

CITY COUNCIL PROCEEDINGS

October 14, 2020

The City Council of the City of David City, Nebraska, met in open public session at 7:00 p.m. in the lower level of the David City Auditorium at 699 Kansas Street, David City, Nebraska. The Public had been advised of the meeting by publication of notice in The Banner Press on, 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 on the City's website. No new items were added to the agenda during the twenty-four hours immediately prior to the opening of the Council meeting. The meeting was held at the City Auditorium due to the COVID-19 pandemic so as to incorporate social distancing strategies. [It is recommended that individuals be kept at least 6 feet apart.]

Present for the meeting were: Mayor Alan Zavodny, Kevin Hotovy, Tom Kobus, Bruce Meysenburg, Pat Meysenburg, City Administrator Clayton Keller, Acting City Attorney Joanna Uden and City Clerk Tami Comte. Council member John Vandenberg was absent.

Also present for the meeting were: Sheriff Tom Dion, City Council Advisor Dana Trowbridge, Park/Auditorium employee Nathan Styskal, Interim Water Supervisor Aaron Gustin, Building Inspector Michael Payne, Michael and Alexis Buresh, Jessica Betzen-Miller, Jeff Hilger, Jan and Dan Sypal, Jerry Kosch, Matt Fleming, Jill Mefford, Bryon & Kristin Hartman, Keith Marvin, Bob & Jan Palik, Ashley Niemann, David McPhillips, Larry McPhillips, Dr. Robert Daro, Bryon Forney, William and Tara Palensky, Stephanie Summers and Alyssa Ledon.

The meeting opened with the Pledge of Allegiance.

Council member Tom Kobus made a motion to approve the minutes of the September 23, 2020 meeting as presented. Council Member Pat Meysenburg seconded the motion. The motion carried.

Kevin Hotovy: Yea, Tom Kobus: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, John Vandenberg: Absent, Alan Zavodny (Mayor): Absent
Yea: 4, Nay: 0, Absent: 2

Council member Tom Kobus made a motion to authorize the payment of claims. Council Member Pat Meysenburg seconded the motion. The motion carried.

Kevin Hotovy: Yea, Tom Kobus: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, John Vandenberg: Absent, Alan Zavodny (Mayor): Absent
Yea: 4, Nay: 0, Absent: 2

Council member Tom Kobus made a motion to accept the committee and officers reports as presented. Council Member Bruce Meysenburg seconded the motion. The motion carried.

Kevin Hotovy: Yea, Tom Kobus: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, John Vandenberg: Absent, Alan Zavodny (Mayor): Absent
Yea: 4, Nay: 0, Absent: 2

Council member Tom Kobus made a motion to advance to agenda items #21-#23 Consideration/Discussion of the rehabilitation of well #12, Consideration/Discussion of the replacement of High Service Pump #2, and Consideration/Discussion of the purchase of a Hydro Gas Meter (Hydrogen Sulfide Detector) for the influent pump station at the Wastewater Treatment Plant. Council Member Pat Meysenburg seconded the motion. The motion carried. Kevin Hotovy: Yea, Tom Kobus: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, John Vandenberg: Absent, Alan Zavodny (Mayor): Absent
Yea: 4, Nay: 0, Absent: 2

Interim Water Supervisor Aaron Gustin stated that well #12 rehabilitation needs to happen. It is the next well in rotation. He stated that he received an estimate from Sargent Drilling in the amount of \$22,017 for the rehabilitation of well #12.

Council member Tom Kobus made a motion to approve the estimate of Sargent Drilling to rehabilitate Well #12. Council Member Pat Meysenburg seconded the motion. The motion carried.
Kevin Hotovy: Yea, Tom Kobus: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, John Vandenberg: Absent, Alan Zavodny (Mayor): Absent
Yea: 4, Nay: 0, Absent: 2

The quote from Sargent Drilling for the rehabilitation of Well #12 is as follows:

PO Box 367
846 S 13th St.
Geneva, NE 68361



Phone: 402-759-3902
888-496-3902
Fax: 402-759-4960

*Providing Complete Municipal, Industrial and Agricultural
Pump and Well Service*

October 2, 2020

City of David City
PO Box 191
David City, NR 68632

Attn: Aaron Gustin

RE: Estimate for Well #12 Rehabilitation

| | |
|--|--------------------|
| Labor to pull and set pump | \$6,000.00 |
| 1- Video survey | \$1,214.00 |
| Sonar Jet well screen | \$2,928.00 |
| 1- Acid treatment | \$2,825.00 |
| 1- Sodium hypochlorite treatment | \$1,250.00 |
| Labor to surge, bail and test pump well | \$1,500.00 |
| Rebuild 6-stage 12CMC Goulds bowl assembly | \$5,250.00 |
| 10- Rolls pipe wrap | \$80.00 |
| Stainless steel banding | \$445.00 |
| Touch up paint for column pipe | \$525.00 |
| Total (does not include applicable sales tax) | \$22,017.00 |

NOTE: Any other repairs would be extra.

Please call 402-759-3902 with any questions.

Thank You,

A handwritten signature in black ink, appearing to read "Ivan Mumm".

Ivan Mumm,
Technician

IM/ah

Quote is good for 30 days

Interim Water Supervisor Aaron Gustin stated that the replacement of High Service Pump #2 was another item that was budgeted. He stated that it is 2 ½ years of age and needs to be replaced.

Council member Tom Kobus made a motion to approve the estimate of Sargent Drilling to replace High Service Pump #2. Council Member Pat Meysenburg seconded the motion. The motion carried.

Kevin Hotovy: Yea, Tom Kobus: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, John Vandenberg: Absent, Alan Zavodny (Mayor): Absent
Yea: 4, Nay: 0, Absent: 2

The quote from Sargent Drilling to replace High Service Pump #2 follows:

PO Box 367
846 S 13th St.
Geneva, NE 68361



Phone: 402-759-3902
888-496-3902
Fax: 402-759-4960

*Providing Complete Municipal, Industrial and Agricultural
Pump and Well Service*

October 14, 2020

City of David City
PO Box 191
David City, NE 68632

RE: Estimate for Water Treatment Plant Booster Pump Repair

| | |
|--|--------------------|
| 1- Aurora model 411 (NSF61) horizontal split case pump end only, low zinc, silicon bronze impeller, stainless steel case ring, stainless steel shaft sleeve and mechanical seals | \$26,733.33 |
| 1- 5" spool | \$320.00 |
| 3- Bolt and gasket kits | \$53.25 |
| Freight | \$416.67 |
| Labor to install | \$1,706.67 |
| Total (does not include applicable sales tax) | \$29,229.92 |

Please call with any questions.

Thank You,

A handwritten signature in black ink that reads "Keith Broman".

Keith Broman,
Technician

KB/ah

Quote is good for 30 days

Interim Water Supervisor Aaron Gustin stated that due to the tragedy in McCook, Nebraska, he tasked Broderick Hoeft with finding an alarm system that would monitor the Hydrogen Sulfide at the Wastewater Treatment Plant. Broderick Hoeft received two quotes and they would like to retain Hawkins to provide the Hydro Gas Meter in the amount of \$2,566.

Council member Tom Kobus made a motion to approve the purchase of a Hydro Gas Meter (Hydrogen Sulfide Detector) from Hawkins, Inc. for the influent pump station at the Wastewater Treatment Plant for a cost of \$2,566. Council Member Pat Meysenburg seconded the motion. The motion carried.

Kevin Hotovy: Yea, Tom Kobus: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, John Vandenberg: Absent, Alan Zavodny (Mayor): Absent
Yea: 4, Nay: 0, Absent: 2

October 15, 2020



WATER TREATMENT GROUP

Hawkins, Inc.
1066 Saltillo Road
Roca, NE 68430
Phone: (402) 420-0755
Fax: (402) 420-0756

Aaron,

Here is the quote that you requested for the gas alarm. The Hydro GA-180 is the alarm system that we carry. It comes with one 0-50 ppm H₂S sensor w/ 25 ft cable and a battery back-up. We can substitute a 0-200 ppm sensor if you decide you need a higher range. It is 4-20 compatible; you will just need to get your SCADA programmed and run wiring to it. Installation is included with cost, other than power/wiring. Additional sensors are \$727.14 each if you decide you need more. If you need anything else, please let me know. Thank you for the opportunity!

Hydro GA-180 Gas Alarm (Build #GA-180-000112111) including:

- 1 Hydrogen Sulfide Sensor, 0-50 ppm w/ 25' cable
- 1 Battery Back-Up
- Installation and Start-Up training provided by Hawkins

Price - \$2,566.20

Bret Moyer

Branch Manager
1066 Saltillo Rd.
Roca, NE 68430
Office: 402-420-0755
Cell: 515-326-0969
Email: Bret.Moyer@hawkinsinc.com



City Administrator Clayton Keller said, "This is the agreement for the fueling system at the airport. This has been approved by the FAA and Kirkham Michael has already signed it. All that is left is for us to approve it and sign it. I'll send it off to the FAA and we can get moving with the project. I'm pretty excited about this."

Council member Tom Kobus made a motion to approve the engineer's agreement with Kirkham Michael for a new aviation fueling system (Airport Improvement Program Project No. 3-31-0025-0013). Council Member Pat Meysenburg seconded the motion. The motion carried. Kevin Hotovy: Yea, Tom Kobus: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, John Vandenberg: Absent, Alan Zavodny (Mayor): Absent
Yea: 4, Nay: 0, Absent: 2

The agreement is attached as follows:

Airport Improvement Program (AIP) Project No. 3-31-0025-013
David City Municipal Airport
David City, Nebraska

THIS CONTRACT is made and entered into by and between the consulting firm of Kirkham Michael & Associates, Inc. of Omaha, 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 3 through 6 for the following project.

1. New above ground self-contained 100LL aviation fueling system;
2. Provide documentation and forecast information to verify tank size;
3. Include card reader;
4. The removal of all components of the existing system including the required soils testing by EPA/NDEQ will be completed by the Sponsor, at their expense; the items required for removal will not be included in this contract;
5. The Consultant will provide a preferred location of the new system that meet the requirements of building setbacks, and FAA Taxiway Object Free (TOFA) and Taxiway Safety Areas (TSA);
6. Provide Spill Prevention, Control and Countermeasure Plan (SPCC).

Rob Garber, P.E., will represent the Consultant as Project Engineer and Eric W. Johnson will represent the Consultant as Project Manager in the performance of this agreement. No one else will be assigned to act in these capacities 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: PRELIMINARY PHASE

"THIS PHASE NOT USED."

SECTION 3: 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. Project management and coordination. Coordinate with the Sponsor, the Nebraska Department of Transportation Divisions of Aeronautics (NDOT) and the Federal Aviation Administration (FAA) to provide

information on developments and decisions that are made concerning the project. Assist with preliminary project formulation and refinement of project scope. Prepare scope of services, including a detailed breakdown of tasks and costs.

Conduct a project kickoff meeting via teleconference with the Sponsor, the NDOT, and the FAA in accordance with AIP Sponsor Guide No. 910 *Predesign Conference*. Kirkham Michael shall prepare a summary of the meeting that highlights critical project issues.

- b. Finalize design criteria in accordance with FAA Advisory Circulars ARC and TDG. Submit a preliminary fuel layout and brief explanation of layout. Coordinate with FAA and NDOT to ensure acceptance.
- c. 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. At a minimum, the Engineer's Design Report will include the following items in accordance with FAA AIP Sponsor Guide No. 920 Engineer's Report:
 - General Scope of Project
 - Photographs
 - Design Standards
 - Airport Operational Safety
 - Site Conditions
 - Material Available
 - Environmental Considerations (Drainage)
 - Underground Utility Lines in Work Areas
 - Miscellaneous Work Items
 - Application of Life Cycle Cost Analysis (as applicable)
 - FAA Owned Facilities
 - Non-AIP Work
 - Engineers Estimate
 - Project Schedule
 - Project Budget
 - Sponsor Modifications to Design or Construction Standards
 - Disadvantaged Business Enterprise (DBE) Participation
 - Pre-design Meeting Minutes
- d. Present the preliminary results and recommendations at a meeting at the Sponsor's location and via teleconference with the FAA and NDOT. Applicable comments will be incorporated into the final plans and specifications.
- e. Provide coordination with State Fire Marshalls office.
- f. Provide topographic surveying for completing final design. This will include elevations and measurements of the proposed improvement area. The topographic survey will not be in accordance with AC 150/5300-18B which is for surveying runways.
- g. Prepare and submit a Construction Safety and Phasing Plan (CSPP) in accordance with current Advisory Circular (AC) 150/5370-2.
- h. Conduct a plan-in-hand on-site visit at the Airport to review preliminary project plans, specifications, and Engineer's Report prior to submittal. This meeting will include the Airport Authority, Airport Manager, and FAA/NDOT if able to attend, to verify all improvements are completed and shown on the plans.

- i. The consultant agrees to follow the FAA AIP Sponsor Guides (current as of the contract date) numbered below:
 - FAA/AIP Sponsor Guide No. 910 - Predesign Conference
 - FAA AIP Sponsor Guide No. 920 - Engineer's Report
 - FAA AIP Sponsor Guide No. 930 - Plans & Specifications
 - FAA AIP Sponsor Guide No. 940 - Regional Approved Modifications to AC 150/5370-10
 - FAA AIP Sponsor Guide No. 950 - Sponsor Modifications of FAA Standards
 - FAA AIP Sponsor Guide No. 951 - Use of State Standards
 - FAA AIP Sponsor Guide No. 960 - Operational Safety on Airport During Construction
- j. Perform Quality Control review of the above documents by a senior airport engineer prior to submittal to Sponsor, NDOT, and FAA.
- k. Submit plans, specifications, contract documents, and Engineer's Design Report. The 90% plans, specifications, contract documents, and Engineer's Design Report will be submitted to the FAA with 1 full-size and 1 half-size set of plans. The detailed plans, specifications, contract documents, and Engineer's Design Report will be submitted to the FAA (2 copies) for review within 70 days of this agreement. Submit final plans, specifications, contract documents, and Engineer's Design Report within 30 days of receipt of comments from the NDOT and FAA. As-advertised Engineer's Report, contract documents, specifications, half-size plans, and the response to comments will be submitted to the FAA. A PDF copy of all deliverables will be provided to the NDOT and FAA.
- l. Prepare and submit electronically FAA Form 7460-1 for the airspace analysis for the new fuel system, haul routes, and staging area that coincide with submittal of the Construction Safety and Phasing Plan.

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 4: 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 the Sponsor, plan rooms and www.QuestCDN.com for advertising and bidding. Copies of the documents will be furnished to prospective bidders at a cost fixed by Kirkham Michael. Kirkham Michael shall perform in accordance with AIP Sponsor Guide No. 1010 *Bidding*.
- b. Mail and/or email Notices to potential bidders and plan rooms. Contact contractors as needed to promote general interest in the project. Maintain a planholders list.
- c. Answer questions raised during the bidding process.
- d. Issue addenda as required.

- e. Attend the bid opening at the Sponsor's location.
- f. Tabulate and analyze bid results.
- g. Review bidder's qualifications. Evaluate bidders' compliance with Buy American Certification and DBE participation requirements.
- h. Furnish a written recommendation to the Sponsor regarding the award of the construction contract. The recommendation will include:
 - 1. Bid date
 - 2. Summarized bid table
 - 3. Evaluation of unit price extensions and total base bid, including an error check
 - 4. Addendums and acknowledgements
 - 5. Additional insured cost, if any
 - 6. DBE utilization, DBE letter of intent, DBE goal, and good faith effort (GFE) (if any) review for compliance with Sponsor's DBE program requirements
 - 7. Buy American compliance
 - 8. Confirmation of bidder's signature on proposal form
 - 9. Bid guarantee
 - 10. Pre-qualification requirements
 - 11. Pre-bid meeting (if any)
 - 12. Review of qualifications
 - 13. Debarment list verification
 - 14. Provide list of subcontractors
 - 15. Recommendation to award
- i. Conduct one teleconference to present bids to the Sponsor.
- j. Assist the Sponsor with the submission of documents necessary to obtain construction contract approval in accordance with AIP Sponsor Guide No. 1020 *Contract Award*, except that the Sponsor Certification will be prepared and submitted by the NDOT.
- k. After FAA's and Sponsor's approvals, 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, NDOT, Sponsor, and Contractor. A PDF copy of all deliverables will be provided.

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

SECTION 5: CONSTRUCTION PHASE
(INCLUDES OBSERVATION)

Based on estimated 40 Working Days (Estimated Construction Contract Time)

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

- a. Project Administration. Provide general consultation and technical assistance to the Sponsor during all construction phases. Coordinate with the Sponsor, NDOT, and FAA to ensure all parties have timely information on developments and decisions that are made concerning the project. Provide 5 sets of plans and

specifications to the Construction Contractor for their use.

- b. Prepare and submit Quarterly Performance Reports.
- c. Assign a Project Engineer to the project who will periodically perform Construction observation of the work in progress. It is estimated that the Project Engineer will make 3 site visits: 1 visit prior to the start of installation, 1 visit during installation, and 1 towards the end.
- d. Review shop drawings and all materials data submitted by construction contractors for general compliance with design concepts and Buy American provisions. Kirkham Michaels review of such information is not a guarantee of suitability, does not relieve the Contractor of any of its responsibilities, and the Contractor shall remain solely responsible and liable for the quality and completion of the Project in compliance with contract documents.
- e. Conduct a preconstruction conference per AIP Sponsor Guide No. 1040 *Preconstruction Conference*. Submit a formal report of the conference discussions.
- f. Upon receipt of NDOT, FAA, and Sponsor authorization, issue the Notice to Proceed to the Construction Contractor. NDOT and FAA authorization will not be issued until all conditions are met in accordance with AIP Sponsor Guide No. 1050 *Notice to Proceed*.
- g. Provide part-time on-site Construction Observation in accordance with Sponsor Guide No. 1070 *Inspections for Development Projects*. A Construction Management Program (CMP) under Guide No 1030 will not be prepared for this project.
- h. Submit weekly FAA Form 5370-1 "Construction Progress and Inspection Reports" and testing reports to the Sponsor, NDOT, and FAA.
- i. Provide a weekly photo log with the Construction Reports for each week that the contractor is on-site from the start of construction until substantial completion.
- j. Monitor compliance with Davis-Bacon requirements, DBE requirements, and E.E.O requirements per AIP Sponsor Guide No. *Labor Provisions: Development Projects* and Guide No. 1073 *Monitoring Labor and Civil Rights Requirements Development Projects*. Provide Davis-Bacon compliance documentation to Sponsor during the project close-out.
- k. Prepare and negotiate construction contract modifications, change orders, and supplemental agreements, per AIP Sponsor Guide No. 1080 *Contract Modifications*.
- l. Review amounts owed to construction contractors and prepare progress estimate forms certified by construction contractor(s).
- m. Arrange and conduct final walk-through with Sponsor and Construction Contractor. Prepare punch list and monitor completion of punch list items.
- n. Arrange and attend final inspection.

SECTION 5A: CLOSE-OUT PHASE

Under this phase the Consultant agrees to perform the following services for final close-out documents which, shall be provided to NDOT and FAA within 90 days of the final acceptance date (per FAA AIP Sponsor Guide No. 1610-

Development Project Closeout) and prior to the consultant's final pay request.

1. Sponsor Certification for Final Acceptance
2. Final Inspection Report Form 5100-17 - prepared by NDOT
3. Final Outlay Report (SF-271) – prepared by NDOT
4. Final Federal Financial Report (SF-425) – prepared by NDOT
5. Final Project Cost Summary – prepared by NDOT
6. Summary of DBE Utilization – to be included in the Final Construction Report
7. Final Construction Report – one copy and a pdf each to Sponsor, NDOT, and FAA
8. As-built Drawings – provide one full-sized set to NDOT; include half-sized set in Final Report and provide in pdf format.
9. As-built Airport Layout Plan – will be completed
10. 5010 data update to reflect the new fuel system prepared by NDOT

SECTION 6: SPECIAL SERVICES

Under this phase, services not listed in Sections 3 through 6 can only be added by supplemental agreement to this contract.

SECTION 7: FEES AND CHARGES

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

Section 2: Preliminary Phase. "THIS PHASE NOT USED."

Section 3: Design Phase. Payment for the items included in Section 3 Design Phase shall be made based on direct salary, overhead costs, and reimbursable expenses incurred plus a fixed payment of \$3,640.59 and subcontract costs. The schedule of charges and reimbursable expenses is Exhibit A 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 3 will not be greater than the "Not-to-Exceed" (NTE) amount of \$34,092.86. If the scope of services is increased, then 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. Payment shall be due according to the following payment schedule:

"A 25% retainage of the total payment will be withheld until after plans and specifications are approved."

Section 4: Bidding Phase. Payment for the items included in Section 4 Bidding Phase shall be made based on direct salary, overhead costs, and reimbursable expenses incurred plus a fixed payment of \$763.16 and subcontract costs. The schedule of charges and reimbursable expenses is Exhibit B 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 \$ 7,122.82. If the scope of services is increased then, 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.

"85% when bids received;
15% when item e in Section 4: Bidding Phase is completed."

