced or upon termination by the City of book-entry-only form, the City shall immediately provide a supply of bond certificates for issuance upon subsequent transfers or in the event of partial redemption. In the event that such supply of certificates shall be insufficient to meet the requirements of the Paying Agent and Registrar for issuance of replacement bond certificates upon transfer or partial redemption, the City agrees to order printed an additional supply of bond certificates and to direct their execution by manual or facsimile signature of its then duly qualified and acting officers. In case any officer whose signature or facsimile thereof shall appear on any Bond shall cease to be such officer before the delivery of such Bond (including any bond certificates delivered to the Paying Agent and Registrar for issuance upon transfer or partial redemption) such signature or such facsimile signature shall nevertheless be valid and sufficient for all purposes the same as if such officer or officers had remained in office until the delivery of such Bond. The Bonds shall not be valid and binding on the City until authenticated by the Paying Agent and Registrar. The Bonds shall be delivered to the Paying Agent and Registrar for registration and authentication. Upon execution, registration and authentication of the Bonds, they shall be delivered to the City Treasurer, who is authorized to deliver them to D.A. Davidson & Co., as initial purchaser thereof, upon receipt of 98.50% of the principal amount of the Bonds plus accrued interest thereon to date of payment for the Bonds. Said initial purchaser shall have the right to direct the registration of the Bonds and the denominations thereof within each maturity, subject to the restrictions of this Ordinance.

Section 11. The City Clerk is directed to make and certify a transcript or transcripts of the proceedings of the Mayor and City Council precedent to the issuance of said Bonds, one of which transcripts shall be delivered to the purchaser of said Bonds.

Section 12. The proceeds of the Bonds in the amount of \$195,000 shall be applied to provide for the redemption and retirement of the Called Series 2004 Bonds and set out herein,

and the balance of the proceeds of the Bonds shall be applied to pay the costs of construction of the improvements described in Section 3 hereof upon order of the Mayor and City Council, including payment of any related warrant or note indebtedness. Pending such application the City Treasurer shall hold such proceeds.

Section 13. For the prompt payment of the Bonds, both principal and interest as the same fall due, the City hereby pledges all receipts now or hereafter received by the City from the State of Nebraska Highway Allocation Fund, as described and referred to in Section 66-4,101, R.R.S. 2003. The pledge provided for in this Section 13 for the Bonds provides, however, that such pledge shall not prevent the City from applying receipts from said fund in any year for other qualifying uses of such receipts so long as sufficient receipts from such fund or other available funds, including the collection of special assessments levied relative to Street Improvement District No. 2008-1, have been set aside for the payment of principal and interest falling due in such year on the Bonds. In addition, the City further reserves the right to issue additional highway allocation fund pledge bonds payable on par with the Bonds and equally and ratably secured by a pledge of receipts from the Highway Allocation Fund. The City hereby further agrees that it shall levy ad valorem taxes upon all the taxable property in the City at such rate or rates within any applicable statutory and constitutional limitations as will provide funds which, together with receipts from the Highway Allocation Fund, as pledged to the payment of the Bonds, and any other monies made available and used for such purpose, will be sufficient to pay the principal of and interest on the Bonds and the 2004 Bonds as the same fall due, after the application of such other funds are available therefore.

Section 14. (a) The City hereby covenants with the purchasers and holders of the Bonds herein authorized that it will make no use of the proceeds of said issue, including monies held in any sinking fund for the payment of principal and interest on said Bonds, which would cause said Bonds to be arbitrage bonds within the meaning of Sections 103 and 148 and other related sections of the Internal Revenue Code of 1986, as amended (the "Code"), and further covenants to comply with said Sections 103 and 148 and related sections and all applicable regulations thereunder throughout the term of said issue. The City hereby covenants with the registered owners from time to time of the Bonds hereby authorized that it shall comply with all applicable provisions of the Code, prior to the date of issuance and delivery of the Bonds, and with all applicable provisions of any other tax laws, existing as of such date, and any regulations, published rulings and court decisions pursuant thereto, which relate to the exclusion from gross income of interest on the Bonds for federal income tax purposes, to the extent necessary to comply with such Code, laws, regulations, published rulings and court decisions or otherwise to preserve such exclusion, including specifically, but without limitation, all arbitrage rebate and information reporting requirements required by the Code.