Section 5: Construction Phase. Payment for the items included in Section 5 Construction Phase shall be made based on direct salary, overhead costs, and reimbursable expenses incurred plus a fixed payment of \$3,097.84 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 5 will not be greater than the "Not-to-Exceed" (NTE) amount of \$30,895.67 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 construction contract time is exceeded or the scope of services is increased, then 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.

Section 5A: Close Out Phase. Payment for the items included in Section 5A Close Out Phase shall be the lump sum of \$7,134.13 shown on Exhibit D, attached and made a part hereto. Payment shall be due according to the following payment schedule:

"Payment shall be due when the final close-out documents are accepted and approved by FAA and NDOT."

Section 6: Special Services. If Special Services are added during 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.

Section 7: 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.

Federal Contract Provisions dated November 12, 2019, are attached to this Agreement and shall be considered incorporated and be an integral part of this agreement.

FEDERAL CONTRACT PROVISIONS FOR A/E AGREEMENTS

ALL REFERENCES MADE HEREIN TO "CONTRACTOR", "PRIME CONTRACTOR", "BIDDER", "OFFEROR", AND "APPLICANT" SHALL PERTAIN TO THE ARCHITECT/ENGINEER (A/E).

ALL REFERENCES MADE HEREIN TO "SUBCONTRACTOR", "SUB-TIER CONTRACTOR" OR "LOWER TIER CONTRACTOR" SHALL PERTAIN TO ANY SUBCONSULTANT UNDER CONTRACT WITH THE A/E.

ALL REFERENCES MADE HEREIN TO "SPONSOR" AND "OWNER" SHALL PERTAIN TO THE STATE, CITY, AIRPORT AUTHORITY OR OTHER PUBLIC ENTITY EXECUTING CONTRACTS WITH THE A/E.

ACCESS TO RECORDS AND REPORTS

Reference: 2 CFR § 200.333, 2 CFR § 200.336, and FAA Order 5100.38

The contractor must maintain an acceptable cost accounting system. The contractor agrees to provide the Sponsor, the Federal Aviation Administration, and the Comptroller General of the United States or any of their duly authorized representatives access to any books, documents, papers, and records of the contractor which are directly pertinent to the specific contract for the purpose of making audit, examination, excerpts and transcriptions. The contractor agrees to maintain all books, records and reports required under this contract for a period of not less than three years after final payment is made and all pending matters are closed.

CIVIL RIGHTS – GENERAL

Reference: 49 USC § 47123

The contractor agrees that it will comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance.

This provision binds the contractor and sub-tier contractors from the bid solicitation period through the completion of the contract. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

CIVIL RIGHTS – TITLE VI ASSURANCE

Reference: 49 USC § 47123 and FAA Order 1400.11

A) Title VI Solicitation Notice

The David City Municipal Airport, David City, Nebraska, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

B) Title VI Clauses for Compliance with Nondiscrimination Requirements

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

- 1) **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they maybe amended from time to time, which are herein incorporated by reference and made a part of this contract.
- 2) **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
- 3) **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.
- 4) **Information and Reports:** The contractor will provide all information and reports required by the Nondiscrimination Acts and Authorities, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
- 5) **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
 - a. Withholding payments to the contractor under the contract until the contractor complies; and/or
 - b. Cancelling, terminating, or suspending a contract, in whole or in part.
- 6) **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Nondiscrimination Acts and Authorities, and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

C) Title VI List of Pertinent Nondiscrimination Authorities

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination in Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

DISADVANTAGED BUSINESS ENTERPRISE

Reference: 49 CFR part 26

Contract Assurance (§ 26.13) - 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 carryout 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.

Prompt Payment (§26.29) - The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than thirty (30) calendar days from the receipt of each payment the prime contractor receives from the Sponsor. The prime contractor agrees further to return retainage payments to each subcontractor within thirty (30) calendar 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.

CERTIFICATION OF OFFERER/BIDDER REGARDING TAX DELINQUENCY AND FELONY CONVICTIONS

The applicant must complete the following two certification statements. The applicant must indicate its current status as it relates to tax delinquency and felony conviction by inserting a checkmark (☑) in the space following the applicable response. The applicant agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification in all lower tier subcontracts.

Certifications

- 1) The applicant represents that it is () is not () a corporation that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.
- 2) The applicant represents that it is () is not () is not a corporation that was convicted of a criminal violation under any Federal law within the preceding 24 months.

ENERGY CONSERVATION REQUIREMENTS

Reference: 2 CFR § 200, Appendix II (H)

Contractor and each subcontractor agree to comply with mandatory standards and policies relating to energy efficiency as contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201 et seq).

FEDERAL FAIR LABOR STANDARDS ACT (FEDERAL MINIMUM WAGE)

Reference: 29 USC § 201, et seq.

All contracts and subcontracts that result from this solicitation incorporate by reference the provisions of 29 CFR part 201, the Federal Fair Labor Standards Act (FLSA), with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part time workers.

The Consultant has full responsibility to monitor compliance to the referenced statute or regulation. The Consultant must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Wage and Hour Division.

OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970

Reference: 20 CFR part 1910

All contracts and subcontracts that result from this solicitation incorporate by reference the requirements of 29 CFR Part 1910 with the same force and effect as if given in full text. Contractor must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. The Contractor retains full responsibility to monitor its compliance and their subcontractor's compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (20 CFR Part 1910). Contractor must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.

RIGHT TO INVENTIONS

Reference: 2 CFR § 200 Appendix II (F) and 37 CFR §401

Contracts or agreements that include the performance of experimental, developmental, or research work must provide for the rights of the Federal Government and the Owner in any resulting invention as established by 37 CFR part 401, Rights to Inventions Made by Non-profit Organizations and Small Business Firms under Government Grants, Contracts, and Cooperative Agreements. This contract incorporates by reference the patent and inventions rights as specified within in the 37 CFR §401.14. Contractor must include this requirement in all sub-tier contracts involving experimental, developmental or research work.

SEISMIC SAFETY

Reference: 49 CFR part 41

In the performance of design services, the Consultant agrees to furnish a building design and associated construction specification that conform to a building code standard which provides a level of seismic safety substantially equivalent to standards as established by the National Earthquake Hazards Reduction Program (NEHRP). Local building codes that model their building code after the current version of the International Building Code (IBC) meet the NEHRP equivalency level for seismic safety. At the conclusion of the design services, the Consultant agrees to furnish the Owner a "certification of compliance" that attests conformance of the building design and the construction specifications with the seismic standards of NEHRP or an equivalent building code.

TAX DELINQUENCY AND FELONY CONVICTION

Reference: Sections 415 and 416 of Title IV, Division L of the Consolidated Appropriations Act, 2014 (Pub. L. 113-76) and DOT Order 4200.6

Certification - The applicant represents that it is not a corporation that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability. A tax delinquency is any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.

Certification - The applicant represents that it is not a corporation that was convicted of a criminal violation under any Federal law within the preceding 24 months. A felony conviction means a conviction within the preceding twenty four (24) months of a felony criminal violation under any Federal law and includes

conviction of an offense defined in a section of the U.S. code that specifically classifies the offense as a felony and conviction of an offense that is classified as a felony under 18 U.S.C. § 3559.

TRADE RESTRICTION CERTIFICATION

Reference: 49 USC § 50104 and 49 CFR part 30

By submission of an offer, the Offeror certifies that with respect to this solicitation and any resultant contract, the Offeror:

- a) is not owned or controlled by one or more citizens of a foreign country included in the list of countries that discriminate against U.S. firms as published by the Office of the United States Trade Representative (U.S.T.R.);
- b) has not knowingly entered into any contract or subcontract for this project with a person that is a citizen or national of a foreign country included on the list of countries that discriminate against U.S. firms as published by the U.S.T.R; and
- c) has not entered into any subcontract for any product to be used on the Federal on the project that is produced in a foreign country included on the list of countries that discriminate against U.S. firms published by the U.S.T.R.

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.

The Offeror/Contractor must provide immediate written notice to the Owner if the Offeror/Contractor learns that its certification or that of a subcontractor was erroneous when submitted or has become erroneous by reason of changed circumstances. The Contractor must require subcontractors provide immediate written notice to the Contractor if at any time it learns that its certification was erroneous by reason of changed circumstances.

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 an Offeror or subcontractor:

- a) who is owned or controlled by one or more citizens or nationals of a foreign country included on the list of countries that discriminate against U.S. firms published by the U.S.T.R. or
- b) whose subcontractors are owned or controlled by one or more citizens or nationals of a foreign country on such U.S.T.R. list or
- c) who incorporates in the public works project any product of a foreign country on such U.S.T.R. list;

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.

The Offeror agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification without modification in all lower tier subcontracts. The contractor may rely on the certification of a prospective subcontractor that it is not a firm from a foreign country included on the list of countries that discriminate against U.S. firms as published by U.S.T.R, unless the Offeror has knowledge that the certification is erroneous.

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

VETERAN'S PREFERENCE

Reference: 49 USC § 47112(c)

In the employment of labor (excluding executive, administrative, and supervisory positions), the contractor and all sub-tier contractors must give preference to covered veterans as defined within Title 49 United States Code Section 47112. Covered veterans include Vietnam-era veterans, Persian Gulf veterans, Afghanistan-Iraq war veterans, disabled veterans, and small business concerns (as defined by 15 U.S.C. 632) owned and controlled by disabled veterans. This preference only applies when there are covered veterans readily available and qualified to perform the work to which the employment relates.

PROVISIONS APPLICABLE TO CONTRACTS EXCEEDING\$3,500

DISTRACTED DRIVING

Reference: Executive Order 13513 and DOT Order 3902.10

In accordance with Executive Order 13513, "Federal Leadership on Reducing Text Messaging While Driving" (10/1/2009) and DOT Order 3902.10 "Text Messaging While Driving" (12/30/2009), the FAA encourages recipients of Federal grant funds to adopt and enforce safety policies that decrease crashes by distracted drivers, including policies to ban text messaging while driving when performing work related to a grant or sub-grant.

In support of this initiative, the Owner encourages the Contractor to promote policies and initiatives for its employees and other work personnel that decrease crashes by distracted drivers, including policies that ban text messaging while driving motor vehicles while performing work activities associated with the project. The Contractor must include the substance of this clause in all sub-tier contracts exceeding \$3,500 and involve driving a motor vehicle in performance of work activities associated with the project.

PROVISIONS APPLICABLE TO CONTRACTS EXCEEDING\$10,000

TERMINATION OF CONTRACT

Reference: 2 CFR § 200 Appendix II (B)

Termination for Convenience

The Owner may, by written notice to the Consultant, terminate this Agreement for its convenience and without cause or default on the part of Consultant. Upon receipt of the notice of termination, except as explicitly directed by the Owner, the Contractor must immediately discontinue all services affected.

Upon termination of the Agreement, the Consultant must deliver to the Owner all data, surveys, models, drawings, specifications, reports, maps, photographs, estimates, summaries, and other documents and materials prepared by the Engineer under this contract, whether complete or partially complete.

Owner agrees to make just and equitable compensation to the Consultant for satisfactory work completed up through the date the Consultant receives the termination notice. Compensation will not include anticipated profit on non-performed services.

Owner further agrees to hold Consultant harmless for errors or omissions in documents that are incomplete as a result of the termination action under this clause.

Termination by Default

Either party may terminate this Agreement for cause if the other party fails to fulfill its obligations that are essential to the completion of the work per the terms and conditions of the Agreement. The party initiating

the termination action must allow the breaching party an opportunity to dispute or cure the breach.

The terminating party must provide the breaching party [7] days advance written notice of its intent to terminate the Agreement. The notice must specify the nature and extent of the breach, the conditions necessary to cure the breach, and the effective date of the termination action. The rights and remedies in this clause are in addition to any other rights and remedies provided by law or under this agreement.

- a) Termination by Owner: The Owner may terminate this Agreement in whole or in part, for the failure of the Consultant to:
- 1) Perform the services within the time specified in this contract or by Owner approved extension;
 - 2) Make adequate progress so as to endanger satisfactory performance of the Project;
 - 3) Fulfill the obligations of the Agreement that are essential to the completion of the Project.

Upon receipt of the notice of termination, the Consultant must immediately discontinue all services affected unless the notice directs otherwise. Upon termination of the Agreement, the Consultant must deliver to the Owner all data, surveys, models, drawings, specifications, reports, maps, photographs, estimates, summaries, and other documents and materials prepared by the Engineer under this contract, whether complete or partially complete.

Owner agrees to make just and equitable compensation to the Consultant for satisfactory work completed up through the date the Consultant receives the termination notice. Compensation will not include anticipated profit on non-performed services.

Owner further agrees to hold Consultant harmless for errors or omissions in documents that are incomplete as a result of the termination action under this clause.

If, after finalization of the termination action, the Owner determines the Consultant was not in default of the Agreement, the rights and obligations of the parties shall be the same as if the Owner issued the termination for the convenience of the Owner.

- b) Termination by Consultant: The Consultant may terminate this Agreement in whole or in part, if the Owner:
- 1) Defaults on its obligations under this Agreement;
 - 2) Fails to make payment to the Consultant in accordance with the terms of this Agreement;
 - 3) Suspends the Project for more than [180] days due to reasons beyond the control of the Consultant.

Upon receipt of a notice of termination from the Consultant, Owner agrees to cooperate with Consultant for the purpose of terminating the agreement or portion thereof, by mutual consent. If Owner and Consultant cannot reach mutual agreement on the termination settlement, the Consultant may, without prejudice to any rights and remedies it may have, proceed with terminating all or parts of this Agreement based upon the Owner's breach of the contract.

In the event of termination due to Owner breach, the Engineer is entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all justified reimbursable expenses incurred by the Consultant through the effective date of termination action. Owner agrees to hold Consultant harmless for errors or omissions in documents that are incomplete as a result of the termination action under this clause.

PROVISIONS APPLICABLE TO CONTRACTS EXCEEDING \$25,000

DEBARMENT AND SUSPENSION

Reference: 2 CFR part 180 (Subpart C), 2 CFR part 1200, and DOT Order 4200.5

By submitting a bid/proposal under this solicitation, the bidder or offeror certifies that at the time the bidder or offeror submits its proposal that neither it nor its principals are presently debarred or suspended by any Federal department or agency from participation in this transaction.

The successful bidder, by administering each lower tier subcontract that exceeds \$25,000 as a "covered transaction", must verify each lower tier participant of a "covered transaction" under the project is not presently debarred or otherwise disqualified from participation in this federally assisted project. The successful bidder will accomplish this by:

- 1) Checking the System for Award Management at website: <https://www.sam.gov>.
- 2) Collecting a certification statement similar to the Certificate Regarding Debarment and Suspension (Bidder or Offeror), above.
- 3) Inserting a clause or condition in the covered transaction with the lower tier contract

If the FAA later determines that a lower tier participant failed to tell a higher tier that it was excluded or disqualified at the time it entered the covered transaction, the FAA may pursue any available remedy, including suspension and debarment.

PROVISIONS APPLICABLE TO CONTRACTS EXCEEDING \$100,000

CONTRACT WORKHOURS AND SAFETY STANDARDS ACT REQUIREMENTS

Reference: 2 CFR § 200 Appendix II (E)

1) Overtime Requirements.

No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic, including watchmen and guards, in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

2) Violation; Liability for Unpaid Wages; Liquidated Damages.

In the event of any violation of the clause set forth in paragraph (1) above, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph 1 above, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph 1 above.

3) Withholding for Unpaid Wages and Liquidated Damages.

The Federal Aviation Administration or the Sponsor shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any monies payable on account of work performed by the contractor or subcontractor under any such contract or any

other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph 2 above.

4) Subcontractors.

The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs 1 through 4 and also a clause requiring the subcontractor to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs 1 through 4 of this section.

LOBBYING AND INFLUENCING FEDERAL EMPLOYEES

Reference: 31 U.S.C. § 1352 – Byrd Anti-Lobbying Amendment; 2 CFR part 200, Appendix II (J); and 49 CFR part 20, Appendix A

The bidder or offeror certifies by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

- 1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the Bidder or Offeror, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- 2) 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 this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- 3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

ROVISIONS APPLICABLE TO CONTRACTS EXCEEDING \$150,000

BREACH OF CONTRACT TERMS

Reference: 2 CFR § 200 Appendix II (A)

Any violation or breach of terms of this contract on the part of the contractor or its subcontractors may result in the suspension or termination of this contract or such other action that may be necessary to enforce the rights of the parties of this agreement.

The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder are in addition to, and not a limitation of, any duties, obligations, rights and remedies otherwise imposed or available by law.

CLEAN AIR AND WATER POLLUTION CONTROL

Reference: 2 CFR § 200 Appendix II (G)

Contractor agrees to comply with all applicable standards, orders, and regulations issued pursuant to the Clean Air Act (42 U.S.C. § 740-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. § 1251-1387). The Contractor agrees to report any violation to the Owner immediately upon discovery. The Owner assumes responsibility for notifying the Environmental Protection Agency (EPA) and the Federal Aviation Administration.

Contractor must include this requirement in all subcontracts that exceeds \$150,000.

Kirkham Michael

**Exhibit A
 Design Phase
 David City Municipal
 New Aviation Fuel System
 AIP 3-31-0025-013**

Item No. 1 - Direct Salary Costs

| Title | Hours | Direct Salary Rate/Hour | Costs |
|----------------------|-------|----------------------------|---|
| Principal | | \$91.35 | \$ - |
| Sr. Project Engineer | 2 | \$88.95 | \$ 177.90 |
| Project Manager | 30 | \$56.73 | \$ 1,701.90 |
| Project Engineer | 65 | \$45.92 | \$ 2,984.80 |
| CADD Tech. | 100 | \$34.75 | \$ 3,475.00 |
| Survey Manager | 8 | \$67.31 | \$ 538.48 |
| Asst. Engineer | 10 | \$33.50 | \$ 335.00 |
| Party Chief | 30 | \$34.75 | \$ 1,042.50 |
| Clerical | 20 | \$25.00 | \$ 500.00 |
| | 265 | | Total Direct Salary \$ 10,755.58 |

Item No. 2 - Labor and General & Administrative Overhead

| | | |
|-----------------------------------|---------|--------------|
| Percentage of Direct Salary Costs | 182.07% | \$ 19,582.68 |
|-----------------------------------|---------|--------------|

Item No 3 - Subtotal of Items 1 & 2 \$ 30,338.26

Item No. 4 - Fixed Fee: 12% of Item 3 \$ 3,640.59

Item No. 5 - Direct Non-Salary Expenses

| | | | |
|----------|-----|----------------------------------|------------------|
| Travel | 200 | \$0.57 | \$ 114.00 |
| Meals | | \$27.50 | \$ - |
| Hotel | | \$110.00 | \$ - |
| Printing | | \$400.00 | \$ - |
| | | Total Non-Salary Expenses | \$ 114.00 |

Item No. 6 - Subconsultants

| | |
|------------|------|
| Total Subs | \$ - |
|------------|------|

Item No. 7 - hourly not to exceed 3, 4, 5 & 6 \$ 34,092.86

Kirkham Michael

**Exhibit D
 Close Out Phase
 David City Municipal
 New Aviation Fuel System
 AIP 3-31-0025-013**

Item No. 1 - Direct Salary Costs

| Title | Hours | Direct Salary Rate/Hour | Costs |
|----------------------|-------|----------------------------|--------------------|
| Principal | | \$91.35 | \$ - |
| Sr. Project Engineer | | \$88.95 | \$ - |
| Project Manager | 4 | \$56.73 | \$ 226.92 |
| Project Engineer | 15 | \$45.92 | \$ 688.80 |
| CADD | 30 | \$34.75 | \$ 1,042.50 |
| Eng tech | | \$67.31 | \$ - |
| Observer | | \$33.50 | \$ - |
| Party Chief | | \$34.75 | \$ - |
| Clerical | 12 | \$25.00 | \$ 300.00 |
| | 61 | Total Direct Salary | \$ 2,258.22 |

Item No. 2 - Labor and General & Administrative Overhead

| | | |
|-----------------------------------|---------|--------------------|
| Percentage of Direct Salary Costs | 182.07% | \$ 4,111.54 |
|-----------------------------------|---------|--------------------|

Item No 3 - Subtotal of Items 1 & 2 **\$ 6,369.76**

Item No. 4 - Fixed Fee: 12% of Item 3 **\$ 764.37**

Item No. 5 - Direct Non-Salary Expenses

| | | | |
|--------|---|----------------------------------|-------------|
| Travel | 0 | \$0.57 | \$ - |
| Meals | 0 | \$12.00 | \$ - |
| Hotel | 0 | \$110.00 | \$ - |
| | | Total Non-Salary Expenses | \$ - |

Item No. 6 - Subconsultants

| | |
|------------|-------------|
| Total Subs | \$ - |
|------------|-------------|

Item No. 7 - Total Lump Sum 3, 4, 5 & 6 **\$ 7,134.13**

Kirkham Michael & Associates, Inc.
 Statement of Direct Labor, Fringe Benefits and General Overhead
 For the Year Ended November 30, 2019

| Description | General Ledger Balance | Portion Unallowable | FAR Ref. | Total Proposed |
|--|------------------------|----------------------|----------|------------------------|
| Direct Labor | <u>\$ 3,702,391.91</u> | <u>\$ -</u> | | <u>\$ 3,702,391.91</u> |
| Fringe Benefits | | | | |
| Vacation/Sick/Holiday | \$ 515,665.83 | \$ - | | \$ 515,665.83 |
| Payroll Taxes | 473,430.81 | 6,431.98 | (m) | 466,998.83 |
| Group Insurance | 867,098.36 | | | 867,098.36 |
| Pension | 491,541.19 | 52,799.77 | (a) | 438,741.42 |
| Employee Welfare | 52,090.93 | 26,158.46 | (b) | 25,932.47 |
| Total Fringe Benefits | <u>\$ 2,399,827.12</u> | <u>\$ 85,390.21</u> | | <u>\$ 2,314,436.91</u> |
| General Overhead | | | | |
| Indirect Labor | \$ 3,136,288.84 | \$ 496,605.09 | (c) | \$ 2,639,683.75 |
| Rent-Office | 343,894.12 | | | 343,894.12 |
| Utilities and Maintenance | 36,090.38 | | | 36,090.38 |
| Printing and Print Supplies | 19,475.57 | | | 19,475.57 |
| Supplies | 29,234.56 | | | 29,234.56 |
| Field Supplies and Equipment | 55,245.16 | | | 55,245.16 |
| Vehicle Expense | 98,738.01 | 457.04 | (d) | 98,281.97 |
| Postage and Shipping | 9,502.11 | | | 9,502.11 |
| Equipment Rent/Maintenance | 457,624.17 | | | 457,624.17 |
| Interest | 35,191.20 | 35,191.20 | (e) | - |
| Telephone | 85,443.22 | | | 85,443.22 |
| Business Insurance | 194,937.25 | | | 194,937.25 |
| Legal and Accounting Fees | 53,660.88 | 9,180.46 | (f) | 44,510.42 |
| Travel | 165,863.94 | 44,968.00 | (g) (b) | 120,895.94 |
| Dues, Fees and Subscriptions | 179,622.36 | 6,889.17 | (h) | 172,933.19 |
| Depreciation and Amortization | 106,664.61 | | | 106,664.61 |
| State Income and Personal Property Tax | 11,937.35 | | | 11,937.35 |
| Contributions | 5,470.00 | 5,470.00 | (i) | - |
| Key Person Life | 16,437.00 | 16,437.00 | (j) | - |
| Promotion | 57,027.04 | 57,027.04 | (k) | - |
| Federal Taxes | 1.00 | 1.00 | (l) | - |
| Total General Overhead | <u>\$ 5,088,559.77</u> | <u>\$ 672,226.00</u> | | <u>\$ 4,426,333.77</u> |
| Total Indirect Costs | <u>\$ 7,498,386.89</u> | <u>\$ 757,616.21</u> | | <u>\$ 6,740,770.68</u> |
| Percentage of Direct Labor | | | | 182.07% |

FAR References:

- (a) 31.205-6(q) - The value of the ESOP stock contribution is limited to the fair market value of the stock on the date that title is effectively transferred to the trust.
- (b) 31.205-14 - Entertainment costs for the purpose of employee relations are not allowed.
- (c) 31.205-6 - Reasonable compensation calculated
- (d) 31.205-6(m)(2) - Personal use of company vehicle costs are not allowed.
- (e) 31.205-20 - Interest and other financial costs are not allowed.
- (f) 31.205-19 - Cost to correct own defects are not allowed.
- (g) 31.205-61 - Alcoholic beverages costs are not allowed.
- (h) 31.205-22 - Lobbying and political activity costs are not allowed.
- (i) 31.205-8 - Contributions and donations are not allowed.
- (j) 31.205-19 - Key-Person life insurance cost not allowed when company is beneficiary.
- (k) 31.205-1 - Public relations and advertising costs are not allowed.
- (l) 31.205-4 - Federal income taxes are not allowed.
- (m) 31.201-8(a) When an unallowable cost is incurred, directly associated costs are also unallowable.

APPROVALS.

It is understood and agreed that this contract and any subcontracts or supplemental agreements are subject to approval by the Nebraska Department of Transportation Division 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 _____, 20__, with copies to be filed with the Nebraska Department of Transportation Division of Aeronautics and the Federal Aviation Administration.

CONSULTING FIRM
Kirkham, Michael & Associates, Inc.
12700 West Dodge Road
Omaha, Nebraska 68154-8030



ATTEST


Eric Johnson, VP

Title

AIRPORT SPONSOR
City of David City
557 North 4th Street
David City, Nebraska 68632

ATTEST

Title

City Administrator Clayton Keller said, "Union negotiations have been going on for about two years. I haven't been here the whole time. So, the City gave a final offer to the Union on September 22nd. As a Council, you guys would need to accept that final offer to say that, "Yes, this is what we would offer. I think it was two weeks ago today, September 30th, the Union filed with the Commission of Industrial Relations, basically saying, "we're not getting anywhere with these negotiations, we don't think that the City is giving us what we're demanding". So, they are going to take it to the State and the State now has the opportunity to decide what is fair, essentially. So, as we go through all of this, the State is going to come down and do a survey. We will need to do a survey and the Union will need to do a survey and the State will compare those and say "whatever we find as the middle ground, that's what has to happen, no budging, no more and no less". So, what that means is that either the employees could come back with getting more, or the employees could lose some of their benefits and their pay if we have been giving them too much. So, it could go one way or the other. That's just to give you a little bit of an idea of what could happen as we move forward with this. This wasn't our decision. We were hoping to reach an agreement with the Union, but they didn't like our offer, so that's why they took it to the CIR. So, these next few steps that you see in front of you on the agenda, the City needs to approve the City's final offer, and then we will reject the final offer from the Union because we're saying that we don't want what they offered because there were things in there that we were not willing to give up. We will retain the services of a professional surveyor to do our pay survey, or wage and benefit survey, for us."

Council President Hotovy said, "So, the first step in this would be consideration of accepting the City's final offer submitted on September 22, 2020 to the Local Union #1536 of the IBEW."

Council member Bruce Meysenburg made a motion to approve accepting the City's final offer submitted on September 22, 2020 to the Local Union #1536 of the IBEW. Council Member Tom Kobus seconded the motion. The motion failed.
Kevin Hotovy: Yea, Tom Kobus: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Nay, John Vandenberg: Absent, Alan Zavodny (Mayor): Absent
Yea: 3, Nay: 1, Absent: 2

Council member Tom Kobus made a motion to approve rejecting the final package offer of the Local Union #1536 of the IBEW submitted on September 30, 2020 to the City. Council Member Bruce Meysenburg seconded the motion. The motion carried.
Kevin Hotovy: Yea, Tom Kobus: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, John Vandenberg: Absent, Alan Zavodny (Mayor): Absent
Yea: 4, Nay: 0, Absent: 2

Council member Kevin Hotovy made a motion to approve retaining the services of Capital City Concepts LLC to conduct a wage and benefits survey. Council Member Tom Kobus seconded the motion. The motion carried.
Kevin Hotovy: Yea, Tom Kobus: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, John Vandenberg: Absent, Alan Zavodny (Mayor): Absent
Yea: 4, Nay: 0, Absent: 2

City Council Adviser Dana Trowbridge asked if he could make a point of order.

Council President Kevin Hotovy said, "Absolutely."

City Council Adviser Dana Trowbridge said, "The point of order question is for our Counsel, and that is agenda item number 8 failed, is that correct? Is that eligible for reconsideration before the night is over? I believe it to be if a person on the losing side asks for reconsideration, it can come up, but I want to check with you."

Acting City Attorney Joanna Uden said, "Let me doing some looking into our City Code quickly and I'll get you an answer."

City Administrator Clayton Keller said, "So, in that manila envelope that you have in front of you, Council President Hotovy, is the single bid that we received. To recap for everybody that is here tonight, the City put out a request for proposals for a contractor to install a cable system around downtown on the buildings. If you were here last year during the Hallmark event, you saw the lights on the buildings and that's what we're trying to do again. The lights were installed using adhesives and as you've seen around town, some of the adhesive has failed and the lights have fallen off. So, what the City would like to do is install a cable system on the rooftops of the buildings that allows us to hook the lights on permanently so that they don't fall off. These are really high-tech lights, a special kind of LED, to be honest, very, very, forward thinking and the electricity cost is very minimal. So, in order for us to have them on year-round would cost very little. We'd really like to have them on year-round. So, that's one of the reasons behind this cable system, so we can have the lights up every day. Now, in order to have a contractor do that, we had to go through the proposal process and we had to put out for bids and let all of the contractors who wanted to bid tell us that "this is what we would charge if you had us do the job." We did this back in July and no one bid, so we went and sought a contractor and they gave us a proposal, but it wasn't through the bid process and so we couldn't, technically, accept that proposal. So, now we had to go back and do another proposal process, and that's what this is. Today at five, we finished that process. Now, we have a sealed bid that hasn't been opened yet, so Council President Hotovy will open the bid. He'll let everyone know what the bid is and then they'll make a decision whether to accept or reject it and we can move forward on the project at that point."

Council President Hotovy said, "From Bierman Contracting, Inc., the cable system bid amount is No Bid, we are, however, providing a bid to install the Holiday Lights as listed in the alternative method below, the alternate bid amount is \$58,800."

City Administrator Clayton Keller said, "Would you like me to do a bit of explaining? So, this is the company that we sought out and they had the proposal from a couple of months ago. We weren't able to accept it at that time. That proposal was just above \$90,000, which was higher than what we anticipated and it was to do cables all around town. Between then and now, they have found a different way to attach the lights on the rooftops and it's not using cables, it's using these clips that they can use. Instead of drilling into the roof tops every thirty feet, they'll drill into the rooftops every two feet. They'll drill into the rooftop where the light is on a V-shaped clip fastener and the lights are actually shaped for this kind of fastener and so this is what these lights are meant for. Yes, it's more holes but it keeps each light on individually and it's thirty to forty thousand dollars cheaper."

Council member Kobus asked if anyone from the public had anything to say about the bid.

City Administrator Clayton Keller said, "I know that one of our concerns is the number of holes in the rooftops. I know that a lot of the business owners have had concerns about that. It

is a contractor doing the job and they will seal it and they do this all they time and that's what we expect from them. We'll be there with them going through the project and making sure that they are doing their due diligence. We'll do our due diligence. So, really the question is, are we ok with some more holes?"

Mayor Zavodny arrived at 7:21 p.m.

Council member Kobus asked if this could be voted on tonight.

City Administrator Clayton Keller said, "I would encourage a vote tonight. If we hold off any longer, there won't be time to finish before the Christmas season. We'd like to have the lights installed by December 1st."

Council member Tom Kobus made a motion to accept the alternate bid of Bierman Contracting to install a downtown lighting system using Parapet clips. Council Member Bruce Meysenburg seconded the motion. The motion carried.

Kevin Hotovy: Yea, Tom Kobus: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, John Vandenberg: Absent, Alan Zavodny (Mayor): Yea
Yea: 5, Nay: 0, Absent: 1



Phone:402-564-4749 • Fax:402-564-4658

P.O. Box 1887 • 2560 E 29th Ave.
Columbus, NE 68601

Proposal

October 14th, 2020

Customer:

The City of David City
Attention to: Clayton Keller
P.O. Box 191
557 North 4th Street
David City, NE 68632

Project: David City – Downtown Holiday Lighting Project
Location: David City, NE

Bierman Contracting, Inc. (BCI) is pleased to provide this proposal to assist with the David City Downtown Holiday Lighting Project. Our proposal has been prepared with reference to the request for proposal listed in the Banner Press dated October 1, 2020. Please contact us with any questions you may have. We look forward to the opportunity to work with you on this project.

☛ **Cable System**

At this time, with considering all of the circumstances involved we are electing to not place a bid for providing a cable system as outlined in the request for proposals. We are however, providing a bid for installing the holiday lights as listed in the alternative method below.

Cable System - Bid Amount-----No Bid

☛ **Alternative Method #1**

In lieu of providing a cable system, BCI would like to propose completing the following scope of work as outlined below. We believe this to be a versatile and cost-effective solution to providing a more permanent installation of the holiday lights.

Inclusions:

1. Bid amount is based on installing holiday lighting on approximately 7,500 lineal feet of building frontage.
2. Lighting to be installed are bulbs as shown in exhibit A at approximately 18 to 24 inches on center along the tops of parapet walls or eaves of building frontage. Lights will follow roof lines as directed by the owner.
3. Where building owners consent, mechanically fastened clips as shown in exhibit B would be installed at each light bulb. This would achieve a more permanent connection point for the lights, but would also allow for lights to be easily removed and re-installed as each owner prefers. Lights will be able to be removed and reinstalled by sliding the shingle tab in or out of the mechanically fastened clip, leaving the clip permanently installed. At each mechanically fastened clip we would install a bed of butyl sealant for added leak protection. Clips would be fastened with (2) stainless steel fasteners suitable for each particular substrate.
4. Where building owners will not allow mechanically fastened clips, lights would be installed with an adhesive. It should be noted that we cannot guarantee any longevity of the installation with adhesives. Good faith effort will be made to use a compatible adhesive with each substrate.

Exclusions:

1. The holiday light material (specifically the cords, lights, and shingle tabs) are to be provided and delivered to the site by others. It is our understanding that the lights are all labeled, operable, and ready to be installed at specific locations. Going back to replace bulbs would be considered additional work beyond the bid amount.
2. Removing any lights after the holiday season or reinstalling lights beyond the 2020 holiday season.
3. Electrical connections or power to the lights. This will need to be provided by others.

Alternative Method #1 - Bid Amount -----\$ 58,800.00

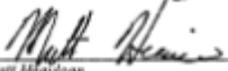
General Bid Clarifications:

1. The contract agreement for this project which must include this proposal being signed and providing a 10% down payment must be submitted to BCI no later than October 20th, 2020 in order to meet the requested completion date.
2. The city of David City will be listed as additional insured under BCI general liability policy for the duration of the project. However, BCI will not be held responsible for any roof leak claims, damaged, or inoperable lights after the project has been completed.
3. We will need to block off sections of sidewalk and parking spaces when completing this work. Barricades to be provided by BCI as required.

Terms of Payment:

10% down payment required for mobilization and initial material costs. After that, contractor to invoice at the 1st of each month on the work completed. Net due 15 days after receipt of invoice.

Respectfully submitted,
Bierman Contracting, Inc.



Matt Heavison
Date
10-16-2020

Please sign and date for acceptance:



Signed
Date
15 October 2020

This proposal is valid for 15 days

Exhibit A

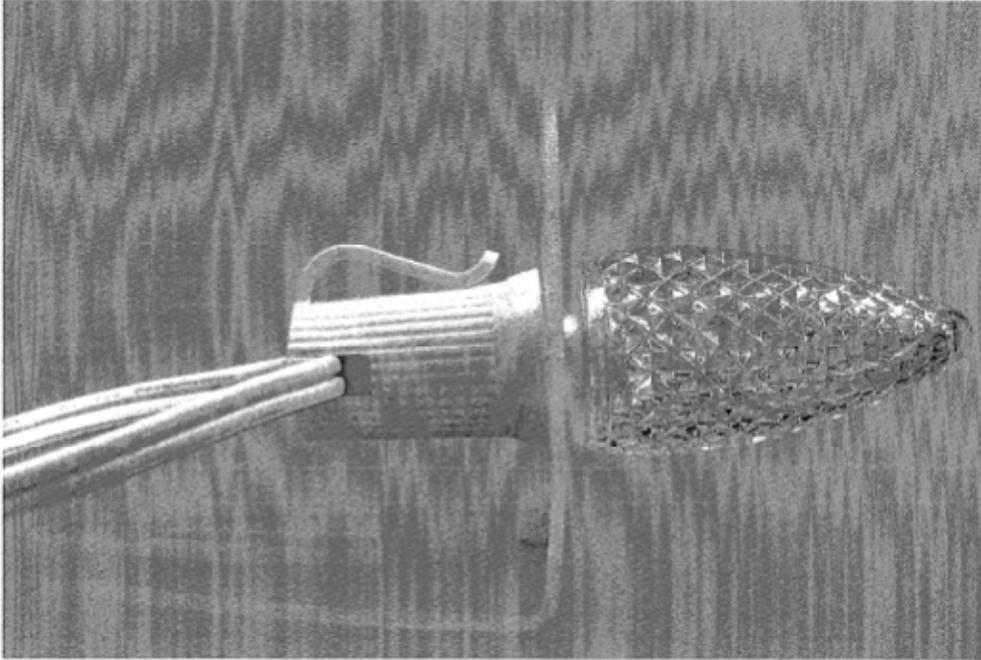
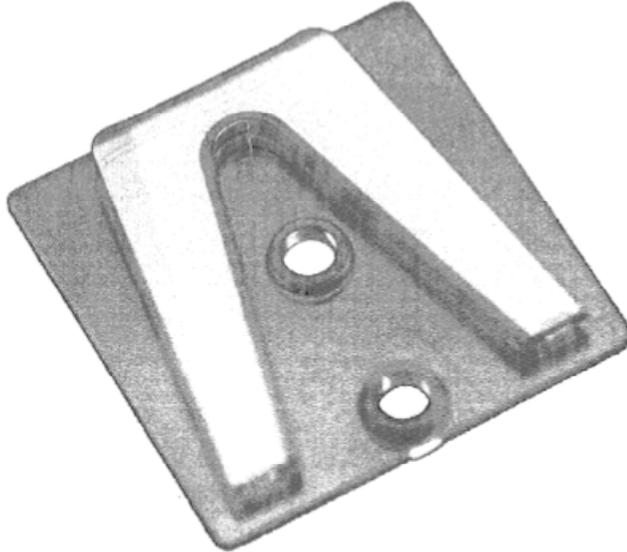


Exhibit B



- Parapet clip for permanent installation
- Use with Shingle Tab on flat surfaces.
- Clip not visible from the ground when tabs are removed.
- Seasonally mount Shingle Tabs to hang Christmas lights.

City Administrator Clayton Keller told Mayor Zavodny which agenda items had been completed and also stated that agenda item #8 had failed.

Mayor Zavodny stated that the City's Union attorney told them that they needed to get that taken care of. Mayor Zavodny asked Acting City Attorney Joanna Uden if they had the option to do a motion to reconsider.

Acting City Attorney Joanna Uden stated that the City Code prescribes that parliamentary procedure is prescribed by Roberts Rules of Order and a motion to reconsider is covered in Section 37 of those rules. Acting City Attorney Joanna Uden read from Section 37 of Roberts Rules of Order: "a motion to reconsider must be made by a member of the prevailing side and it may be seconded by any member", so we can reconsider in that manner."

Mayor Zavodny said, "I would like to revisit agenda item #8 and I would entertain a motion to reconsider."

Council member Tom Kobus made a motion to reconsider agenda item #8 consideration of accepting the City's final offer submitted on September 22, 2020 to the local union #1536 of the IBEW. Council Member Bruce Meysenburg seconded the motion. The motion carried. Kevin Hotovy: Yea, Tom Kobus: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, John Vandenberg: Absent, Alan Zavodny (Mayor): Yea
Yea: 5, Nay: 0, Absent: 1

Mayor Zavodny said, "I don't know how much we've covered on this. This has been a work in progress for probably a couple of years. We have made offers and there have been counteroffers. There was a deadline of September 30th to either reach a deadline or we would go to the Commission of Industrial Relations. That's kind of where we found ourselves. The bargaining unit decided to say that we've basically reached an impasse and we're going to the CIR. This has been an expensive thing for us thus far and the way that we are paying for it is the ratepayers. Throughout the life of this, there have been numerous amounts of back and forth and different proposals that we didn't feel that we could live with and the insurance part I think we've agreed on and that's kind of what I was told that this started with and our salary schedule, we didn't give the raises. Now, I need to make it clear, now that this is before the CIR, we can change nothing. Now, that's a problem both ways. That means no percent and half raise either. You have to keep the insurance the way that it is. Everything stays status quo until this is taken care of. What we need to do, on the advice of our attorney, is say that we've made our final offer to the union and they are going to reject that and they have rejected it and the next steps will be the wage surveys and the benefit surveys and starting the steps to go in front of the Commission of Industrial Relations. That's why this step is there."

Council member Kevin Hotovy made a motion to accept the City's final offer submitted on September 22, 2020 to the local union #1536 of the IBEW. Council Member Tom Kobus seconded the motion. The motion carried. Kevin Hotovy: Yea, Tom Kobus: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, John Vandenberg: Absent, Alan Zavodny (Mayor): Yea
Yea: 5, Nay: 0, Absent: 1

Wastewater Supervisor w/Gr VI, Laborer I, Laborer II, Maintenance Worker I, Maintenance Worker II, Street Foreman, Street Superintendent, excluding clerical and temporary employees.

3. That the Respondent, City of David City, Nebraska, is a public employer as that term is defined in *Neb. Rev. Stat.*, § 48-801(12), is a municipality as defined in *Neb. Rev. Stat.*, § 48-801(9), and is subject to the jurisdiction of the Nebraska Commission of Industrial Relations. That the Respondent's administrative offices are located at 557 N. 4th Street, David City, Nebraska 68632.