(b) The City hereby represents and warrants that (i) it reasonably anticipates issuing not more than \$30,000,000 of tax-exempt obligations not including "private activity bonds" as defined in Section 141 of the Code (other than "qualified 501(c)(3) bonds" as defined in Section 145 of the Code) during the 2009 calendar year, (ii) it has not designated more than \$30,000,000 of obligations (including the Bonds herein authorized) during the 2009 calendar year to the date of this resolution as qualified tax-exempt obligations, (iii) the Bonds herein authorized are not "private activity bonds" as such term is defined in Section 141(a) of the Code, and (iv) it hereby designates the Bonds as "qualified tax-exempt obligations" pursuant to Section 265(b)(3)(B)(i) of the Code. The City agrees to take all further actions, if any, necessary to qualify the Bonds herein authorized as such "qualified tax-exempt obligations," as and to the extent permitted by law.

Section 15. The City reserves the right to issue refunding bonds and provide for the investment of the proceeds thereof for purposes of providing for the payment of principal and

interest on the Bonds in such manner as may be prescribed by law from time to time but specifically including the provisions of Section 10-142, R.R.S. Neb. 2007, or any amendment thereto.

Section 16. The City's obligations under this resolution shall be fully discharged and satisfied as to the Bonds authorized and issued hereunder, and said Bonds shall no longer be deemed outstanding hereunder when payment of the principal thereof plus interest thereon to the date of maturity or redemption thereof (a) shall have been made or caused to have been made in accordance with the terms thereof and hereof, or (b) shall have been provided for by depositing in escrow with a national or state bank having trust powers in trust solely for such payment, (i) sufficient monies to make such payment or (ii) direct general obligations of, or obligations the principal and interest of which are unconditionally guaranteed by, the United States of America (herein referred to as "Government Obligations"), in such amount and with such maturities as to principal and interest as will insure the availability of sufficient monies to make such payment, and thereupon such Bonds shall cease to draw interest from the date of their redemption or maturity and, except for the purposes of such payments, shall no longer be entitled to the benefits of this resolution; provided that, with respect to any Bonds called or to be called for redemption prior to the stated maturity thereof, notice of redemption shall have been duly given or provided for. If monies shall have been deposited in accordance with the terms hereof with the escrow agent in trust for that purpose sufficient to pay the principal of such Bonds and all interest due thereon to the due date thereof or to the date fixed for the redemption thereof, all liability of the City for such payment (except from such deposit) shall forthwith cease, determine and be completely discharged, and all such Bonds shall no longer be considered outstanding.

Section 17. The Mayor and City Council do hereby approve the Preliminary Official Statement with respect to the Bonds and the information therein contained, and the Mayor, the City Administrator, the City Clerk, or any one of them is authorized to approve and deliver a final Offering Circular for and on behalf of the City, and said final Official Statement shall be delivered to the Underwriter in accordance with the requirements of Reg. Sec. 240.15c2-12 of the Securities and Exchange Commission.

Section 18. In accordance with the requirements of Rule 15c2-12 (the "Rule") promulgated by the Securities and Exchange Commission, the City, hereby agrees that it will provide the following continuing disclosure information:

(a) to the Municipal Securities Rulemaking Board (the "MSRB") and to the Underwriter, the City shall provide that financial information and operating data which is customarily prepared by the City and is publicly available which shall include the City's audited financial statements; with such information required to be filed annually. Audited financial information shall be provided for governmental and fiduciary fund types based on the cash basis which is a comprehensive basis of accounting other than generally accepted accounting principles.