4. That the bargaining unit described in paragraph 2, above, was certified by this Commission on April 30, 2018. No labor contract between the Petitioner and the Respondent has been signed since certification.

5. That despite negotiations, the parties were unable to come to terms for a contract year October 1, 2019 – September 30, 2020 agreement concerning wages and terms and conditions of employment.

6. That on September 22, 2020, the Respondent delivered a final offer to the Petitioner during a scheduled negotiation session. A copy of the Respondent's final offer is attached hereto as Attachment 1.

7. That the Petitioner delivered a final offer to respondent on September 30, 2020 by means of an email sent from Richard Michel, IBEW 11th District Representative, to Jerry Pigsley, attorney for Respondent. A copy of the Petitioner's final offer is attached hereto as Attachment 2.

8. That the present rates of pay and terms and conditions of employment are not comparable to the prevalent wage rates paid and conditions of employment maintained for the same or similar work of workers exhibiting the same or similar skills under the same or similar

working conditions; and therefore, an industrial dispute exists between the parties for the contract year October 1, 2019 – September 30, 2020.

9. That this Commission has the jurisdiction and authority, pursuant to *Neb. Rev. Stat.* §§ 48-801 and 48-818, to alter the rates of pay for those employees within the bargaining unit represented by the Petitioner for the contract year October 1, 2019 – September 30, 2020.

10. That this Commission has the jurisdiction and authority pursuant to *Neb. Rev. Stat.* §§ 48-801 and 48-818, to establish the following terms and conditions of employment for those employees within the bargaining unit represented by the Petitioner for contract year October 1, 2019 – September 30, 2020:

- a) Union recognition;
- b) Conduct of union affairs
- c) Dues deduction
- d) Grievance and arbitration procedure;
- e) Discharge and termination of employment;
- f) Layoff and recall;
- g) Job posting;
- h) Holidays and holiday pay;
- i) Vacations;
- j) Sick leave;
- k) Personal leave;
- l) Funeral leave;
- m) Personal leave without pay;
- n) Military leave;
- o) Longevity pay;

- p) Public service leave;
- q) On the job accidents;
- r) Medical insurance;
- s) Life insurance;
- t) Retirement plan;
- u) Hours of work;
- v) Flextime;
- w) Overtime;
- x) Compensatory time;
- y) Work on holidays;
- z) Call back pay;
- aa) On call pay;
- bb) Standby pay;
- cc) Work breaks;
- dd) Employee residence requirements;
- ee) Employee discounts;
- ff) Licenses and fees reimbursement;
- gg) Vaccinations;
- hh) Wage rates;
- ii) Pay plan;
- jj) Work rules;
- kk) Smoking policy

WHEREFORE, the Petitioner prays that the Commission make findings and orders establishing wage rates and the terms and conditions of employment listed in paragraph 10.

above, for those employees within the bargaining unit for the contract year October 1, 2019 –
September 30, 2020.

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL
UNION No. 1536,
Petitioner,

By: Dalton W. Tietjen
Dalton W. Tietjen #18179
of TIETJEN, SIMON & BOYLE
1023 Lincoln Mall, #202
Lincoln, NE 68508
(402) 438-1437
Attorney for Petitioner

cir818pet - no contract(David City)

City's Offer
August 24, 2020

*Last and Final
on
9-22-2020*

AGREEMENT

between

CITY OF DAVID CITY

and

**LOCAL UNION #1536
OF THE
INTERNATIONAL BROTHERHOOD
OF ELECTRICAL WORKERS**

AFL-CIO

The CITY reserves the right to change and/or amend any proposal made during our negotiations prior to agreement, as well as to correct inadvertent errors and omissions. Agreements reached during negotiations will be tentative pending agreement on the contract as a whole.

Attachment 1

PREAMBLE

This Agreement executed as of the ___ day of _____, by and between the City of David City, its successor assigns hereinafter referred to as the "City" and Local Union No. 1536 of the International Brotherhood of Electrical Workers affiliated with the AFL-CIO hereinafter referred to as the "Union."

This Agreement, made and entered into, when signed by the proper officers of the City of David City and Local Union #1536 and approved by the President of the International Brotherhood of Electrical Workers, shall become operative.

ARTICLE 1

RECOGNITION

Sec. 1: The City recognizes the Union as the exclusive bargaining agent for all permanent full-time and regular part-time employees of The City of David City, Nebraska, occupying the following classifications:

Power Plant Operator I, Power Plant Operator II, Power Plant Operator III, Power Plant Operator Supervisor, Apprentice Lineman, Line Worker II, Line Worker I, Line Foreman, Electric Supervisor, Water/Sewer Operator I, Water/Sewer Operator I w/Gr VI, Water/Sewer Operator II, Water/Sewer Operator II w/Gr VI, Waste Water Pit Operator, Water Supervisor w/Gr VI, Wastewater Supervisor w/Gr VI, Laborer I, Laborer II, Maintenance Worker I, Maintenance Worker II, Street Foreman, Street Superintendent, excluding clerical and temporary employees.

Sec. 2: The City recognizes and shall not interfere with the right of its employees to become members of the Union. There shall be no discrimination, interference, restraint or coercion by the City or any of its agents against any employee because of membership in the Union. The Union agrees not to intimidate or coerce employees into membership and also not to solicit union membership on employer's time. Neither the City nor the Union will willfully, orally or in writing, make untruthful statements concerning the other party or its representative.

ARTICLE 2

DEFINITIONS

Sec. 1: For the purpose of this Agreement, the following definitions shall apply:

- A. **Introductory Employees:** An Employee working during the orientation period which is six (6) months from the first day of work.
- B. **Full-Time Employee:** An employee who has completed his/her introductory period and is regularly scheduled to work forty (40) hours per week.
- C. **Part-Time Employee:** An employee who has completed his/her introductory period and is regularly scheduled to work less than forty (40) hours per week. Part-Time employees shall be eligible for all City benefits on a pro rata basis as follows:
- Vacation time on a pro-rata basis.
Retirement benefits on a pro-rata basis.
Employees, who work an average of twenty (20) hours or more per week, are eligible for one-half (1/2) day of holiday pay.
Employees, who work an average of twenty (20) hours or more per week, are eligible for one-half (1/2) day of sick leave per month.
Part-time employees are not eligible for Personal Leave and Funeral Leave.
- Pro-rata basis:** Calculated by percentage. (The percentage used for calculations is: 2080 hrs. per year ÷ by the hours worked by the regular part-time employee in a year.)
- D. **Temporary Employee:** An employee with the expectation that his/her employment will be for a short duration, (i.e., no more than one (1) year).

ARTICLE 3

CONDUCT OF UNION AFFAIRS

Sec. 1: All employees including Union officers and representatives shall not conduct any Union activity or Union business during working hours except as specifically authorized by the provisions of this Agreement.

Sec. 2: Stewards shall be selected by the Union and function on behalf of the employees in the bargaining unit.

Sec. 3: All stewards referred to in this Agreement shall be full-time employees of the City.

Sec. 4: Each steward shall report to his/her immediate supervisor or designated representative prior to the time of leaving his/her work to perform the duties of such

steward as set forth herein. He/she shall also report on returning to his/her work assignment unless the prior consent of the steward's supervisor not to report has been secured.

Sec. 5: The City shall designate a bulletin board for the posting of official Union Notices.

Sec. 6: A Union member may be released from their duties when requested by the Union to attend Union activities.

ARTICLE 4

SAFETY COMMITTEE

Sec. 1: **Training and Safety.** The Safety Committee exists to oversee the safety goals and plans of the City by making recommendations addressing safety and health hazards at each worksite. The Safety Committee shall consist of an equal number of bargaining unit employees (that shall serve in an advisory only status) and management. The Union shall appoint the bargaining unit members to this committee.

ARTICLE 5

GRIEVANCE AND ARBITRATION PROCEDURE

Sec. 1: Should any employee or the union have a grievance arising from the interpretation of a specific provision of this Agreement, such matter shall be exclusively resolved in accordance with the provision provided herein. It is also agreed between the parties that the alleged violation of a specific provision of the Agreement, to be arbitrable, must have occurred during the term of this Agreement. It is also specifically agreed that this grievance procedure shall not be used to change any provision of this Agreement.

Sec. 2: In reducing a grievance to writing, the following information must be stated with reasonable clearness: the exact nature of the grievance, the act or acts of commission or omission, the date of the act or acts, the identity of the party or parties who claim to be aggrieved, the identity of the party or parties alleged to have caused the grievance, the specific provisions of this contract which are alleged to have been violated, and the remedy which is sought.

Sec. 3: Step 1: An employee believing he/she has a grievance shall submit a written grievance with his/her supervisor within fifteen (15) calendar days after the occurrence of the grievance. The supervisor shall, within fifteen (15) calendar days after receiving the written grievance, meet with the employee in an attempt to resolve the dispute. The employee may be accompanied by a union steward, if the employee desires. The supervisor shall then have fifteen (15) calendar days after meeting with the employee

to give a written response to the grievance and this response shall be given to the employee and Union Steward.

Step 2: A grievance not settled in Step 1 which the employee or the Union wishes to pursue further shall be placed in writing and signed by the employee or the Union within fifteen (15) calendar days from the supervisor's answer and filed with the City Administrator. If such action is taken by the employee, he/she shall give notice to the Business Manager of the Union. The City Administrator shall, within fifteen (15) calendar days after receiving the grievance, meet with the Business Manager of the Local or his Designee in an attempt to resolve the dispute. The City Administrator shall supply both the employee and the Business Manager of the Union his written response within fifteen (15) calendar days of this meeting.

Step 3: If the Union and the employee decline to accept the City Administrator's decision, and if the grievance remains unresolved, the employee or the union may within fifteen (15) calendar days after receipt of the City Administrator's response, file with the Mayor of the City a request for further review. The Mayor shall, within thirty (30) calendar days after receiving the grievance, meet with the Business Manager of the Local or his Designee in an attempt to resolve the dispute. The Mayor shall supply both the employee and the Business Manager of the Union his written response within thirty (30) calendar days of this meeting.

Sec. 4: The time limits provided for in this Article shall be strictly followed. No grievance shall be valid unless filed or appealed within the time limits provided herein. Failure of the grieving party to meet the time limits provided for shall result in dismissal of the grievance. Failure of the other party to meet the time limits provided for shall result in settlement of the Agreement according to the remedy sought by the grieving party. The parties may, however, by mutual agreement extend the time limit at any step of the grievance procedure.

ARTICLE 6

LAYOFF AND RECALL

Sec. 1: The criteria set forth below shall be considered in selecting the employee(s) who will be subject to any layoff. The criteria are not listed in any order of priority.

- A. Employment positions to be offered;
- B. Areas of certification that are of present or future value to the City.
- C. State and federal laws or regulations that may mandate certain employment practices;
- D. Special or advanced training that would be of present or future value to the City.

E. Performance evaluations.

Sec. 2: If, after consideration of the criteria listed above and there is no significant difference between or among employees being considered for layoff, the employee(s) with the longest uninterrupted service to the City shall be retained.

Sec. 3: In the event of a restoration of the workforce, employees will be recalled in the reverse order in which they were laid off.

**ARTICLE 7
JOB POSTING**

Sec. 1: Job openings for bargaining unit positions other than entry-level positions shall be posted. Employees interested in the position must submit an application for the position by the end of the posting period.

**ARTICLE 8
NO STRIKE AND LOCKOUT**

Sec. 1: There shall be no lockouts, consumer boycotts, strikes, slow downs, picketing, work stoppages or interferences with production, including sympathy strikes, for any reason whatsoever during the period of this Agreement. No picket lines shall be observed during the life of this Agreement.

Sec. 2: The Union, its officers, agents and members agree that they will not authorize, ratify, permit, aid, assist, or participate in any consumer boycott, strike, slow down, picket, work stoppage or interference with operations, including sympathy strikes, for any reason whatsoever. If any unauthorized consumer boycott, strike, slow down, picket, work stoppage or interference with production, including a sympathy strike, occurs or is threatened, the Union agrees to use every means at its disposal to disavow, prevent and terminate such unauthorized action and to maintain full operations.

Sec. 3: Individual members of the bargaining unit violating this Article may be disciplined by the City with notice thereof to the Union. Such discipline may include discharge.

Sec. 4: The City and Union acknowledge that it is unlawful for any person:

- A. To hinder, delay, limit or suspend the continuity or efficiency of any governmental service or any governmental service in a proprietary capacity, or the service of any public entity, by lockout, strike, slowdown, or other work stoppage;
- B. To coerce, instigate, induce, conspire with, intimidate or encourage any person to participate in any lockout, strike, slowdown or other work

stoppage, which would hinder, delay, limit or suspend the continuity or efficiency of any governmental service or governmental service in a proprietary capacity.

- C. To aid or assist any such lockout, strike, slowdown, or other work stoppage by giving direction or guidance in the conduct of any such lockout, strike, slowdown or other work stoppage or by providing funds for the conduct or direction thereof, or for the payment of strike, unemployment or other benefits to those participating therein.

ARTICLE 9

HOLIDAYS

Sec. 1: Employees receive twelve and a half (12.5) paid holidays per year, as follows:

| | |
|------------------------|---|
| New Year's Day | Veteran's Day |
| Martin Luther King Day | Thanksgiving Day |
| Arbor Day | The Day after Thanksgiving Day |
| Memorial Day | Christmas Eve Afternoon (Close at noon) |
| Independence Day | Christmas Day |
| Labor Day | Individual Selectable Day |
| Columbus Day | |

- When a national holiday falls on a Saturday, the preceding Friday shall be recognized as a day off with pay. When the national holiday falls on a Sunday, the following Monday shall be recognized as a day off with pay.
- All City and Utility Departments shall close one (1) hour early on December 31st.
- Individual Selectable Days must be used during the year in which they are earned and cannot be carried over to succeeding years.

ARTICLE 10

VACATIONS

Sec. 1: Employees are eligible for paid vacation after six (6) months of employment. Available vacation is based on full-time work and is reduced proportionately for absences other than vacation time, paid sick leave, paid funeral

leave, and holidays. Vacation is earned as follows:

Years of Employment Days/Hours Earned Per Year

| | |
|-------------------|-------------------|
| After 1 year | 5 days/40 hours |
| After 2-5 years | 10 days/80 hours |
| After 10-15 years | 15 days/120 hours |
| After 16 years | 16 days/128 hours |
| After 17 years | 17 days/136 hours |
| After 18 years | 18 days/144 hours |
| After 19 years | 19 days/152 hours |
| After 20 + years | 20 days/160 hours |

- Employees may carry a maximum of 320 hours of vacation time. Department Heads/City Administrator shall make every effort to accommodate employees when scheduling vacation.
- Employees that terminate employment with the City shall be paid for all unused accumulated vacation leave. Upon the death of an employee, his/her beneficiary shall be paid for unused accumulated vacation leave.
- Vacations shall be scheduled by the Department Head.
- Vacation shall be allowed in half-hour increments.
- Vacation time shall be applied to FMLA leave after the use of sick leave (if applicable).

ARTICLE 11

SICK LEAVE

Sec. 1: Each full-time employee is credited with one (1) working day of sick leave each month and is charged with sick leave actually taken. No employee may accrue more than one hundred twenty (120) days of sick leave.

The employee shall notify the department head or supervisor of his/her illness before the time that he/she is due to report for work on the first day of illness. If he/she is physically incapable of giving notice in this manner, notice shall be given as soon as possible.

The department head or City Administrator may require the employee to present a medical certificate as to the fact of illness or as to the ability of the employee to perform his/her work upon returning from sick leave.

The City of David City leave policies adhere to the provisions of 29 U.S.C. 2601, commonly known as the Family Medical Leave Act of 1993.

*** SICKNESS - SELF:** An employee may use sick leave when that employee is ill and unable to perform his/her work or has an appointment with a doctor.

*** SICKNESS - FAMILY:** An employee may use sick leave when an immediate family member (spouse, child, father, mother, father-in-law and mother-in-law) is ill or is hospitalized and needs the employee's care, or, requires the employee to take that family member for a doctor's appointment.

Any employee that is suspected of sick leave abuse may have their sick leave usage monitored for a period of six months and counseled concerning the matter. False claims for sick leave are cause for disciplinary action.

Sick leave may not be converted into vacation leave or used in lieu of vacation leave. At the time of separation from employment, an employee shall not be paid for his sick leave which has not been used.

ARTICLE 12

PERSONAL LEAVE

Sec. 1: Personal leave will be granted to regular full-time employees prorated by years of employment as follows:

| | | |
|----------------------|---|------------------|
| 0 years to 4 years | - | 2 days per year |
| 5 years to 9 years | - | 3 days per year |
| 10 years to 14 years | - | 4 days per year |
| 15 years to 19 years | - | 5 days per year |
| 20 years to 24 years | - | 6 days per year |
| 25 years to 29 years | - | 7 days per year |
| 30 years to 34 years | - | 8 days per year |
| 35 years to 39 years | - | 9 days per year |
| 40 years plus | - | 10 days per year |

Personal leave is not an earned benefit. Personal leave is deducted from accrued sick leave and may be used by the employee for any reason. If an employee does not have

accrued sick leave then the employee shall not be granted personal leave. Personal leave shall be considered a privilege to reward employees for their attendance. At the time of separation from employment, an employee shall not be paid for his personal leave which has not been used.

ARTICLE 13

SPECIAL LEAVE PROVISIONS

Sec. 1: The City shall grant leave of absence with pay to Full-Time Employees for the following reasons and subject to the applied restrictions.

A. Funeral Leave.

Primary: Leave will be granted, not to exceed five (5) consecutive days per event, to employees to attend the funeral services of close family members, i.e., spouse, child, mother, father, mother-in-law, father-in-law, brother, sister, brother-in-law, sister-in-law, niece or nephew.

Secondary: Leave will be granted, not to exceed two (2) consecutive days per event, to employees to attend the funeral services or secondary family members, i.e., grandparents, grandparents-in-law, aunts, uncles and cousins

B. Personal Leave without Pay. A personal leave of absence under this policy is an approved absence without pay. Personal leaves of absence must be requested in writing and will be granted only for special reasons. Only regular full-time employees who are not otherwise eligible for FMLA leave for any reason are eligible for a personal leave of absence. Time off without pay and leave of absence for medical or personal reasons will be considered on the basis of the City requirements and hardships caused thereby, the employee's performance record, the reason for the request, and the employee's length of service with the City. The determination of whether the request shall be granted rests solely within the discretion of the employee's Department Head and the City Administrator.

A leave of absence under this policy may be granted for personal reasons without pay for a period not to exceed thirty (30) days. All vacation time must first be exhausted before a leave of absence under this policy will be considered.

A leave of absence without compensation under this policy also may be granted for illness, injury or pregnancy disability for a period not to exceed thirty (30) days. All vacation and sick leave must first be exhausted before a leave for these purposes will be considered. At the option of the City, an

employee may be required to present a certificate from the employer's physician and/or a physician of his/her own choosing as to the fact of the illness, injury or pregnancy disability. The employee must present a full medical release signed by his or her physician before being reinstated for work.

The length of absence may be extended at the discretion of the City upon further application in writing by the employee prior to the expiration of the initial period. In no event will leaves be granted for a period in excess of sixty (60) days. If your leave of absence is in excess of thirty (30) days, your return is subject to job availability. If your position is not available at the end of your leave, the City will make a reasonable effort to return you to a substantially similar position.

It will be the responsibility of the employee who has been granted a leave of absence in excess of thirty (30) days to pay monthly premiums for any continued group insurance coverage. In the absence of such payment, coverage will be terminated; however, you will be given an opportunity to convert the policy for your individual coverage. Failure to return to work on the date scheduled by the City will result in discharge from employment.

All leaves of absence will be granted subject to and in accordance with the provisions of the Uniformed Services Employment and Reemployment Rights Act (USERRA), if applicable.

- C. Military Leave. Military leave shall be governed by Neb. Rev. Stat. Sections 55-160 through 55-166 (Reissue 2004) or as amended by the Legislature, and by the Uniformed Services Employment and Reemployment Rights Act.
- D. Longevity Recognition. The City of David City may present gifts with a monetary value to employees in recognition of years of employment and other special occasions as approved by the City Council, as follows:

| | |
|----------|----------|
| 5 years | \$10.00 |
| 10 years | \$15.00 |
| 15 years | \$30.00 |
| 20 years | \$50.00 |
| 25 years | \$80.00 |
| 30 years | \$110.00 |
| 35 years | \$140.00 |
| 40 years | \$170.00 |
| 45 years | \$200.00 |

- E. **Public Service Leave.** An employee may take leave to serve as a member of a jury, upon being called as a witness because of his position in any court, or, to enter military training for not more than two weeks in any one year. During the period of public service leave, the employee shall receive his/her regular pay less any amount received by him/her for performing such public service, provided, however, that no deduction shall be made for amounts earned of less than \$10.00 (R.R.S. 55-160).

ARTICLE 14

ON THE JOB ACCIDENTS

Sec. 1: The City shall maintain insurance to comply with Nebraska Workers' Compensation law as amended.

Sec. 2: If there is an on-the-job injury and the employee receives workers' compensation payments for the lost wages, the employee shall be allowed to use his/her sick leave so that the employee receives base pay equal to what he/she earned prior to the accident.

ARTICLE 15

EMPLOYEE INSURANCE AND RETIREMENT PROGRAMS

Sec. 1: **Medical and Life Insurance.** Employees must work a minimum of forty (40) hours per week to be eligible for the medical and life insurance benefits.

- A. Medical insurance is with Blue Cross Blue Shield of Nebraska.

The City will contribute 75% of the deductible, which money will be deposited directly into the employee's HSA account.

- B. The employee pays 25% of the monthly premium regardless of which coverage plan they have chosen. The City pays the balance.

~~C. Employees may receive a cash payment in lieu of the insurance listed above, upon providing proof of such coverage. The employee may receive \$88.75 per month for family coverage or \$16.90 per month for single coverage.~~

~~C. The City reserves the right to choose the method of providing this benefit (i.e., self-funded plan or insurance) and the benefits provided, including the deductible and co-payment amounts.~~

Sec. 2: **Retirement Plan.** The City will match employee contributions in an amount equal to the greater of 6% of regular pay or \$50.00 per month to a regular employee's Deferred Compensation Plan. The City of David City currently has two (2) deferred compensation plans to choose from.

New employees will not be eligible for this benefit until they have been taken off of probationary status. This is a voluntary benefit in which employees may choose not to participate. Employees, who elect not to participate in this benefit, will not receive any type of in-lieu of payment from the City.

ARTICLE 16

HOURS OF WORK

Sec. 1: **Hours of Work.** All Departments shall work a forty (40) hour workweek as the standard workweek unless otherwise provided. The Supervisors shall set the hours of work.

Sec. 2: **Time Sheets.** Timesheets serve as the legal authority to pay an employee. They also serve as a verification of time off, and provide the legal basis to grant an employee benefits, including workers' compensation as appropriate. Employees are to provide an accurate accounting of all hours worked and leave used during a pay period on a timesheet.

All absences from an employee's regular work schedule must be reported and accounted for. An employee's timesheet accounts for all hours in the pay period and must be verified and approved by the employee's supervisor.

Completed timesheets require the signatures of the employee and the supervisor. These signatures certify that, to the best of their knowledge, the information provided on the documents is true and correct. An intentional misrepresentation of hours worked constitutes fraud and will result in disciplinary action or possibly termination of employment.

Sec. 3: **Flextime.** Flextime is an alternate forty (40) hour workweek schedule by which an employee's workweek is determined by the needs of the job and is subject to Department Head or City Administrator approval.

Department Heads shall establish work periods and hours of work, which may differ from the hours of work to meet special department needs, projects or workloads. Special department needs and projects shall include, but not be limited to, infrastructure construction, standard workweek snow removal, street painting, recycling, football events, tract events, auditorium events, official committee and board meetings of

the City, and any other known work that occurs before 7:30 a.m. or after 5:00 p.m. Monday through Friday or on weekends.

Department Heads are encouraged to use flextime whenever feasible to minimize overtime or the accumulation of compensatory time.

ARTICLE 17

OVERTIME, CALL BACK AND ON CALL

Sec. 1: **Overtime & Compensatory Time.**

Overview: All compensatory/overtime work should be held to a minimum and should be authorized in advance in writing by the appropriate supervisor. Each supervisor is responsible for and expected to use good judgment in determining what constitutes legitimate and necessary compensatory/overtime work.

In unusual situations in which prior approval may not have been practical or possible and the required completion of a specific project, assignment, or official travel results in overtime or compensatory time worked, the appropriate supervisor may verbally approve the unauthorized time based on the circumstances involved, but it should be reported to the City Administrator in a reasonable timeframe.

Definitions:

- A. **Overtime** is the amount of time someone works beyond normal working hours, i.e., the standard forty (40) hour workweek.
- B. **Compensatory Time** refers to a type of work schedule arrangement that allows (or requires) workers to accumulate leave time and take time off instead of receiving overtime pay.

Sec. 2: **Nonexempt Employees Overtime & Compensatory Time.**

Overtime. According to the Fair Labor Standards Act (FLSA), time worked in excess of forty (40) hours in one (1) week will be paid at the rate of time and one-half the regular rate of pay.

Compensatory Time. Compensatory time may be accumulated in lieu of time and one-half pay for overtime worked at the discretion of the City Administrator. These hours shall be recorded in the payroll system at the time of accrual and use. Hours worked in excess of eight (8) hours in one (1) day may not necessarily be counted as overtime.

When compensatory time is allowed by the Department Head or City Administrator, an employee may accrue no more than twenty-four (24) hours of compensatory time at any given time. Any exceptions to this provision must be authorized by the City Administrator.

Compensatory time shall be used within the same pay period from when it was earned. If compensatory hours are earned during the last week of the pay period, those hours may be carried over to be used during the next week following the pay period in which they were earned.

~~Designated holidays, vacation time, individual selectable days, and sick leave time are included as hours of work for the purpose of calculating overtime during the week in which they fall.~~

Sec. 3: **Work on Holidays.** If an employee is required to work on a holiday, he/she shall receive eight (8) hours of work credited to the total work week hours plus the number of hours actually worked on the holiday to be credited to the total week hours. ~~All hours of said hours shall be included in time worked in calculating overtime for the week.~~

Sec. 4: **Call Out Time.** If after an employee has left his/her place of work and he/she is called back for duty, he/she shall be paid for at least two (2) hours of work, which shall be included in time worked in calculating overtime for that week. For purposes of calculating Call-Out Time, hours worked shall include two (2) hours plus actual time worked after two (2) hours.

Sec. 6.5: **On Call Time.** An employee, who carried a pager for a week ~~and is scheduled for rounds,~~ will be credited with ~~two (2)~~ ^{two (2)} hours of compensatory time if the hours worked for that week total less than forty (40) hours. If the hours total forty (40) or more, a maximum of three (3) hours will be credited toward compensatory time. ~~Overtime pay is not permitted in place of compensatory time off.~~ While an employee is On-Call Time, he/she shall be in a place and situation that allows for a response to any situation or need within thirty (30) minutes.

Sec. 26: **Standby Time.** City Power Plant employees, who are not On-Call, will be credited with two (2) hours of compensatory time during such times as Nebraska Public Power District mandates the David City Power Plant standby for possible electric energy production. An employee who is On-Call shall not receive any compensation for Standby Time. While an employee is on Standby Time, he/she shall be in a place and situation that allows for a response to any situation or need within thirty (30) minutes.

Sec. 87: **Breaks.** A fifteen (15) minute break shall be allowed for each four (4) hours of work. If work conditions are such that travel, cleanup, etc., plus the break require more than fifteen (15) minutes, the break shall be taken on the site.

ARTICLE 18

SPECIAL PROVISIONS

Sec. 1: **Employee Residence.** All Departments that may be called back to work for emergency purposes (Water Department, Sewer Department, Electric Department, Street Department, and Power Plant Department) are required to reside within a fifteen (15) mile radius of the established city limits of David City.

Sec. 2: **Full-Time Employee Discounts.**

- 10% off Auditorium Rentals (including bar charges)
- 10% off Swimming Pool Passes (family, couple, or single)
- 10% off Schweser House Rentals
- Gravel, White Rock, Mud Rock, etc. - allowed to purchase at cost

Sec. 3: **License and Fees.** The City shall pay the fees for all licenses required for the employees.

Sec. 4: **Influenza and Hepatitis B Vaccination.** The City shall offer an annual influenza shot for all employees who elect to participate. Employees who are required to work with or at any Wastewater Treatment Facility Plant, Equipment and/or System will be provided at their option, vaccination shots for Hepatitis B at the expense of the City.

ARTICLE 19

RATE OF PAY

Sec. 1: Effective March 24, 2020, The wages in effect during this Agreement for employees covered by this Agreement shall be in accordance with the Pay Step Plan as set forth in Schedule A attached hereto which identifies a Probation step and Steps 1 through 13 for each job classification. An employee shall be eligible for a one step merit pay increase after satisfactory completion of a six (6) month probation period beginning with the original date of employment. Employees' placement on the Pay Step Plan is set forth in Schedule B attached hereto. A one-step merit pay increase from Step 1 through Step 13 may be granted no more than after one (1) year of service from the date the last merit step increase became effective. In making the decision as to whether or not an employee deserves and shall receive a merit step increase, the Department Head must find that the employee has performed in a commendable or outstanding matter. When an

employee moves to a higher classification, they shall be slotted into a step closest, but not less than their current wage.

ARTICLE 20

SCOPE OF AGREEMENT

Sec. 1: The parties mutually agree that this Agreement constitutes the entire Agreement and understanding concerning all proper subjects of collective bargaining for the duration of the contract between the parties and supersedes all previous agreements. This Agreement shall not be modified, altered, changed or amended in any respect unless in writing and signed by both parties. There are no oral agreements nor is this Agreement based upon any oral representation covering the subject matter of this Agreement.

Sec. 2: This Agreement has been executed in accordance with the statutes and the laws of the State of Nebraska and the United States of America, and any dispute, disagreement, or litigation arising under this Agreement shall be adjudged in accordance with the statutes and laws of the State of Nebraska and of the United States of America.

Sec. 3: The parties agree that the negotiations preceding the signing of this Agreement included negotiations on all proper subjects of bargaining and that all negotiations were conducted in accordance with all applicable federal and state requirements.

ARTICLE 21

MANAGEMENT RIGHTS

Sec. 1: All Management rights, functions, responsibilities and authority not specifically limited by the express terms of this Agreement are retained by the Employer and remain exclusively within the rights of the Employer and nothing contained herein shall be construed or interpreted to restrict, limit or impair the rights, powers and authority of the Employer heretofore possessed and hereinafter granted by virtue of law, regulations or resolutions.

Sec. 2: The Union acknowledges the concept of "inherent management rights" and agrees that this concept shall be made fully applicable to the terms of the Agreement with respect to the utilization of the grievance procedure of this Agreement and with respect to any exercise of this Article.

Sec. 3: In addition to all powers, duties, and rights of the Employer established by constitutional provision, statute, ordinance, charter, or special act, the Union recognizes the powers, duties, and rights which belong solely, exclusively, and without limitation to the Employer, and are not in conflict with this Agreement.

- A. The right to determine, effectuate and implement the objectives and goals of the City.
- B. The right to manage and supervise all operations and functions of the City.
- C. The right to determine services to be provided, including the right to establish, allocate, schedule, assign, modify, change, subcontract and discontinue City operations, work shifts and working hours.
- D. The right to establish, modify, change and discontinue work standards.
- E. The right to direct and arrange working forces including the right to hire, examine, classify, promote, train, transfer, assign, and retain employees; maintain discipline and control and use of City property; suspend, demote, discharge or take other disciplinary action against employees; and to relieve employees from duty due to lack of work, lack of funds, a decision to subcontract or discontinue City operations or other legitimate reasons and not in conflict with this Agreement.
- F. The right to increase, reduce, change, modify and alter the size and composition of the work force.
- G. The right to determine, establish, set and implement management organization policies of the City for the selection, training, transfer and reorganization of employees.
- H. The right to create, establish, change, modify, subcontract and discontinue any City function or operation.
- I. The right to establish, implement, modify and change financial policies, budget control policies, accounting procedures, prices of goods or services, and public relations procedures and policies.
- J. The right to adopt, modify, change, enforce or discontinue any existing work rules, regulations, procedures, policies and other terms and conditions of employment of the City which are not in conflict with this Agreement or state statute.
- K. The right to determine and enforce employee work abilities and quality and quantity standards.
- L. The right to establish the location of offices, including the establishment of new offices and the relocation and closing of old offices.
- M. The right to maintain order and efficiency.

The listing of the foregoing rights, powers and authority are not in any way intended to be exclusive, but are merely intended to illustrate the rights retained by the Employer.

ARTICLE 22

WORK RULES

The Employer may adopt rules and regulations for the operation of the City and the conduct of its employees; provided any such rules and regulations shall not conflict with

any provisions of this Agreement or the laws of the State of Nebraska or the United States of America. Any terms or conditions not covered in this Agreement will be adhered to as currently written in the City Employee Handbook as revised from time to time.

ARTICLE 23

SMOKING POLICY

Smoking is prohibited throughout Employer's facilities and vehicles.

ARTICLE 24

C.I.R. WAIVER

As a result of negotiations, and in consideration of this entire collective bargaining agreement, the Union, on behalf of all of its members, hereby knowingly, intelligently, and voluntarily waives its right to file any proceedings with the Nebraska Commission of Industrial Relations alleging lack of comparability with respect to any wages, fringe benefits or any other conditions of employment with respect to the time period between October 1, 2019, through September 30, 2021.

ARTICLE 25

DURATION OF AGREEMENT

Sec. 1: This Agreement shall be in full force and effective upon execution of this Agreement to September 30, 2021, only.

Sec. 2: In the event either party to this Agreement provides sixty (60) days' written notice to the other prior to the expiration of this Agreement of a desire to meet for the purpose of negotiating a replacement contract, the party receiving such notice agrees to respond within (7) calendar days for the purpose of establishing mutually agreeable times and places for the commencement of bargaining on a replacement contract. In the event neither party provides notice to meet for the purpose of negotiating a replacement contract, the contract shall continue in full force.

ARTICLE 26

SIGNATURE

The parties hereto have caused the Agreement to be executed by their proper officers hereunto duly authorized and effective as of the ____ day of _____.

CITY OF DAVID CITY

LOCAL 1536, I.B.E.W.

MAYOR

BUSINESS MANAGER

CITY ADMINISTRATOR

SCHEDULE A

| | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 |
|-------------------------------|-----------|---------|---------|---------|---------|---------|---------|---------|---------|---------|---------|---------|---------|
| <u>Power Plant</u> | Probation | | | | | | | | | | | | |
| Power Plant Op 1 | \$23.16 | \$23.70 | \$24.25 | \$24.80 | \$25.34 | \$25.89 | \$26.44 | \$26.99 | \$27.53 | \$28.08 | \$28.63 | \$29.17 | \$29.72 |
| Power Plant Supervisor | \$26.29 | \$26.88 | \$27.48 | \$28.07 | \$28.67 | \$29.26 | \$29.86 | \$30.45 | \$31.05 | \$31.64 | \$32.24 | \$32.83 | \$33.43 |
| <u>Electric</u> | Probation | | | | | | | | | | | | |
| Apprentice Lineman | \$18.77 | \$19.61 | \$20.03 | \$20.45 | \$20.87 | \$21.29 | \$21.72 | \$22.14 | \$22.56 | \$22.98 | \$23.40 | \$23.82 | \$24.24 |
| Lineman 2nd Class | \$22.89 | \$23.79 | \$24.24 | \$24.69 | \$25.14 | \$25.59 | \$26.03 | \$26.48 | \$26.93 | \$27.38 | \$27.83 | \$28.28 | \$28.73 |
| Lineman 1st Class | \$24.99 | \$26.06 | \$26.60 | \$27.13 | \$27.67 | \$28.21 | \$28.74 | \$29.28 | \$29.82 | \$30.35 | \$30.89 | \$31.42 | \$31.96 |
| Line Foreman | \$27.96 | \$28.96 | \$29.46 | \$29.96 | \$30.46 | \$30.96 | \$31.46 | \$31.96 | \$32.46 | \$32.96 | \$33.46 | \$33.96 | \$34.46 |
| Electric Supervisor | \$30.87 | \$32.02 | \$32.59 | \$33.17 | \$33.74 | \$34.32 | \$34.89 | \$35.47 | \$36.04 | \$36.62 | \$37.19 | \$37.77 | \$38.34 |
| <u>Water/Wastewater</u> | Probation | | | | | | | | | | | | |
| Water/Wastewater Operator I | \$16.90 | \$17.77 | \$18.20 | \$18.64 | \$19.07 | \$19.51 | \$19.94 | \$20.38 | \$20.81 | \$21.25 | \$21.68 | \$22.12 | \$22.55 |
| Water/Wastewater Operator II | \$19.96 | \$20.94 | \$21.43 | \$21.92 | \$22.41 | \$22.90 | \$23.38 | \$23.87 | \$24.36 | \$24.85 | \$25.34 | \$25.83 | \$26.32 |
| Water Field Supervisor | \$21.35 | \$22.27 | \$22.73 | \$23.18 | \$23.64 | \$24.10 | \$24.56 | \$25.02 | \$25.48 | \$25.93 | \$26.39 | \$26.85 | \$27.31 |
| Water Supervisor | \$26.12 | \$27.55 | \$28.26 | \$28.98 | \$29.69 | \$30.41 | \$31.12 | \$31.84 | \$32.55 | \$33.27 | \$33.98 | \$34.70 | \$35.41 |
| Wastewater Supervisor | \$26.12 | \$27.55 | \$28.26 | \$28.98 | \$29.69 | \$30.41 | \$31.12 | \$31.84 | \$32.55 | \$33.27 | \$33.98 | \$34.70 | \$35.41 |
| <u>Street</u> | Probation | | | | | | | | | | | | |
| Maintenance Worker I | \$15.33 | \$16.14 | \$16.54 | \$16.95 | \$17.35 | \$17.76 | \$18.16 | \$18.57 | \$18.97 | \$19.38 | \$19.78 | \$20.19 | \$20.59 |
| Maintenance Worker II | \$16.32 | \$17.06 | \$17.45 | \$17.84 | \$18.24 | \$18.65 | \$19.07 | \$19.50 | \$19.94 | \$20.39 | \$20.85 | \$21.31 | \$21.79 |
| Street Foreman | \$17.31 | \$18.11 | \$18.51 | \$18.90 | \$19.30 | \$19.70 | \$20.10 | \$20.50 | \$20.90 | \$21.29 | \$21.69 | \$22.09 | \$22.49 |
| Street Supervisor | \$22.74 | \$23.82 | \$24.36 | \$24.91 | \$25.45 | \$25.99 | \$26.53 | \$27.07 | \$27.61 | \$28.16 | \$28.70 | \$29.24 | \$29.78 |
| <u>Parks</u> | Probation | | | | | | | | | | | | |
| Park Laborer | \$11.52 | \$12.13 | \$12.43 | \$12.74 | \$13.04 | \$13.34 | \$13.65 | \$13.95 | \$14.25 | \$14.56 | \$14.86 | \$15.17 | \$15.47 |
| Parks & Auditorium Supervisor | \$21.04 | \$21.84 | \$22.24 | \$22.65 | \$23.05 | \$23.45 | \$23.85 | \$24.25 | \$24.65 | \$25.06 | \$25.46 | \$25.86 | \$26.26 |
| <u>Part-Time</u> | Probation | | | | | | | | | | | | |
| Part-Time Worker | \$9.99 | \$10.43 | \$10.68 | \$10.90 | \$11.15 | \$11.42 | \$11.65 | \$11.94 | \$12.20 | \$12.48 | \$12.76 | \$13.03 | \$13.34 |

SCHEDULE B

| Name | Pay Step | Hourly Wage | Job Title |
|--------------------|----------|-------------|--------------------------------|
| Pat Hoeft | Step 6 | \$34.32 | Electric Supervisor |
| Mick Shipley | Step 7 | \$31.46 | Line Foreman |
| Nathan Blomenberg | Step 4 | \$27.13 | Lineworker I |
| Brett Thiemann | Step 1 | \$23.34 | Lineworker II |
| Patrick Ayers | Step 4 | \$20.45 | Apprentice Lineman |
| Aaron Gustin | Prob. | \$26.12 | Interim Water Supervisor |
| John Kobus | Step 10 | \$25.93 | WA/SE Field Supervisor |
| Nathan Styskal | Step 13 | \$15.47 | Park Laborer |
| Emmalyn Gustin | Prob. | \$16.90 | WA/SE Operator I |
| Chris Kroesing | Step 1 | \$23.28 | Street Supervisor |
| Matt Asche | Step 4 | \$18.90 | Street Foreman |
| Nicholas Zrust | Step 3 | \$17.45 | Maintenance Worker II |
| Clint Brandenburgh | Step 1 | \$16.69 | Maintenance Worker II |
| Bill Buntgen | Step 4 | \$22.65 | Park/Auditorium Superintendent |
| Eugene Andel | Step 7 | \$11.65 | Part-Time Worker |

Union Final Package Offer
September 30, 2020.

AGREEMENT

between

CITY OF DAVID CITY

and

**LOCAL UNION #1536
OF THE
INTERNATIONAL BROTHERHOOD
OF ELECTRICAL WORKERS**

AFL-CIO

OCTOBER 1, 2019 – SEPTEMBER 30, 2021

The Union reserves the right to change and/or amend any proposal made during our negotiations prior to agreement, as well as to correct inadvertent errors and omissions. Agreements reached during negotiations will be tentative pending agreement on the contract as a whole.

PREAMBLE

This Agreement executed as of the ___ day of _____, by and between the City of David City, its successor assigns hereinafter referred to as the "City" and Local Union No. 1536 of the International Brotherhood of Electrical Workers affiliated with the AFL-CIO hereinafter referred to as the "Union."

This Agreement, made and entered into, when signed by the proper officers of the City of David City and Local Union #1536 and approved by the President of the International Brotherhood of Electrical Workers, shall become operative.