(b) in a timely manner to the MSRB, notice of the occurrence of any of the following events with respect to the Bonds, if in the judgment of the City, such event is material:

- (1) principal and interest payment delinquencies,
- (2) non-payment related defaults,
- (3) unscheduled draws on debt service reserves reflecting financial difficulties (there are no debt service reserves established for the Bonds under the terms of the Resolution),

- (4) unscheduled draws on credit enhancements reflecting financial difficulties (there is no credit enhancement on the Bonds),
- (5) substitution of credit or liquidity providers, or their failure to perform (not applicable to the Bonds),
- (6) adverse tax opinions or events affecting the tax-exempt status of the Bonds,
- (7) modifications to rights of the holders of the Bonds,
- (8) bond calls,
- (9) defeasances,
- (10) release, substitution, or sale of property securing repayment of the Bonds, and
- (11) rating changes (the Bonds are not rated and no rating for the Bonds is expected to be requested).

The City has not undertaken to provide notice of the occurrence of any other material event, except the events listed above.

The City agrees that all such information required to be filed with the MSRB shall be provided for filing in such format and accompanied by such identifying information as shall be prescribed by the MSRB. The City reserves the right to modify from time to time the specific types of information provided or the format of the presentation of such information, to the extent necessary or appropriate in the judgment of the City, consistent with the Rule. The City agrees that the foregoing covenants are for the benefit of the registered owners of the Bonds (including Beneficial Owners) and that such covenants may be enforced by any registered owner or Beneficial Owner, provided that any such right to enforcement shall be limited to specific enforcement of such undertaking and any failure shall not constitute an event of default under the Resolution. The foregoing continuing disclosure obligations of the City shall cease when none of the Bonds remain outstanding.

Section 19. Without in any way limiting the power, authority or discretion elsewhere herein granted or delegated, the Mayor and the City Council hereby authorize and direct all of the officers, employees and agents of the City to carry out, or cause to be carried out, and to perform such obligations of the City and such other actions as they, or any one of them, shall consider necessary, advisable, desirable, or appropriate in connection with this ordinance, and the issuance, sale and delivery of the Bonds, including, without limitation and whenever appropriate, the execution and delivery thereof and of all other related documents, instruments, certifications and opinions; and delegates, authorizes and directs the Mayor the right, power and authority to exercise his own independent judgment and absolute discretion in determining and finalizing the terms, provisions, form and contents of each of the foregoing. The execution and delivery by the Mayor or by any such other officer, officers, agent or agents of the City of any such documents, instruments, certifications and opinions, or the doing by him of any act in connection with any of the matters which are the subject of this resolution, shall constitute conclusive evidence of both the City's and his approval of all changes, modifications, amendments, revisions and alterations made therein, and shall conclusively establish his or her absolute, unconditional and irrevocable authority with respect thereto from the City and the authorization, approval and ratification by the

City of the documents, instruments, certifications and opinions so executed and the action so taken.

Section 20. This Ordinance shall be published in pamphlet form and shall be in force and take effect from and after its adoption as provided by law.

ADOPTED this 12<sup>th</sup> day of August 2009.

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Mayor

ATTEST:

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Deputy City Clerk Tami L. Comte

(SEAL)

Council member Hein made a motion that the City of David City continue to support economic development by making a contribution to the Butler County Development Alliance in the requested amount and introduced Resolution No. 23-2009 and moved for its passage and adoption. Council member Yindrick seconded the motion. Voting AYE: Council members Smith, Yindrick, Kroesing, Rogers, and Hein. Voting NAY: None. Council member Scribner abstained. The motion carried and Resolution No. 18 - 2009 was passed and approved as follows:

**RESOLUTION NO. 23-2009**

**A RESOLUTION OF THE CITY OF DAVID CITY, NEBRASKA AUTHORIZING AN INTER-LOCAL AGREEMENT BETWEEN THE CITY OF DAVID CITY, NEBRASKA, COUNTY OF BUTLER COUNTY, NEBRASKA AND THE BUTLER COUNTY AREA CHAMBER OF COMMERCE FOR PARTICIPATION IN AND CONTINUANCE OF THE BUTLER COUNTY DEVELOPMENT BOARD.**

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 will enter into a relationship to continue a comprehensive, effective and accountable community economic development program for individuals and communities within Butler County.

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

1. Authorizes the execution of the Butler County Development Board Inter-local Agreement pursuant to the provisions of the Nebraska Interlocal Cooperation Act.

PASSED AND APPROVED this 12<sup>th</sup> day of August 2009.

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Mayor Stephen Smith

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Deputy City Clerk Tami L. Comte

Council member Hein made a motion to table an agenda item requested by Mike Sousek, Lower Platte North Natural Resource District's Rural Water Manager, regarding water quality issues with the David City Water Treatment Plant. Council member Scribner seconded the motion. Voting AYE: Council members Scribner, Smith, Rogers, Hein, Yindrick, and Kroesing. Voting NAY: None. The motion carried.

Mayor Trowbridge read a section from the NMPP Essent newsletter in which the Executive Director of NMPP, Gary Stauffer, shared his experiences from the last three years when he served on the American Public Power's Blue Ribbon Climate Change Task Force. Mayor Trowbridge read two questions and answers from the publication that were asked of Gary Stauffer. Mayor Trowbridge felt that these questions pertained to the methane gas generator issue. The first question was: For you, personally, what have you taken away from participating in the task force for the last three years? His answer was: I am challenged to grasp the enormity of the climate change dynamic, frustrated by the lack of reality in the promises and predictions made by politicians and concerned that real people have no concept of potential changes required to their lifestyles. The second question was: Can you put into perspective how the climate change bill would affect the general public in our region, and that being the Midwest (Nebraska), if the cap in trade bill ultimately passes, or some variant of it, actually passes? It has barely passed the House of Representatives and has moved to the Senate. When they get back from their break they will take this up. His answer was: It's difficult to say because the actual price of the carbon dioxide emission permits will be determined only after an active market for the permits is established. Some projections indicate that the cost of bulk power, in our area, could rise by 50% or more. Higher bulk power costs to utilities, most likely, will be passed through to consumers. Mayor Trowbridge stated that what he is telling us is that beyond the normal price increases of 6 to 8 to 10% that we see on the spreadsheets, if cap in trade comes about, it could add another 50% to that, easily. That's the Midwest market. Areas of Missouri raised their wholesale power costs 17% last month. We have some interesting things coming at us from a cost of power perspective.

Council member Kroesing found some interesting points in the report from Ken Fairchild, who is with Olsson Associates. Our debt service for twenty years is going to be \$163,000. Our fuel cost for one year is going to be \$497,000. Our operation and maintenance is going to be \$384,000. This is option number 2. Without option 2, it's \$122,000 operation and maintenance. Option 2 is with Caterpillar doing the operation and maintenance, for an annual cost of \$1,045,000, which puts the cost of a kilowatt of electricity at 8 cents. Now, we've got, on May 26, 2009, N.P.D.'s rate committee study here and what they plan on doing from 2009 to 2012. These are their proposals. They propose a 7% raise in 2009, 5 – 7% in 2010, 8.5 – 11% in 2011, and 8 – 8.5% in 2012. This will put their price per kilowatt hour at 4.5 cents and 5 cents. Using this generator is going to cost us 8 cents per kilowatt. This is the engineer's statement: It does not appear prudent to consider LFG energy as a replacement for wholesale purchases. Also, this could change if David City acquires a sufficient number of customers who would be

willing to pay the cost difference between their normal energy bill and the greener sustainable energy.

Mayor Trowbridge stated that he was in total agreement with him, if this were to be a replacement for wholesale power purchases. But, this is not, under any of these proposals, ever been considered to be a replacement for wholesale power purchases. There is a request for proposals from N.P.P.D. (Nebraska Public Power District) in which they say, "tell us what you want to do and we'll tell you what we're willing to pay". There's a contingency in this. We're not looking to lose 2 cents per kilowatt hour times 12.9 million kilowatt hours produced annually, which is what that system would produce. If we look at the other side of the equation, its 6.1 cents per kilowatt, if we don't take the "we do everything" for \$250,000 a year program that Cat offers.