ARTICLE I

RECOGNITION

Sec. 1: The City recognizes the Union as the exclusive bargaining agent for all permanent full-time and regular part-time employees of The City of David City, Nebraska, occupying the following classifications:

Power Plant Operator I, Power Plant Operator II, Power Plant Operator III, Power Plant Operator Supervisor, Apprentice Lineman, Line Worker II, Line Worker I, Line Foreman, Electric Supervisor, Water/Sewer Operator I, Water/Sewer Operator I w/Gr VI, Water/Sewer Operator II, Water/Sewer Operator II w/Gr VI, Waste Water Pit Operator, Water Supervisor w/Gr VI, Wastewater Supervisor w/Gr VI, Laborer I, Laborer II, Maintenance Worker I, Maintenance Worker II, Street Foreman, Street Superintendent, excluding clerical and temporary employees.

Sec. 2: The City recognizes and shall not interfere with the right of its employees to become members of the Union. There shall be no discrimination, interference, restraint or coercion by the City or any of its agents against any employee because of membership in the Union. The Union agrees not to intimidate or coerce employees into membership and also not to solicit union membership on employer's time. Neither the City nor the Union will willfully, orally or in writing, make untruthful statements concerning the other party or its representative.

ARTICLE 2

DEFINITIONS

Sec. 1: For the purpose of this Agreement, the following definitions shall apply:

- A. **Introductory Employees:** An Employee working during the orientation period which is six (6) months from the first day of work.
- B. **Full-Time Employee:** An employee who has completed his/her introductory period and is regularly scheduled to work forty (40) hours per week.
- C. **Part-Time Employee:** An employee who has completed his/her introductory period and is regularly scheduled to work less than forty (40) hours per week. Part-Time employees shall be eligible for all City benefits on a pro rata basis as follows:

Vacation time on a pro-rata basis.

Retirement benefits on a pro-rata basis.

Employees, who work an average of twenty (20) hours or more per week, are eligible for one-half (1/2) day of holiday pay.

Employees, who work an average of twenty (20) hours or more per week, are eligible for one-half (1/2) day of sick leave per month.

Part-time employees are not eligible for Personal Leave and Funeral Leave.

Pro-rata basis: Calculated by percentage. (The percentage used for calculations is: 2080 hrs. per year ÷ by the hours worked by the regular part-time employee in a year.

- D. **Temporary Employee:** An employee with the expectation that his/her employment will be for a short duration, (i.e., no more than one (1) year).

ARTICLE 3

CONDUCT OF UNION AFFAIRS

Sec. 1: All employees including Union officers and representatives shall not conduct any Union activity or Union business during working hours except as specifically authorized by the provisions of this Agreement.

Sec. 2: Stewards shall be selected by the Union and function on behalf of the employees in the bargaining unit.

Sec. 3: All stewards referred to in this Agreement shall be full-time employees of the City.

Sec. 4: Each steward shall report to his/her immediate supervisor or designated representative prior to the time of leaving his/her work to perform the duties of such steward as set forth herein. He/she shall also report on returning to his/her work assignment unless the prior consent of the steward's supervisor not to report has been secured.

Sec. 5: The City shall designate a bulletin board for the posting of official Union Notices.

Sec. 6: A Union member may be released from their duties when requested by the Union to attend Union activities.

Sec. 7: A) Union Dues. The City upon receipt from the Union shall deduct the stated amount of dues from each employee's paycheck and forward that amount to the Union by the tenth day of the month following the month in which the deduction occurred. The City shall provide the Union with a report stating from whom and the amount deducted upon request.

B) Indemnification. The Union shall indemnify the City and hold it harmless against any and all claims, demands, lawsuits, or other forms of liability that may arise out of or by reason of any action taken by the City for the purpose of complying with the provisions of this section of the agreement.

ARTICLE 4

SAFETY COMMITTEE

Sec. 1: **Training and Safety.** The Safety Committee exists to oversee the safety goals and plans of the City by making recommendations addressing safety and health hazards at each worksite. The Safety Committee shall consist of an equal number of bargaining unit employees (that shall serve in an advisory only status) and management. The Union shall appoint the bargaining unit members to this committee.

ARTICLE 5

GRIEVANCE AND ARBITRATION PROCEDURE

Sec. 1: Should any employee or the union have a grievance arising from the interpretation of a specific provision of this Agreement, such matter shall be exclusively resolved in accordance with the provision provided herein. It is also agreed between the parties that the alleged violation of a specific provision of the Agreement, to be arbitrable, must have occurred during the term of this Agreement. It is also specifically

agreed that this grievance procedure shall not be used to change any provision of this Agreement.

Sec. 2: In reducing a grievance to writing, the following information must be stated with reasonable clearness: the exact nature of the grievance, the act or acts of commission or omission, the date of the act or acts, the identity of the party or parties who claim to be aggrieved, the identity of the party or parties alleged to have caused the grievance, the specific provisions of this contract which are alleged to have been violated, and the remedy which is sought.

Sec. 3: Step 1: An employee believing he/she has a grievance shall submit a written grievance with his/her supervisor within fifteen (15) calendar days after the occurrence of the grievance. The supervisor shall, within fifteen (15) calendar days after receiving the written grievance, meet with the employee in an attempt to resolve the dispute. The employee may be accompanied by a union steward, if the employee desires. The supervisor shall then have fifteen (15) calendar days after meeting with the employee to give a written response to the grievance and this response shall be given to the employee and Union Steward.

Step 2: A grievance not settled in Step 1 which the employee or the Union wishes to pursue further shall be placed in writing and signed by the employee or the Union within fifteen (15) calendar days from the supervisor's answer and filed with the City Administrator. If such action is taken by the employee, he/she shall give notice to the Business Manager of the Union. The City Administrator shall, within fifteen (15) calendar days after receiving the grievance, meet with the Business Manager of the Local or his Designee in an attempt to resolve the dispute. The City Administrator shall supply both the employee and the Business Manager of the Union his written response within fifteen (15) calendar days of this meeting.

Step 3: If the Union and the employee decline to accept the City Administrator's decision, and if the grievance remains unresolved, the employee or the union may within fifteen (15) calendar days after receipt of the City Administrator's response, file with the Mayor of the City a request for further review. The Mayor shall, within thirty (30) calendar days after receiving the grievance, meet with the Business Manager of the Local or his Designee in an attempt to resolve the dispute. The Mayor shall supply both the employee and the Business Manager of the Union his written response within thirty (30) calendar days of this meeting.

Sec. 4: The time limits provided for in this Article shall be strictly followed. No grievance shall be valid unless filed or appealed within the time limits provided herein. Failure of the grieving party to meet the time limits provided for shall result in dismissal of the grievance. Failure of the other party to meet the time limits provided for shall result in settlement of the Agreement according to the remedy sought by the grieving

party. The parties may, however, by mutual agreement extend the time limit at any step of the grievance procedure.

Sec. 5: ARBITRATION

Step 1: If Arbitration is requested by either party, an impartial Arbitrator shall be selected in the following manner. The Federal Mediation and Conciliation Service shall be requested to furnish a listing of five (5) available Arbitrators. From this listing, the City shall strike out two (2) names, and the Union shall strike out two (2) names. The remaining Arbitrator on the listing shall be designated to act as Arbitrator to the dispute.

Step 2: As soon as possible after the selection of the Arbitrator, the Arbitrator shall meet with the City and the Union to give due consideration to the dispute. A final and binding decision, in writing, from the Arbitrator shall be forwarded to both parties of the dispute as soon as reasonably possible after the final meeting concerning the dispute.

Sec. 6: EXPENSES OF ARBITRATION

The expense of the Arbitrator shall be paid equally between the parties.

ARTICLE 6

DISCHARGE AND TERMINATION OF EMPLOYMENT

Sec. 1: If it becomes necessary to discharge an employee, he/she shall be informed in writing of the action and of his/her rights and privileges according to the following conditions:

1. The City reserves the right to discharge an Introductory Employee with or without cause, at any time up to the time that he/she has completed six (6) months of continuous service.
2. A Full-time Employee may be discharged only for just cause.

ARTICLE 7

LAYOFF AND RECALL

Sec. 1: The criteria set forth below shall be considered in selecting the employee(s) who will be subject to any layoff. The criteria are not listed in any order of priority.

- A. Employment positions to be offered;
- B. Areas of certification that are of present or future value to the City.

- C. State and federal laws or regulations that may mandate certain employment practices;
- D. Special or advanced training that would be of present or future value to the City.
- E. Performance evaluations.

Sec. 2: If, after consideration of the criteria listed above and there is no significant difference between or among employees being considered for layoff, the employee(s) with the longest uninterrupted service to the City shall be retained.

Sec. 3: In the event of a restoration of the workforce, employees will be recalled in the reverse order in which they were laid off.

ARTICLE 8 JOB POSTING

Sec. 1: Job openings for bargaining unit positions other than entry-level positions shall be posted. Employees interested in the position must submit an application for the position by the end of the posting period.

ARTICLE 9 NO STRIKE AND LOCKOUT

Sec. 1: There shall be no lockouts, consumer boycotts, strikes, slow downs, picketing, work stoppages or interferences with production, including sympathy strikes, for any reason whatsoever during the period of this Agreement. No picket lines shall be observed during the life of this Agreement.

Sec. 2: The Union, its officers, agents and members agree that they will not authorize, ratify, permit, aid, assist, or participate in any consumer boycott, strike, slow down, picket, work stoppage or interference with operations, including sympathy strikes, for any reason whatsoever. If any unauthorized consumer boycott, strike, slow down, picket, work stoppage or interference with production, including a sympathy strike, occurs or is threatened, the Union agrees to use every means at its disposal to disavow, prevent and terminate such unauthorized action and to maintain full operations.

Sec. 3: Individual members of the bargaining unit violating this Article may be disciplined by the City with notice thereof to the Union. Such discipline may include discharge.

Sec. 4: The City and Union acknowledge that it is unlawful for any person:

- A. To hinder, delay, limit or suspend the continuity or efficiency of any governmental service or any governmental service in a proprietary capacity, or the service of any public entity, by lockout, strike, slowdown, or other work stoppage;
- B. To coerce, instigate, induce, conspire with, intimidate or encourage any person to participate in any lockout, strike, slowdown or other work stoppage, which would hinder, delay, limit or suspend the continuity or efficiency of any governmental service or governmental service in a proprietary capacity.
- C. To aid or assist any such lockout, strike, slowdown, or other work stoppage by giving direction or guidance in the conduct of any such lockout, strike, slowdown or other work stoppage or by providing funds for the conduct or direction thereof, or for the payment of strike, unemployment or other benefits to those participating therein.

ARTICLE 10

HOLIDAYS

Sec. 1: Employees receive twelve and a half (12.5) paid holidays per year, as follows:

| | |
|------------------------|---|
| New Year's Day | Veteran's Day |
| Martin Luther King Day | Thanksgiving Day |
| Arbor Day | The Day after Thanksgiving Day |
| Memorial Day | Christmas Eve Afternoon (Close at noon) |
| Independence Day | Christmas Day |
| Labor Day | Individual Selectable Day |
| Columbus Day | |

- When a national holiday falls on a Saturday, the preceding Friday shall be recognized as a day off with pay. When the national holiday falls on a Sunday, the following Monday shall be recognized as a day off with pay.
- All City and Utility Departments shall close one (1) hour early on December 31st.
- Individual Selectable Days must be used during the year in which they are earned and cannot be carried over to succeeding years.

ARTICLE 11

VACATIONS

Sec. 1: Employees are eligible for paid vacation after six (6) months of employment. Available vacation is based on full-time work and is reduced proportionately for absences other than vacation time, paid sick leave, paid funeral leave, and holidays. Vacation is earned as follows:

Years of Employment Days/Hours Earned Per Year

| | |
|-------------------|-------------------|
| After 1 year | 5 days/40 hours |
| After 2-5 years | 10 days/80 hours |
| After 10-15 years | 15 days/120 hours |
| After 16 years | 16 days/128 hours |
| After 17 years | 17 days/136 hours |
| After 18 years | 18 days/144 hours |
| After 19 years | 19 days/152 hours |
| After 20 + years | 20 days/160 hours |

- Employees may carry a maximum of 320 hours of vacation time. Department Heads/City Administrator shall make every effort to accommodate employees when scheduling vacation.
- Employees that terminate employment with the City shall be paid for all unused accumulated vacation leave. Upon the death of an employee, his/her beneficiary shall be paid for unused accumulated vacation leave.
- Vacations shall be scheduled by the Department Head.
- Vacation shall be allowed in half-hour increments.
- Vacation time shall be applied to FMLA leave after the use of sick leave (if applicable).

ARTICLE 12

SICK LEAVE

Sec. 1: Each full-time employee is credited with one (1) working day of sick leave each month and is charged with sick leave actually taken. No employee may accrue more than one hundred twenty (120) days of sick leave.

The employee shall notify the department head or supervisor of his/her illness before the time that he/she is due to report for work on the first day of illness. If he/she is physically incapable of giving notice in this manner, notice shall be given as soon as possible.

The department head or City Administrator may require the employee to present a medical certificate as to the fact of illness or as to the ability of the employee to perform his/her work upon returning from sick leave.

The City of David City leave policies adhere to the provisions of 29 U.S.C. 2601, commonly known as the Family Medical Leave Act of 1993.

* SICKNESS - SELF: An employee may use sick leave when that employee is ill and unable to perform his/her work or has an appointment with a doctor.

* SICKNESS - FAMILY: An employee may use sick leave when an immediate family member (spouse, child, father, mother, father-in-law and mother-in-law) is ill or is hospitalized and needs the employee's care, or, requires the employee to take that family member for a doctor's appointment.

Any employee that is suspected of sick leave abuse may have their sick leave usage monitored for a period of six months and counseled concerning the matter. False claims for sick leave are cause for disciplinary action.

Sick leave may not be converted into vacation leave or used in lieu of vacation leave. However, 75% of unused sick leave shall be paid upon termination of employment with the City.

ARTICLE 13

PERSONAL LEAVE

Sec. 1: Personal leave will be granted to regular full-time employees prorated by years of employment as follows:

| | | |
|----------------------|---|------------------|
| 0 years to 4 years | - | 2 days per year |
| 5 years to 9 years | - | 3 days per year |
| 10 years to 14 years | - | 4 days per year |
| 15 years to 19 years | - | 5 days per year |
| 20 years to 24 years | - | 6 days per year |
| 25 years to 29 years | - | 7 days per year |
| 30 years to 34 years | - | 8 days per year |
| 35 years to 39 years | - | 9 days per year |
| 40 years plus | - | 10 days per year |

Personal leave is not an earned benefit. Personal leave is deducted from accrued sick leave and may be used by the employee for any reason. If an employee does not have accrued sick leave then the employee shall not be granted personal leave. Personal leave shall be considered a privilege to reward employees for their attendance. At the time of separation from employment, an employee shall not be paid for his personal leave which has not been used.

ARTICLE 14

SPECIAL LEAVE PROVISIONS

Sec. 1: The City shall grant leave of absence with pay to Full-Time Employees for the following reasons and subject to the applied restrictions.

A. Funeral Leave.

Primary: Leave will be granted, not to exceed five (5) consecutive days per event, to employees to attend the funeral services of close family members, i.e., spouse, child, mother, father, mother-in-law, father-in-law, brother, sister, brother-in-law, sister-in-law, niece or nephew.

Secondary: Leave will be granted, not to exceed two (2) consecutive days per event, to employees to attend the funeral services or secondary family members, i.e., grandparents, grandparents-in-law, aunts, uncles and cousins

B. Personal Leave without Pay. A personal leave of absence under this policy is an approved absence without pay. Personal leaves of absence must be requested in writing and will be granted only for special reasons. Only regular full-time employees who are not otherwise eligible for FMLA leave for any reason are eligible for a personal leave of absence. Time off without pay and

leave of absence for medical or personal reasons will be considered on the basis of the City requirements and hardships caused thereby, the employee's performance record, the reason for the request, and the employee's length of service with the City. The determination of whether the request shall be granted rests solely within the discretion of the employee's Department Head and the City Administrator.

A leave of absence under this policy may be granted for personal reasons without pay for a period not to exceed thirty (30) days. All vacation time must first be exhausted before a leave of absence under this policy will be considered.

A leave of absence without compensation under this policy also may be granted for illness, injury or pregnancy disability for a period not to exceed thirty (30) days. All vacation and sick leave must first be exhausted before a leave for these purposes will be considered. At the option of the City, an employee may be required to present a certificate from the employer's physician and/or a physician of his/her own choosing as to the fact of the illness, injury or pregnancy disability. The employee must present a full medical release signed by his or her physician before being reinstated for work.

The length of absence may be extended at the discretion of the City upon further application in writing by the employee prior to the expiration of the initial period. In no event will leaves be granted for a period in excess of sixty (60) days. If your leave of absence is in excess of thirty (30) days, your return is subject to job availability. If your position is not available at the end of your leave, the City will make a reasonable effort to return you to a substantially similar position.

It will be the responsibility of the employee who has been granted a leave of absence in excess of thirty (30) days to pay monthly premiums for any continued group insurance coverage. In the absence of such payment, coverage will be terminated; however, you will be given an opportunity to convert the policy for your individual coverage. Failure to return to work on the date scheduled by the City will result in discharge from employment.

All leaves of absence will be granted subject to and in accordance with the provisions of the Uniformed Services Employment and Reemployment Rights Act (USERRA), if applicable.

C. Military Leave. Military leave shall be governed by Neb. Rev. Stat. Sections 55-160 through 55-166 (Reissue 2004) or as amended by the Legislature, and by the Uniformed Services Employment and Reemployment Rights Act.

D. Longevity Recognition. The City of David City may present gifts with a monetary value to employees in recognition of years of employment and other special occasions as approved by the City Council, as follows:

| | |
|----------|----------|
| 5 years | \$10.00 |
| 10 years | \$15.00 |
| 15 years | \$30.00 |
| 20 years | \$50.00 |
| 25 years | \$80.00 |
| 30 years | \$110.00 |
| 35 years | \$140.00 |
| 40 years | \$170.00 |
| 45 years | \$200.00 |

E. Public Service Leave. An employee may take leave to serve as a member of a jury, upon being called as a witness because of his position in any court, or, to enter military training for not more than two weeks in any one year. During the period of public service leave, the employee shall receive his/her regular pay less any amount received by him/her for performing such public service, provided, however, that no deduction shall be made for amounts earned of less than \$10.00 (R.R.S. 55-160).

ARTICLE 15

ON THE JOB ACCIDENTS

Sec. 1: The City shall maintain insurance to comply with Nebraska Workers' Compensation law as amended.

Sec. 2: If there is an on-the-job injury and the employee receives workers' compensation payments for the lost wages, the employee shall be allowed to use his/her sick leave so that the employee receives base pay equal to what he/she earned prior to the accident.

ARTICLE 16

EMPLOYEE INSURANCE AND RETIREMENT PROGRAMS

Sec. 1: **Medical and Life Insurance.** Employees must work a minimum of forty (40) hours per week to be eligible for the medical and life insurance benefits.

A. Medical insurance is with Blue Cross Blue Shield of Nebraska.

The City will contribute 75% of the deductible, which money will be deposited directly into the employee's HSA account.

B. The employee pays 25% of the monthly premium regardless of which coverage plan they have chosen. The City pays the balance.

C. The City reserves the right to choose the method of providing this benefit (i.e., self-funded plan or insurance) and the benefits provided, including the deductible and co-payments.

Sec. 2: **Retirement Plan.** The City will match employee contributions in an amount equal to the greater of 6% of regular pay or \$50.00 per month to a regular employee's Deferred Compensation Plan. The City of David City currently has two (2) deferred compensation plans to choose from.

New employees will not be eligible for this benefit until they have been taken off of probationary status. This is a voluntary benefit in which employees may choose not to participate. Employees, who elect not to participate in this benefit, will not receive any type of in-lieu of payment from the City.

Sec. 3: **Life Insurance.** The City shall provide a term life insurance plan in the amount of \$15,000.00 for each employee. The City shall pay the total cost for this plan.

ARTICLE 17

HOURS OF WORK

Sec. 1: **Hours of Work.** All Departments shall work a forty (40) hour workweek as the standard workweek unless otherwise provided. The Supervisors shall set the hours of work.

Sec. 2: **Time Sheets.** Timesheets serve as the legal authority to pay an employee. They also serve as a verification of time off, and provide the legal basis to grant an employee benefits, including workers' compensation as appropriate. Employees are to provide an accurate accounting of all hours worked and leave used during a pay period on a timesheet.

All absences from an employee's regular work schedule must be reported and accounted for. An employee's timesheet accounts for all hours in the pay period and must be verified and approved by the employee's supervisor.

Completed timesheets require the signatures of the employee and the supervisor. These signatures certify that, to the best of their knowledge, the information provided on the documents is true and correct. An intentional misrepresentation of hours worked constitutes fraud and will result in disciplinary action or possibly termination of employment.

Sec. 3: Flextime. Flextime is an alternate forty (40) hour workweek schedule by which an employee's workweek is determined by the needs of the job and is subject to Department Head or City Administrator approval.

Department Heads shall establish work periods and hours of work, which may differ from the hours of work to meet special department needs, projects or workloads. Special department needs and projects shall include, but not be limited to, infrastructure construction, standard workweek snow removal, street painting, recycling, football events, tract events, auditorium events, official committee and board meetings of the City, and any other known work that occurs before 7:30 a.m. or after 5:00 p.m. Monday through Friday or on weekends.