City Administrator Joe Johnson stated that the agenda item states that this is contingent upon successful negotiations with N.P.P.D. They should be making that decision on whether they want to pay the 8 cents to have Caterpillar maintain the engines, if anything happens, or if we want to sit down with the power plant crew and see what we can do to serve their needs. But, that really needs to be handled in a negotiation session with NPPD. We need to move this thing forward if we even want to get to that negotiation table with NPPD. The RFP (request for proposals) is due Sept. 1<sup>st</sup> to NPPD. They have specifically added methane to their RFP. They were simply going after alternative fuels, more specifically, wind energy. They have specifically added methane generation because of our ability to produce that here. If it wasn't for us knocking at their door saying, "We have methane. We can do something with it. Do you want to do something positive with it?" They wouldn't have added methane to their RFP. Their brothers and sisters across the state, the big dogs, LES and OPPD, are both producing a ton of energy using methane. NPPD has fallen behind and they are willing to pay an additional cost to get caught back up to those two big dogs. We would not do this project, because we can go out to the market and buy a kilowatt of energy for 4.3 cents, as it stands today. Come January 1<sup>st</sup> we're going to be paying 4.8 cents per kilowatt hour. This doesn't make sense if we look at it in those terms. But, if we look at it in the sense that we are simply going to sell this to NPPD and they are going to give us a profit off of this as well. We're not just going to do this out of the kindness of our heart. We will profit from this. So, say we can produce this for 8.1 cents, and that's on the high end, I can imagine that our contract is going to be for 8.2 cents or 8.3 cents. That's money that we did nothing for, but it's coming back into our electric department to keep our rates low. That's the longer term vision. Now, let's say we go out even 10 more years and we had a contract with NPPD and cap in trade comes in. Mayor Trowbridge just told you guys that the vision of municipal leaders in this state say that cap in trade will double our rates. So, let's double our rates. 4.8 cents in January is what we will be paying. So, double that, but if we can produce methane energy at a comparable price 10 years from now we've got a heck of a bargaining chip when we go back to the negotiation table with NPPD. We are a wholesale power customer of NPPD. We have a 25 year contract to purchase their power. If we have this on the table 10 years from now, we have a major bargaining chip with NPPD that will forever keep our rates low. This is a doable project right now only if NPPD signs on the dotted line and we can reach some consensus between them and the City of David City. Without accepting the bid we can't submit an RFP, and if we don't submit an RFP, we just threw the opportunity out the window.

Mayor Trowbridge asked if we can submit a bid, contingent upon the contingency with Nebraska Public Power District giving us a bid that would support this economically with Cat. That's what we're asking for is a contingency. If it won't work, it won't work.

City Administrator Johnson stated that there is no risk with this. If we have a contract with NPPD, our bills will be paid. We'll have this thing paid off in 10 years. It's ours to do whatever we want to do with it, at that point. There is no risk.

Council member Hein made a motion to accept the bid received for one new landfill methane gas generator, paralleling switchgear, and installation of the same, contingent upon successful project approval and negotiated agreements with Nebraska Public Power District to purchase electric energy produced by the new landfill methane gas generator and when those numbers are known, that it comes back for City Council approval. Council member Yindrick seconded the motion. Voting AYE: Council members Hein, Yindrick, Smith, Scriber, Rogers and Kroesing. Voting NAY: None. The motion carried.

Mayor Trowbridge declared a break at 8:35 p.m. The meeting resumed at 8:44 p.m.

Ordinance No. 1107 was introduced and passed on 1<sup>st</sup> reading on July 8, 2009. Council member Hein made a motion to suspend the statutory rule that requires an ordinance be read on three separate days. Council member Yindrick seconded the motion. Voting AYE: Council members Scribner, Smith, Rogers, Hein, Yindrick, and Kroesing. Voting NAY: None. The motion carried.

Council member Kroesing made a motion to pass and adopt Ordinance No. 1107 on the third and final reading. Council member Scribner seconded the motion. Voting AYE: Council members Hein, Rogers, Yindrick, Scribner, Smith, and Kroesing. Voting NAY: None. The motion carried and Ordinance No. 1107 was passed and adopted as follows:

**ORDINANCE NO. 1107**

AN ORDINANCE TO AMEND THE LAND USE PLAN BY CHANGING THE ZONING CLASSIFICATION OF REAL ESTATE DESCRIBED FROM LDR (LOW DENSITY RESIDENTIAL) TO MDR (MEDIUM DENSITY RESIDENTIAL), REPEAL ANY ORDINANCES IN CONFLICT HEREWITH; DESCRIBE THE TIME WHEN THIS ORDINANCE SHALL BE IN FULL FORCE AND EFFECT, AND PROVIDE FOR PUBLICATION OF THE ORDINANCE IN PAMPHLET FORM.

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

Section 1. A request was received from Michael & Jolene Eller to re-zone their property from LDR (Low Density Residential) to MDR (Medium Density Residential).

Section 2. That the land use plan be amended as follows:

- a. To amend the following property from LDR (Low Density Residential) to MDR (Medium Density Residential):

Property located in Section 18, T15N, R3E of the 6<sup>th</sup> P.M., part of Lot 4, David City Land & Lot Subdivision, David City, Butler County, Nebraska, containing approximately .27 acres, owned by Mike & Jolene Eller.

Section 3. That 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 appealed.

Section 4. This ordinance shall be published in pamphlet form and shall be in full force and effect from and after its passage, approval, and publication as provided by law.

Passed and adopted this 12<sup>th</sup> day of August, 2009.

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Mayor Dana Trowbridge

ATTEST:

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Deputy City Clerk Tami L. Comte

Council member Hein introduced Ordinance No. 1108. Council member Yindrick 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 Scribner, Smith, Rogers, Hein, Yindrick, and Kroesing. Voting NAY: None. The motion carried.

Council member Yindrick made a motion to pass and adopt Ordinance No. 1108 on the third and final reading. Council member Hein seconded the motion. Voting AYE: Council members Hein, Rogers, Yindrick, Scribner, Smith, and Kroesing. Voting NAY: None. The motion carried and Ordinance No. 1108 was passed and adopted as follows:

**ORDINANCE NO. 1108**

AN ORDINANCE TO AMEND THE OFFICIAL ZONING MAP BY CHANGING THE ZONING CLASSIFICATION OF REAL ESTATE DESCRIBED FROM R1 (LOW DENSITY RESIDENTIAL) TO R-2 (TWO FAMILY RESIDENTIAL); REPEAL ANY ORDINANCES IN CONFLICT HEREWITH; DESCRIBE THE TIME WHEN THIS ORDINANCE SHALL BE IN FULL FORCE AND EFFECT, AND PROVIDE FOR PUBLICATION OF THE ORDINANCE IN PAMPHLET FORM.

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

Section 1. That the Official Zoning Map be amended as follows:

- a. To amend the following property from R-1 (Low Density Residential) to R-2 (Two Family Residential): Property located in Section 18, T15N, R3E of the 6<sup>th</sup> P.M., Part of Lot 4, David City Land & Lot Subdivision, containing approximately .27 acres, owned by Michael & Jolene Eller.

Section 2. That 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 appealed.

Section 3. This ordinance shall be published in pamphlet form and shall be in full force and effect from and after its passage, approval, and publication as provided by law.

Passed and adopted this 12<sup>th</sup> day of August, 2009.

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Mayor Dana Trowbridge

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Deputy City Clerk Tami L. Comte

Council member Hein introduced Resolution No. 18 - 2009 and moved for its passage and adoption. Council member Yindrick seconded the motion. Voting AYE: Council members Smith, Yindrick, Kroesing, Rogers, Scribner, and Hein. Voting NAY: None. The motion carried and Resolution No. 18 - 2009 was passed and approved as follows:

**RESOLUTION NO. 18 - 2009**

WHEREAS, Michael & Jolene Eller are the owners of two tracts of land, and

WHEREAS, Michael & Jolene Eller have submitted a request to combine their two tracts of land as described below, to form one lot:

- 1) 18-15-3 Part of Lot 4, David City Land & Lot Subdivision containing approximately .27 acres, and
- 2) Lot 49, Silver Heights Addition (1609 Silver Drive) which is approximately 77.14' x 120'

WHEREAS, there were no objections expressed concerning combining the two tracts described above to form one lot.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF DAVID CITY, NEBRASKA, that the request of Michael and Jolene Eller, to combine the two tracts of land listed above to form one lot, is hereby approved.