Department Heads are encouraged to use flextime whenever feasible to minimize overtime or the accumulation of compensatory time.

ARTICLE 18

OVERTIME, CALL BACK AND ON CALL

Sec. 1: Overtime & Compensatory Time.

Overview: All compensatory/overtime work should be held to a minimum and should be authorized in advance in writing by the appropriate supervisor. Each supervisor is responsible for and expected to use good judgment in determining what constitutes legitimate and necessary compensatory/overtime work.

In unusual situations in which prior approval may not have been practical or possible and the required completion of a specific project, assignment, or official travel results in overtime or compensatory time worked, the appropriate supervisor may verbally approve the unauthorized time based on the circumstances involved, but it should be reported to the City Administrator in a reasonable timeframe.

Definitions:

- A. **Overtime** is the amount of time someone works beyond normal working hours, i.e., the standard forty (40) hour workweek.
- B. **Compensatory Time** refers to a type of work schedule arrangement that allows (or requires) workers to accumulate leave time and take time off instead of receiving overtime pay.

Sec. 2: **Nonexempt Employees Overtime & Compensatory Time.**

Overtime. According to the Fair Labor Standards Act (FLSA), time worked in excess of forty (40) hours in one (1) week will be paid at the rate of time and one-half the regular rate of pay.

Compensatory Time. Compensatory time may be accumulated in lieu of time and one-half pay for overtime worked at the discretion of the City Administrator. These hours shall be recorded in the payroll system at the time of accrual and use. Hours worked in excess of eight (8) hours in one (1) day may not necessarily be counted as overtime.

When compensatory time is allowed by the Department Head or City Administrator, an employee may accrue no more than twenty-four (24) hours of compensatory time at any given time. Any exceptions to this provision must be authorized by the City Administrator.

Compensatory time shall be used within the same pay period from when it was earned. If compensatory hours are earned during the last week of the pay period, those hours may be carried over to be used during the next week following the pay period in which they were earned.

Designated holidays, vacation time, individual selectable days, and sick leave time are included as hours of work for the purpose of calculating overtime during the week in which they fall.

Sec. 3: **Work on Holidays.** If an employee is required to work on a holiday, he/she shall receive eight (8) hours of work credited to the total work week hours plus the number of hours actually worked on the holiday to be credited to the total week hours.

Sec. 4: **Call Out Time.** If after an employee has left his/her place of work and he/she is called back for duty, he/she shall be paid for at least two (2) hours of work, which shall be included in time worked in calculating overtime for that week. For

purposes of calculating Call-Out Time, hours worked shall include two (2) hours plus actual time worked after two (2) hours.

Sec. 5: **On Call Time.** An employee, who carried a pager for a week, will be credited with three (3) hours of compensatory time. While an employee is On-Call Time, he/she shall be in a place and situation that allows for a response to any situation or need within thirty (30) minutes.

Sec. 6: **Standby Time.** City Power Plant employees, who are not On-Call, will be credited with two (2) hours of compensatory time during such times as Nebraska Public Power District mandates the David City Power Plant standby for possible electric energy production. An employee who is On-Call shall not receive any compensation for Standby Time. While an employee is on Standby Time, he/she shall be in a place and situation that allows for a response to any situation or need within thirty (30) minutes.

Sec. 7: **Breaks.** A fifteen (15) minute break shall be allowed for each four (4) hours of work. If work conditions are such that travel, cleanup, etc., plus the break require more than fifteen (15) minutes, the break shall be taken on the site.

ARTICLE 19

SPECIAL PROVISIONS

Sec. 1: **Employee Residence.** All Departments that may be called back to work for emergency purposes (Water Department, Sewer Department, Electric Department, Street Department, and Power Plant Department) are required to reside within a fifteen (15) mile radius of the established city limits of David City.

Sec. 2: **Full-Time Employee Discounts.**

- 10% off Auditorium Rentals (including bar charges)
- 10% off Swimming Pool Passes (family, couple, or single)
- 10% off Schweser House Rentals
- Gravel, White Rock, Mud Rock, etc. - allowed to purchase at cost

Sec. 3: **License and Fees.** The City shall pay the fees for all licenses required for the employees.

Sec. 4: **Influenza and Hepatitis B Vaccination.** The City shall offer an annual influenza shot for all employees who elect to participate. Employees who are required to work with or at any Wastewater Treatment Facility Plant, Equipment and/or System will be provided at their option, vaccination shots for Hepatitis B at the expense of the City.

ARTICLE 20

RATE OF PAY

Sec. 1: The rate of pay is found in Schedule A attached herein.

ARTICLE 21

SCOPE OF AGREEMENT

Sec. 1: The parties mutually agree that this Agreement constitutes the entire Agreement and understanding concerning all proper subjects of collective bargaining for the duration of the contract between the parties and supersedes all previous agreements. This Agreement shall not be modified, altered, changed or amended in any respect unless in writing and signed by both parties. There are no oral agreements nor is this Agreement based upon any oral representation covering the subject matter of this Agreement.

Sec. 2: This Agreement has been executed in accordance with the statutes and the laws of the State of Nebraska and the United States of America, and any dispute, disagreement, or litigation arising under this Agreement shall be adjudged in accordance with the statutes and laws of the State of Nebraska and of the United States of America.

Sec. 3: The parties agree that the negotiations preceding the signing of this Agreement included negotiations on all proper subjects of bargaining and that all negotiations were conducted in accordance with all applicable federal and state requirements.

ARTICLE 22

MANAGEMENT RIGHTS

Sec. 1: All Management rights, functions, responsibilities and authority not specifically limited by the express terms of this Agreement are retained by the Employer and remain exclusively within the rights of the Employer and nothing contained herein shall be construed or interpreted to restrict, limit or impair the rights, powers and authority of the Employer heretofore possessed and hereinafter granted by virtue of law, regulations or resolutions.

Sec. 2: The Union acknowledges the concept of "inherent management rights" and agrees that this concept shall be made fully applicable to the terms of the Agreement with respect to the utilization of the grievance procedure of this Agreement and with respect to any exercise of this Article.

Sec. 3: In addition to all powers, duties, and rights of the Employer established by constitutional provision, statute, ordinance, charter, or special act, the Union recognizes the powers, duties, and rights which belong solely, exclusively, and without limitation to the Employer, and are not in conflict with this Agreement.

- A. The right to determine, effectuate and implement the objectives and goals of the City.
- B. The right to manage and supervise all operations and functions of the City.
- C. The right to determine services to be provided, including the right to establish, allocate, schedule, assign, modify, change, subcontract and discontinue City operations, work shifts and working hours.
- D. The right to establish, modify, change and discontinue work standards.
- E. The right to direct and arrange working forces including the right to hire, examine, classify, promote, train, transfer, assign, and retain employees; maintain discipline and control and use of City property; suspend, demote, discharge or take other disciplinary action against employees; and to relieve employees from duty due to lack of work, lack of funds, a decision to subcontract or discontinue City operations or other legitimate reasons and not in conflict with this Agreement.
- F. The right to increase, reduce, change, modify and alter the size and composition of the work force.
- G. The right to determine, establish, set and implement management organization policies of the City for the selection, training, transfer and reorganization of employees.
- H. The right to create, establish, change, modify, subcontract and discontinue any City function or operation.
- I. The right to establish, implement, modify and change financial policies, budget control policies, accounting procedures, prices of goods or services, and public relations procedures and policies.
- J. The right to adopt, modify, change, enforce or discontinue any existing work rules, regulations, procedures, policies and other terms and conditions of employment of the City which are not in conflict with this Agreement or state statute.
- K. The right to determine and enforce employee work abilities and quality and quantity standards.
- L. The right to establish the location of offices, including the establishment of new offices and the relocation and closing of old offices.
- M. The right to maintain order and efficiency.

The listing of the foregoing rights, powers and authority are not in any way intended to be exclusive, but are merely intended to illustrate the rights retained by the Employer.

ARTICLE 23

WORK RULES

The Employer may adopt rules and regulations for the operation of the City and the conduct of its employees; provided any such rules and regulations shall not conflict with any provisions of this Agreement or the laws of the State of Nebraska or the United States of America. Any terms or conditions not covered in this Agreement will be adhered to as currently written in the City Employee Handbook as revised from time to time and is not a mandatory subject of bargaining.

ARTICLE 24

SMOKING POLICY

Smoking is prohibited throughout Employer's facilities and vehicles.

ARTICLE 25

DURATION OF AGREEMENT

Sec. 1: This Agreement shall be in full force and effective upon execution of this Agreement to September 30, 2021, only.

Sec. 2: In the event either party to this Agreement provides sixty (60) days' written notice to the other prior to the expiration of this Agreement of a desire to meet for the purpose of negotiating a replacement contract, the party receiving such notice agrees to respond within (7) calendar days for the purpose of establishing mutually agreeable times and places for the commencement of bargaining on a replacement contract. In the event neither party provides notice to meet for the purpose of negotiating a replacement contract, the contract shall continue in full force.

ARTICLE 26

SIGNATURE

The parties hereto have caused the Agreement to be executed by their proper officers hereunto duly authorized and effective as of the ____ day of _____.

CITY OF DAVID CITY

LOCAL 1536, I.B.E.W.

MAYOR

BUSINESS MANAGER

CITY ADMINISTRATOR

| | | Schedule A | | | | | | | | | |
|-------------------------------|----------|-------------------------------------|----------|----------|----------|----------|----------|----------|----------|-----------|--|
| | | October 1, 2019--September 30, 2020 | | | | | | | | | |
| Job Title | 1st Step | 2nd Step | 3rd Step | 4th Step | 5th Step | 6th Step | 7th Step | 8th Step | 9th Step | 10th Step | |
| Power Plant Op I | \$ 22.61 | \$ 23.40 | \$ 24.19 | \$ 24.98 | \$ 25.77 | \$ 26.56 | \$ 27.35 | \$ 28.14 | \$ 28.93 | \$ 29.72 | |
| Power Plant Supervisor | \$ 25.86 | \$ 26.70 | \$ 27.54 | \$ 28.38 | \$ 29.22 | \$ 30.07 | \$ 30.91 | \$ 31.75 | \$ 32.59 | \$ 33.43 | |
| Appr. Lineman | \$ 20.77 | \$ 21.38 | \$ 21.99 | \$ 22.59 | \$ 23.20 | \$ 23.81 | \$ 24.42 | \$ 25.02 | \$ 25.63 | \$ 26.24 | |
| Line Worker II | \$ 22.89 | \$ 23.54 | \$ 24.19 | \$ 24.84 | \$ 25.49 | \$ 26.13 | \$ 26.78 | \$ 27.43 | \$ 28.08 | \$ 28.73 | |
| Line Worker I | \$ 27.77 | \$ 28.24 | \$ 28.70 | \$ 29.17 | \$ 29.63 | \$ 30.10 | \$ 30.56 | \$ 31.03 | \$ 31.49 | \$ 31.96 | |
| Line Foreman | \$ 27.96 | \$ 28.68 | \$ 29.40 | \$ 30.13 | \$ 30.85 | \$ 31.57 | \$ 32.29 | \$ 33.02 | \$ 33.74 | \$ 34.46 | |
| Electric Supervisor | \$ 30.87 | \$ 31.70 | \$ 32.53 | \$ 33.36 | \$ 34.19 | \$ 35.02 | \$ 35.85 | \$ 36.68 | \$ 37.51 | \$ 38.34 | |
| WA/SE Op I | \$ 17.59 | \$ 18.19 | \$ 18.79 | \$ 19.38 | \$ 19.98 | \$ 20.58 | \$ 21.18 | \$ 21.77 | \$ 22.37 | \$ 22.97 | |
| WA/SE Op I w Gr VI | \$ 18.64 | \$ 19.27 | \$ 19.91 | \$ 20.54 | \$ 21.18 | \$ 21.81 | \$ 22.45 | \$ 23.08 | \$ 23.72 | \$ 24.35 | |
| WA/SE Op II | \$ 19.96 | \$ 20.67 | \$ 21.37 | \$ 22.08 | \$ 22.79 | \$ 23.49 | \$ 24.20 | \$ 24.91 | \$ 25.61 | \$ 26.32 | |
| WA/SE Op II w Gr VI | \$ 20.44 | \$ 21.24 | \$ 22.04 | \$ 22.84 | \$ 23.64 | \$ 24.44 | \$ 25.24 | \$ 26.04 | \$ 26.84 | \$ 27.64 | |
| WA/SE Op III w Gr VI | \$ 20.85 | \$ 21.67 | \$ 22.48 | \$ 23.30 | \$ 24.11 | \$ 24.93 | \$ 25.74 | \$ 26.56 | \$ 27.37 | \$ 28.19 | |
| Water Field Supervisor | \$ 26.12 | \$ 27.15 | \$ 28.18 | \$ 29.22 | \$ 30.25 | \$ 31.28 | \$ 32.31 | \$ 33.35 | \$ 34.38 | \$ 35.41 | |
| Water Supervisor w Gr VI | \$ 26.12 | \$ 27.15 | \$ 28.18 | \$ 29.22 | \$ 30.25 | \$ 31.28 | \$ 32.31 | \$ 33.35 | \$ 34.38 | \$ 35.41 | |
| Wastewater Supervisor w Gr VI | \$ 26.12 | \$ 27.15 | \$ 28.18 | \$ 29.22 | \$ 30.25 | \$ 31.28 | \$ 32.31 | \$ 33.35 | \$ 34.38 | \$ 35.41 | |
| Maintenance Worker I | \$ 16.29 | \$ 16.80 | \$ 17.31 | \$ 17.82 | \$ 18.33 | \$ 18.85 | \$ 19.36 | \$ 19.87 | \$ 20.38 | \$ 20.89 | |
| Maintenance Worker II | \$ 17.06 | \$ 17.59 | \$ 18.12 | \$ 18.65 | \$ 19.18 | \$ 19.71 | \$ 20.24 | \$ 20.77 | \$ 21.30 | \$ 21.83 | |
| Street Foreman | \$ 20.34 | \$ 20.97 | \$ 21.60 | \$ 22.23 | \$ 22.86 | \$ 23.49 | \$ 24.12 | \$ 24.75 | \$ 25.38 | \$ 26.01 | |
| Street Supervisor | \$ 25.84 | \$ 26.53 | \$ 27.21 | \$ 27.90 | \$ 28.58 | \$ 29.27 | \$ 29.95 | \$ 30.64 | \$ 31.32 | \$ 32.01 | |
| Park Laborer | \$ 11.52 | \$ 11.96 | \$ 12.40 | \$ 12.84 | \$ 13.28 | \$ 13.71 | \$ 14.15 | \$ 14.59 | \$ 15.03 | \$ 15.47 | |
| Parks & Aud. Supervisor | \$ 21.04 | \$ 21.62 | \$ 22.20 | \$ 22.78 | \$ 23.36 | \$ 23.94 | \$ 24.52 | \$ 25.10 | \$ 25.68 | \$ 26.26 | |
| Part-time Workers | \$ 10.15 | \$ 10.56 | \$ 10.98 | \$ 11.39 | \$ 11.80 | \$ 12.22 | \$ 12.63 | \$ 13.04 | \$ 13.46 | \$ 13.87 | |

1st Step = 6 months= Probation
 2nd step thru 9th step = 1 year

When an employee moves to a higher classification, they shall be slotted into a step closest too, but not less than their current wage.

Employees shall be slotted as follows:

| | | |
|--------------------|---------|---|
| Pat Hoelt | Step 10 | 38.34 |
| Mick Shipley | Step 10 | 34.46 |
| Nathan Blumenberg | Step 10 | 31.96 |
| Brett Thiermann | Step 4 | 24.84 |
| Patrick Ayers | Step 2 | 21.38 |
| Aaron Gustin | Step 5 | WA/SE Op III w Gr VI, If promoted moves to Step 1, Water Supervisor |
| John Kobus | Step 2 | 27.15 |
| Nathan Styskal | Step 10 | 15.47 |
| Emmalyn Gustin | Step 2 | 18.19 |
| Chris Kroesing | Step 10 | 32.01 |
| Matt Asche | Step 9 | 25.38 |
| Nicholas Zrust | Step 3 | 18.12 |
| Clint Brandenburgh | Step 2 | 17.59 |
| Bill Buntigen | Step 8 | 25.11 |
| Eugene Andel | Step 7 | 12.63 |

Wage increases retroactive to October 1, 2019

6/15/2020

Oct. 1, 2020 + 3% across the board

BEFORE THE NEBRASKA COMMISSION OF INDUSTRIAL RELATIONS

| | | |
|---------------------------------|---|--------------------|
| INTERNATIONAL BROTHERHOOD OF |) | Case No. _____ |
| ELECTRICAL WORKERS, LOCAL UNION |) | |
| NO. 1536, |) | |
| |) | |
| Petitioner, |) | |
| |) | |
| vs. |) | NOTICE OF PENDENCY |
| |) | |
| CITY OF DAVID CITY, NEBRASKA, |) | |
| |) | |
| Respondent. |) | |

TO THE ABOVE NAMED RESPONDENT:

You are hereby notified that a Petition has been filed on or about September 30, 2020 in the Commission of Industrial Relations of the State of Nebraska, seeking a resolution of an industrial dispute. A copy of said Petition is attached hereto.

Pursuant to *Neb. Rev. Stat.*, § 48-813, this Notice of Pendency is served upon:

| | |
|-------------------------------|------------------------------------|
| Mayor Alan Zavodny | Clayton Keller, City Administrator |
| 557 N. 4 th Street | 557 N. 4 th Street |
| David City, NE 68632 | PO Box 191 |
| | David City, NE 68632 |

principal officers of the Respondent at their usual places of activity.

As provided by law, the Respondent shall have twenty (20) days after receipt of the Petition and Notice of Pendency in which to serve and file its response.

DATED this 30th day of September, 2020.

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL
UNION No. 1536, Petitioner,

By: *Dalton W. Tietjen*
Dalton W. Tietjen #18179
of TIETJEN, SIMON & BOYLE
1023 Lincoln Mall, Suite 202
Lincoln, NE 68508
(402) 438-1437 – Telephone
(402) 438-1795 – Fax
DTietjen555@gmail.com
Attorney for Petitioner

Pendency-David City

BEFORE THE NEBRASKA COMMISSION OF INDUSTRIAL RELATIONS

| | | |
|---------------------------------|---|----------------|
| INTERNATIONAL BROTHERHOOD OF |) | Case No. _____ |
| ELECTRICAL WORKERS, LOCAL UNION |) | |
| NO. 1536, |) | |
| |) | |
| Petitioner, |) | |
| |) | |
| vs. |) | CERTIFICATE OF |
| |) | SERVICE |
| CITY OF DAVID CITY, NEBRASKA, |) | |
| |) | |
| Respondent. |) | |

The undersigned hereby certifies that copies of the Petition, Notice of Pendency, and this Certificate of Service were forwarded to the following persons on this 30th day of September, 2020.

BY CERTIFIED UNITED STATES MAIL, RETURN RECEIPT REQUESTED,
POSTAGE THEREON PREPAID:

Mayor Alan Zavodny
557 N. 4th Street
David City, NE 68632

Clayton Keller, City Administrator
557 N. 4th Street
PO Box 191
David City, NE 68632

BY REGULAR UNITED STATES MAIL, POSTAGE THEREON PREPAID:

Comm. Patricia L. Vannoy
134 S. 13th St., Ste. 1200
Lincoln, NE 68508

Clerk of the Neb. Commission of Ind. Rel.
PO Box 94864
Lincoln, NE 68509

Comm. Dallas D. Jones
1248 O Street
Suite 600
Lincoln, NE 68508

Comm. William G. Blake
301 S. 13th Street
Suite 101 Cornhusker Plaza
Lincoln, NE 68508

Comm. Joel Carlson
200 West Benjamin Ave.
Norfolk, NE 68702

Comm. Gregory M. Neuhaus
205 S. Cedar Street, Suite 150
Grand Island, NE 68801

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL
UNION No. 1536, Petitioner,

By: Dalton W. Tietjen
Dalton W. Tietjen #18179
of TIETJEN, SIMON & BOYLE
1023 Lincoln Mall, Suite 202
Lincoln, NE 68508
(402) 438-1437 – Telephone
(402) 438-1795 – Fax
DTietjen555@gmail.com
Attorney for Petitioner

CIR/Cert-David City

BEFORE THE NEBRASKA COMMISSION OF INDUSTRIAL RELATIONS

| | | |
|---------------------------------|---|---------------------|
| INTERNATIONAL BROTHERHOOD OF |) | Case No. _____ |
| ELECTRICAL WORKERS, LOCAL UNION |) | |
| NO. 1536, |) | |
| |) | |
| Petitioner, |) | |
| |) | |
| vs. |) | NOTICE OF SERVING |
| |) | DISCOVERY DOCUMENTS |
| CITY OF DAVID CITY, NEBRASKA, |) | |
| |) | |
| Respondent. |) | |

Notice is hereby given that on the 30th day of September, 2020, the following discovery documents were served upon Respondent by mailing the same to Mayor Alan Zavodny and City Administrator Clayton Keller:

1. Petitioner's Requests for Production of Documents; and
2. Petitioner's Interrogatories to Respondent.

Dated at Lincoln, Nebraska this 30th day of September, 2020.