Dated this 12<sup>th</sup> day of August, 2009.

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Mayor Dana Trowbridge

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Deputy City Clerk Tami L. Comte

Council member Hein introduced Resolution No. 21 - 2009 and moved for its passage and adoption. Council member Rogers seconded the motion. Voting YEA: Council members Rogers, Scribner, Yindrick, Hein, Smith, and Kroesing. Voting NAY: None. The motion carried and Resolution No. 21 - 2009 was passed and adopted as follows:

**RESOLUTION NO. 21 - 2009**

WHEREAS, Leo Stevens, as the owner of Lot 4, and the South 10' of Lot 1, Block 10, Miles 5<sup>th</sup> Addition, has submitted a request to divide his property into two lots consisting of 1) Lot 4 (100' x 140') and 2) the South 10' of Lot 1 (10' x 140') which he will then sell to Russell and Monica Heller, and,

WHEREAS, there were no objections expressed concerning the request of Leo Stevens.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF DAVID CITY, NEBRASKA, that the request of Leo Stevens to divide his property into two lots consisting of 1) Lot 4 (100' x 140') and 2) the South 10' of Lot 1 (10' x 140'), all in Block 10, Miles 5<sup>th</sup> Addition, is hereby approved.

Dated this 12th day of August, 2009.

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Mayor Dana Trowbridge

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Deputy City Clerk Tami L. Comte

Council member Hein introduced Resolution No. 22 - 2009 and moved for its passage and adoption. Council member Smith seconded the motion. Voting AYE: Council members Smith, Kroesing, Scribner, Rogers, Yindrick, and Hein. Voting NAY: None. The motion carried and Resolution No. 22 - 2009 was passed and adopted as follows:

**RESOLUTION NO. 22 - 2009**

WHEREAS, Russell & Monica Heller have filed an application to combine the South 10' of Lot 1, with the North 90' of Lot 1, all in Block 10, Miles 5<sup>th</sup> Addition to form one lot approximately 100' x 140',

WHEREAS, there were no objections expressed concerning the request of Russell & Monica Heller.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF DAVID CITY, NEBRASKA, that the request of Russell & Monica Heller to combine the South 10' of Lot 1, with the North 90' of Lot 1, all in Block 10, Miles 5<sup>th</sup> Addition to form one lot approximately 100' x 140', is hereby approved.

Dated this 12th day of August, 2009.

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Mayor Dana Trowbridge

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Deputy City Clerk Tami L. Comte

Ordinance No. 1109, amending Chapter 6, Article 4, §6-430 Concerning Weed Removal by adding "If within the same calendar year, the City has, pursuant to Section (1) of the Section, acted to remove grass, weeds or worthless vegetation exceeding 12" in height on the same lot or piece of ground, it shall be declared a nuisance to permit or maintain any growth of 8" or more in height of grass, weeds or worthless vegetation, was introduced and passed on first reading on July 8, 2009. Council member Hein made a motion to suspend the statutory rule that requires an ordinance be read on three separate days. Council member Yindrick seconded the motion. Voting AYE: Council members Scribner, Smith, Rogers, Hein, Yindrick, and Kroesing. Voting NAY: None. The motion carried.

Council member Kroesing made a motion to pass and adopt Ordinance No. 1109 on the third and final reading. Council member Smith seconded the motion. Voting AYE: Council members Hein, Rogers, Yindrick, Scribner, Smith, and Kroesing. Voting NAY: None. The motion carried and Ordinance No. 1109 was passed and adopted as follows:

**ORDINANCE NO. 1109**

AN ORDINANCE AMENDING CHAPTER 6, ARTICLE 4, §6-430 OF THE OF THE CITY OF DAVID CITY, NEBRASKA, MUNICIPAL CODE BOOK PROVIDING FOR ADDITIONAL MEANS TO NOTIFY PROPERTY OWNERS OF WEEDS, GRASSES OR OTHER WORTHLESS VEGETATION NUISANCES; 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, §6-430 of the David City Municipal Code Book shall be amended to read:

**§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.)

**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 12<sup>th</sup> day of August, 2009.

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Mayor Dana Trowbridge

ATTEST

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Deputy City Clerk Tami L. Comte

Council member Scribner made a motion to approve the request of the Knights of Columbus for a permit to conduct the game of Bingo at the Knights of Columbus Hall, 517 N 4<sup>th</sup> Street, David City, Nebraska. Council member Yindrick seconded the motion. Voting AYE: Council members Scribner, Rogers, Yindrick, Kroesing, Hein, and Smith. Voting NAY: None. The motion carried.

City Administrator Johnson stated that on an annual basis we meet with Henningsen Foods, Inc. and we agree to the terms of what they're going to pay for the upcoming year and what the City's going to pay. These items, the anaerobic digester, the standby power, the SCADA system and the other little improvements have been discussed since 2002 or 2003. This is just moving those forward to get some real cost estimates to see if we want to do something next year on this. We're really ahead of the game on this. Henningsen Foods is paying 2/3 of the cost of this study and the cost is around \$30,000. So, they will pay \$20,000 and the City will only be responsible for \$10,000. The anaerobic lagoon will become an

important piece into making our treatment plant function appropriately because Henningsen's only provided us with flow four days out of the week and then their flow stops so it's like starting up a new lagoon every Monday. This will help even that out and help improve our efficiency at the plant.

Water/Sewer Supervisor Gary Janicek stated that that anaerobic lagoon is a possible generator of methane too. There's a possibility of capturing and using methane there too.

City Administrator Johnson stated that this was just a study to move us down that path.

Council member Scribner made a motion to accept the agreement for professional services from Olsson Associates for the Wastewater Treatment Plant preliminary design that includes a new anaerobic lagoon, new standby power, SCADA system improvements and other miscellaneous improvements. Council member Rogers seconded the motion. Voting AYE: Council members Scribner, Rogers, Smith, Hein, Kroesing and Yindrick. Voting NAY: None. The motion carried.

Council member Hein made a motion to accept the resignation of Sergeant James Sylvester, authorized him to work part-time and acknowledged his twenty-six years of law enforcement services to the City of David City, Nebraska. Council member Yindrick seconded the motion. Voting AYE: Council members Hein, Yindrick, Rogers, Kroesing, Smith and Scribner. Voting NAY: None. The motion carried.

Council member Hein made a motion to approve CDBG housing reuse fund loan #54 for \$5,000 for down payment assistance. Council member Scribner seconded the motion. It was noted that this money is not new money; it has been repaid and is being used again. Voting AYE: Council members Hein, Scribner, Yindrick, Smith, Kroesing and Rogers. Voting NAY: None. The motion carried.

Council member Hein made a motion to approve CDBG housing reuse fund loan #55 for \$5,000 for down payment assistance. Council member Scribner seconded the motion. Voting AYE: Council members Hein, Scribner, Yindrick, Smith, Kroesing and Rogers. Voting NAY: None. The motion carried.

Council member Hein made a motion to table Ordinance No. 1111 setting the salary for City Administrator Joe Johnson at \$70,000 per year. Council member Scribner seconded the motion. Voting AYE: Council members Hein, Smith, Kroesing, Rogers, Yindrick and Scribner. Voting NAY: None. The motion carried.

There being no further business to come before the Council, Council member Yindrick made a motion to adjourn. Council member Hein seconded the motion. Voting AYE: Council members Kroesing, Smith, Scribner, Rogers, Hein, and Yindrick. Voting NAY: None. The motion carried and Mayor Trowbridge declared the meeting adjourned at 9:08 p.m.

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Mayor Dana Trowbridge

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Deputy City Clerk Tami L. Comte



CERTIFICATION OF MINUTES  
August 12, 2009

I, Tami L. Comte, duly qualified and acting Deputy City Clerk for the City of David City, Nebraska, do hereby certify with regard to all proceedings of August 12, 2009; 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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Tami L. Comte, Deputy City Clerk