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL
UNION No. 1536,
Petitioner,

By: Dalton W. Tietjen
Dalton W. Tietjen #18179
of TIETJEN, SIMON & BOYLE
1023 Lincoln Mall, Suite 202
Lincoln, NE 68508
(402) 438-1437 – Telephone
(402) 438-1795 – Fax
DTietjen555@gmail.com
Attorney for Petitioner

CERTIFICATE OF SERVICE

The undersigned hereby certifies that true and correct copies of the above and foregoing Notice of Serving Discovery Documents were served upon David City Mayor Alan Zavodny.

David City City Administrator Clayton Keller, and all members of the Commission by First Class
US Mail, Postage Prepaid.

Dalton W. Tietjen

CIR/Discoverynotice-David City

BEFORE THE NEBRASKA COMMISSION OF INDUSTRIAL RELATIONS

| | | |
|---------------------------------|---|------------------------|
| INTERNATIONAL BROTHERHOOD OF |) | Case No. _____ |
| ELECTRICAL WORKERS, LOCAL UNION |) | |
| NO. 1536, |) | |
| |) | |
| Petitioner, |) | |
| |) | |
| vs. |) | CERTIFICATE OF MAILING |
| |) | FILING FEE |
| CITY OF DAVID CITY, NEBRASKA, |) | |
| |) | |
| Respondent. |) | |

Petitioner, by and through its attorney of record, Dalton W. Tietjen, hereby certifies that payment of the required \$100 filing fee has been mailed to the Clerk of the Commission by regular US Mail, postage prepaid, on this 30th day of September, 2020.

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL
UNION No. 1536,
Petitioner,

By: Dalton W. Tietjen
Dalton W. Tietjen #18179
of TIETJEN, SIMON & BOYLE
1023 Lincoln Mall, Suite 202
Lincoln, NE 68508
(402) 438-1437 – Telephone
(402) 438-1795 – Fax
DTietjen555@gmail.com
Attorney for Petitioner

NEBRASKA COMMISSION OF INDUSTRIAL RELATIONS

| | |
|---------------------------------|---------------------------|
| INTERNATIONAL BROTHERHOOD) | Case No. 1509 |
| OF ELECTRICAL WORKERS, LOCAL) | |
| UNION NO. 1536,) | ORDER ASSIGNING PANEL AND |
| Petitioner,) | HEARING COMMISSIONER |
| v.) | |
|)) | |
| CITY OF DAVID CITY, NEBRASKA,) | NEBRASKA COMMISSION |
| Respondent.) | OF INDUSTRIAL RELATIONS |
|) | FILED |
|) | |
|) | OCT 07 2020 |
|) | |
|) | CLERK |

The Commission hereby ORDERS the following assignment to Hearing Commissioner and Panel in the above-entitled action:

CASE NO. 1509

The Honorable Patricia L. Vannoy, Hearing Commissioner
The Honorable Joel E. Carlson
The Honorable Dallas D. Jones

Entered October 7, 2020.

NEBRASKA COMMISSION OF INDUSTRIAL RELATIONS

William G. Blake, Presiding Commissioner

By Ashlea R. Whitney
Ashlea R. Whitney, Clerk

Mayor Zavodny stated that the next item on the agenda was consideration of an estimate from Bierman Contracting to install a downtown cable system and lighting.

City Administrator Clayton Keller said, "Previously, in past Council meetings when Bierman Contracting gave us their proposal, we kept tabling it and when the Council tables it, we have to put it on the next agenda. So, this is where that comes from. We've already accepted their alternate proposal, so then we would need to deny this one."

Mayor Zavodny said, "Since we can't have a negative motion, listen to me very carefully, someone needs to make a motion to approve this and it needs to die for lack of a second."

Council member Kevin Hotovy made a motion to accept the estimate from Bierman Contracting to install a downtown cable system and lighting. The motion was not seconded and therefore dies.

Council member Tom Kobus made a motion to select JEO as the firm to complete the source water protection project. Council Member Kevin Hotovy seconded the motion. The motion carried.

Kevin Hotovy: Yea, Tom Kobus: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, John Vandenberg: Absent, Alan Zavodny (Mayor): Yea
Yea: 5, Nay: 0, Absent: 1

City of David City, NE
Source Water Protection Project
October 14, 2020



Response to Request for Qualifications

Via email: <ckeller@davidcityne.com>

Dear Mr. Keller and Selection Committee Members,

Increasing agricultural water consumption and pollutant sources are a cause of growing concern for the City of David City (City). We understand that the City has decided to initiate a project to better understand the characteristics of the source water aquifer by updating the 2010 official Wellhead Protection (WHP) Area map and developing a WHP Plan. JEO Consulting Group, Inc. (JEO) is familiar with your water supply system and has staff that specialize in working with communities through these types of challenges. Additionally, we have teamed with LRE Water, Inc., a group of hydrogeologists that we trust and have depended on for over a decade to assist with the modeling of groundwater around your community.

JEO has led the development of more than 20 similar source water protection projects, including WHP Plans, well siting, well abandonment/decommissioning, public outreach and education, and aquifer assessments.

In the attached two-page response, we have briefly highlighted the major tasks for this project. It is anticipated that final scope, fee, and schedule would be negotiated based upon the City's final source water grant. If you have any questions regarding the enclosed information, please don't hesitate to contact me at 402.416.4667, or by email at jmohr@jeo.com.

Sincerely,

A handwritten signature in blue ink that reads 'Jonathan Mohr'.

Jonathan Mohr
Environmental Planner/Scientist

JEO CONSULTING GROUP INC

2700 Fletcher Avenue | Lincoln, Nebraska 68504-1113 | p: 402.435.3080 | f: 402.435.4110

www.jeo.com

City of David City, NE
Source Water Protection Project
October 14, 2020
Page 1 of 2



Project Understanding

The City has growing concerns about potential pollutant sources and high water use from agricultural operations infringing on its water supply. As a result, the City intends to utilize a groundwater model to accurately delineate a WHP Area utilizing Airborne Electromagnetic (AEM) data recently obtained by Lower Platte North Natural Resources District (LPNNRD). The City would also like to decommission private abandoned wells, Municipal Well No. 8, and educate the community on source water protection. This project will enable the City's Planning Commission to ensure zoning and land use controls are being applied to the correct delineated area. Funding has been obtained from the Nebraska Department of Environmental and Energy (NDEE). Lower Platte North Natural Resources District (LPNNRD) and Upper Big Blue NRD (UBBNRD) will be supporting partners.

Project Experience

Since 2010, JEO has worked with over 20 communities on projects related to source water protection, shown on the map below. Our team is uniquely qualified, with proven expertise in all aspects of WHP Planning, groundwater modeling, and community involvement.

JEO has teamed with its exclusive partner, LRE Water Inc., a group of hydrogeologists that will perform groundwater modeling. LRE has completed nearly 10 similar WHP Area mapping efforts, each approved by NDEE. Both firms also regularly work with the LPNNRD, a co-sponsor of your project.



Project Manager

Jonathan Mohr – Jon is an Environmental Planner/Scientist with over 15 years of experience including a career specialization in WHP, including time spent at NDEE delineating WHP Areas. He will be your primary point of contact and work with JEO and LRE staff to ensure the project is completed on time. Jon will also assist with NDEE correspondence, lead all meetings, and assist with working with both NRDs. He has worked with 15 different Nebraska communities on similar projects utilizing the NDEE's Source Water Protection Funding.

JEO CONSULTING GROUP INC

2700 Fletcher Avenue | Lincoln, Nebraska 68504-1113 | p: 402.435.3080 | f: 402.435.4110
www.jeo.com

City of David City, NE
Source Water Protection Project
October 14, 2020



Project Approach and Scope

The approach will be based upon the NDEE source water grant and includes five primary tasks, each summarized below in a scope of services. JEO will conduct a kickoff meeting to fine tune the scope and negotiate a cost with the City upon notice to proceed.

Task 1: Project Management and Coordination – This task includes time for project management to maintain the schedule, budget, and quality of work, as well as coordination with project partners. Additionally, monthly progress report and invoices will be prepared for the City. JEO will also coordinate with NDEE, the City, LPNNRD, Upper Big Blue NRD, and other project partners, and help with grant reporting requirements.

Task 2: Public Outreach and Meetings – JEO will assist the City in forming a small stakeholder group consisting of local farmers, property owners, citizens, and other interested individuals. Up to four meetings will be facilitated, including a public open house. JEO will offer virtual meeting alternatives for consideration. Additional materials to support these efforts, such as project handouts, posters, new releases, etc. will be created by JEO with input from the City and NRDs.

Task 3: Groundwater Model – A groundwater model (MODFLOW) will be built utilizing groundwater level data, geologic data, Airborne Electromagnetic (AEM) data, and pumping test data, if available. The model will be utilized to identify groundwater time of travel (TOT) flow paths to the existing wells for a 20 and 50-year timeframe. A report will be created which will be submitted to NDEE for review and approval before the WHP area is officially mapped and adopted by the City. This map will be the basis for the WHP Plan update.

Task 4: Well Decommissioning – JEO will assist the City in identifying and decommissioning up to ten privately owned abandoned wells within the updated WHP Area. Public input will be utilized to locate wells. JEO will assist the City with obtaining one contractor, and working with the contractor, to decommission wells and properly document closures with the NRDs and Nebraska Department of Natural Resources.

Task 5: Wellhead Protection Plan – JEO will develop a NDEE approved WHP Plan that includes demographic statistics, an inventory of potential contaminant sources, summary of water system and applicable regulatory authorities, water supply contingency information, long-term water supply planning, and suggested management strategies to reduce pollutant loading. Stakeholder meetings to support developing of the plan will be held as part of Task 2.

Schedule

The project schedule is dependent upon award of the grant and contracting with NDEE. Assuming this occurs in November 2020, it is anticipated that the entire project will be completed within 12 months, around December 2021. Additional time may be necessary for NDEE to review and approve the WHP Plan.

JEO CONSULTING GROUP INC

2700 Fletcher Avenue | Lincoln, Nebraska 68504-1113 | p: 402.435.3080 | f: 402.435.4110
www.jeo.com

Council member Kevin Hotovy made a motion to pass and adopt Resolution No. 26-2020 setting the monthly industrial wastewater billing amounts for Michael Foods. Council Member Bruce Meysenburg seconded the motion. The motion carried.
 Kevin Hotovy: Yea, Tom Kobus: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, John Vandenberg: Absent, Alan Zavodny (Mayor): Yea
 Yea: 5, Nay: 0, Absent: 1

RESOLUTION NO. 26 - 2020

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF DAVID CITY, BUTLER COUNTY NEBRASKA, to modify the monthly industrial wastewater billing amounts based on the current agreement between Michael Foods (formerly known as Henningsen Foods) and the City regarding accepting and treating wastewater.

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

Section 1: The allocation of sewer system maintenance, proportionate fixed costs, proportionate variable costs, and construction costs on a monthly basis for the Fiscal Year 2020-2021 for Henningsen Foods shall be as follows, per the current agreement:

| | |
|---------------------------|----------------|
| Sewer System Maintenance | \$1,638 |
| Capital Construction Cost | \$6,489 |
| Proportionate Fixed Cost | \$10,271 |
| Variable Cost | <u>\$4,270</u> |
| Total | \$22,669 |

Section 2: Should the wastewater flow and loading characteristics exceed the current agreement limits, daily surcharges shall be added to the monthly costs per the following daily surcharge amounts, per the current agreement:

Daily Surcharges:

| <u>BOD (lbs/day)</u> | <u>TSS (lbs/day)</u> | <u>TKN (lbs/day)</u> | <u>Flow (per 1,000 gpd)</u> |
|--------------------------|--------------------------|--------------------------|---------------------------------|
| \$0.45 | \$0.06 | \$0.37 | \$0.70 |

Section 3: These amounts are revised annually.

PASSED AND APPROVED this 14th day of October, 2020.

Attest:

 Alan Zavodny, Mayor
 City of David City, Nebraska

 Tami Comte, City Clerk

Mayor Zavodny stated that the next item on the agenda was consideration of an engineering agreement with Olsson.

After some discussion, it was decided to go out for engineering proposals.

Mayor Zavodny stated that the next item on the agenda was Resolution No. 28-2020, allowing the David City Swimming Pool use of David City Water, Sewer and Electric Services without the customer charge from September through April each year.

Mayor Zavodny said, "I did get a call from Electric Supervisor Pat Hoeft today and he outlined his plans for making this work and they are going to treat it like an irrigation motor. It doesn't make sense to charge the seventy-five dollars every month for such a small usage, so they are just going to adjust how they bill and I think we've got that taken care of, so I think that we are ok to move ahead on Resolution No. 28-2020."

Council member Bruce Meysenburg made a motion to pass and adopt Resolution No. 28-2020 allowing the David City Swimming Pool use of David City Water, Sewer and Electric services without charge from September through April each year. Council Member Pat Meysenburg seconded the motion. The motion carried.

Kevin Hotovy: Yea, Tom Kobus: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, John Vandenberg: Absent, Alan Zavodny (Mayor): Yea
Yea: 5, Nay: 0, Absent: 1

RESOLUTION NO. 28-2020

A RESOLUTION OF THE CITY OF DAVID CITY, ALLOWING THE DAVID CITY SWIMMING POOL USE OF DAVID CITY WATER, SEWER, AND ELECTRIC SERVICES WITHOUT THE CUSTOMER CHARGE FROM SEPTEMBER THROUGH APRIL EACH YEAR.

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

WHEREAS, David City owns, maintains and operates the David City Water and Sewer Department and the David City Electric Department, otherwise known as "city utilities", and

WHEREAS, David City owns, maintains and operates the David City Swimming Pool, and

WHEREAS, the David City Swimming Pool expends tax dollars to pay David City utility costs because of inadequate income generated from the service that department provides to the citizens, and

WHEREAS, the David City Water and Sewer Department and Electric Department generate adequate incomes to provide for free city utilities to the David City Swimming Pool that provide true governmental services using tax dollars.

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

1. The City of David City's Water and Sewer Department and Electric Department be requested, by this resolution, to allow for the David City Swimming Pool to pay in May the accumulated water and electric usage from September through April;

2. The City of David City's Water and Sewer Department and Electric Department, by this resolution, to allow for the David City Swimming Pool to waive the customer charge from September through April of each year;
3. The in-lieu of utility costs budgeted amounts will be placed in a Contingency Fund and the respective department heads must receive Council approval to access the funds.

PASSED AND APPROVED this 14th day of October, 2020.

Mayor Alan Zavodny

City Clerk Tami L. Comte

Mayor Zavodny stated that the next item on the agenda was consideration of Ordinance No. 1359 mandate to wear masks in public spaces within the city limits of David City.

Mayor Zavodny said, "I assume that there are a significant number of people interested in this topic since there is a larger attendance than normal. What I'm going to do is recommend a couple of things. What I want to do is have a discussion. I'm going to make a few rules that I think are reasonable. There are people who have passionate feelings on both sides, but being civil is an expectation. I will be civil if I disagree with you and I expect you to be civil with the members of this Council. You can make your points and you can be passionate about it, but what we are not going to do is ridicule the stance of someone else. Everyone is entitled to their opinion, respectfully. The other thing that I'm going to strongly recommend is that we don't take a vote on this tonight. We are less than a month away from an election and we have an open seat. We're short a person and I think that the right thing to do is to let the Council that will have to deal with this vote on that topic. You can do a different course of action, if you wish, but that would be my suggestion to do, otherwise we're doing it short-handed. You have the rights availed to you to take a different course this evening. So, what I want to do is to have a community discussion about this. I've been the one that has been sitting on the Four Corners Health Department calls and I know from doing that that there's other cities in our Four Corners area that are considering this. The governor has stated as recently as yesterday that a mask mandate is not on the table for Nebraska. This isn't going away. We still need to hand wash. We still need to social distance and there are some people who feel that a mask can help from spreading it, especially if you already have it. So, I have prepared a statement of why we are considering this."

Mayor Zavodny read his statement and said, "Is there anything that you wouldn't do to protect your son or your daughter, your spouse or your mother or father? Let's start with that question. What we are really trying to do is to buy time until a vaccine, hopefully, can be developed. I like less government in my life. I really wish that we could have less government. This issue is not about trying to control, it's about trying to protect your fellow citizens. I believe in the constitution and I swore an oath to uphold it. We are solidly in the orange for our risk dial

and moving toward red which is not a good place to be. I don't think that our biggest issue is hospital capacity, beds could be an issue, but I will tell you this, because I've worked in staffing my whole life, staffing could be an issue and they have acknowledged as much. You might be ok today to do all of the beds that we have capacity for, but if five or six people come down with it and can't work, how many beds does that reduce the capacity? So, that's some of the things that we're looking at. Even if there is a small chance that a mask can help, are we willing to do it with the potential people who are experiencing long haul problems. We can't shut down the economy again and I think that shut downs are not what we want to do. To some extent, I think that I'm a little selfish in my position. I want to have winter sports, go to concerts again, church dinners, weddings, those kinds of things, if this is something to get us there, it's something that we should at least discuss. Masks are inconvenient. They are uncomfortable and no one likes to wear them. I forget it most of the time, in my car when I'm going into somewhere, if they require it. So, I go back to my car and I get it and I put it on. We, on purpose, didn't put a strong enforcement mechanism for this Ordinance because Omaha and Lincoln did it and there are issues with trying to do that differently. So, the question that we are considering tonight is how far we are willing to go to respect the health of our fellow citizens. What I'd like to hear from first, and if you can come up to the microphone if you have something that you wish to share, is proponents, people who support having masks. What I'm going to do first is recognize former Council member Trowbridge because he has prepared a statement."

Former Council member Trowbridge spoke in favor of the mask Ordinance.

There was much discussion that followed in opposition to the mask Ordinance.

Mayor Zavodny asked if there was a Council member who would like to introduce Ordinance No. 1359.

Ordinance No. 1359 did not get an introduction and therefore does not advance.

ORDINANCE NO. 1359

AN ORDINANCE TO ADOPT DIRECTED HEALTH MEASURES; TO HELP PREVENT, LIMIT, OR SLOW THE SPREAD OF THE NOVEL CORONAVIRUS (COVID-19) AMONG THE CITIZENS OF THE CITY OF DAVID CITY; TO PROVIDE FOR PUBLICATION OF THIS ORDINANCE IN PAMPHLET FORM; AND, TO PROVIDE FOR A TIME WHEN THIS ORDINANCE SHALL TAKE EFFECT.

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

FOR THE PURPOSE OF reducing the risk of the spread of the COVID-19 virus; reducing the potential shutdown of the local economy and the negative impacts associated with such a shutdown; and potentially reducing the need for hospitalization and the number of fatalities, the City of David City ordains as follows:

WHEREAS, a primary function of municipal government is the health and safety of those persons residing within or entering into it; and

WHEREAS, infectious diseases are caused by germs, such as viruses, bacteria, and parasites. COVID-19 is a viral illness that has the ability to be spread from person to person very easily through respiratory droplets. Public Health Officials have determined that it is well established that an individual infected with COVID-19 can transmit the disease whether or not they are exhibiting any symptoms; and

WHEREAS, on January 23, 2020, the World Health Organization declared a Public Health Emergency of International Concern and the United States Department of Health and Human Services declared a Public Health Emergency related to the COVID-19 outbreak on January 31, 2020; and

WHEREAS, on March 11, 2020 the World Health Organization declared COVID-19 a pandemic; and

WHEREAS, on March 13, 2020, the President of the United States declared a National Emergency under the federal Stafford Act due to the spread of COVID-19; and

WHEREAS, on March 13, 2020, the Governor of the State of Nebraska declared a state of emergency exists due to the impacts of the COVID-19 pandemic; and

WHEREAS, the top officials of the World Health Organization, the Centers for Disease Control (CDC), the National Institute of Health (NIH) and the Nebraska Department of Health and Human Services (NDHHS) Division of Public Health have all determined that COVID-19 is most commonly spread from an infected person to others through the dispersion of respiratory droplets, including:

1. Through the air by coughing or sneezing;
2. Close personal contact, such as touching or shaking hands;
3. Touching an object or surface with the virus on it, then touching mouth, nose, or eyes before washing of hands.

And,

WHEREAS, the CDC has determined that COVID-19 may also be spread before an infected person shows symptoms of the virus and are therefore, unaware they are infected; and

WHEREAS, it is clinically established that the best means of slowing the spread of a virus is through minimizing close personal contact with individuals in a public environment, social/physical distancing, covering one's mouth and nose by wearing a face covering, and utilizing frequent and proper hand washing. For optimal protection, the following key factors should be considered while wearing a face covering. The safe use of face coverings requires the wearer to maintain proper hand hygiene by hand washing frequently with either soap and water or hand sanitizer for at least 20 seconds. The wearer should prevent the spread of disease by avoiding touching their face, nose, or eyes and not touching the outside of the face coverings at all times; and

WHEREAS, cloth face coverings are most likely to reduce the spread of COVID-19 when they are widely used by people in public settings as they reduce the spray of respiratory droplets, particularly when combined with social/physical distancing and other sanitary measures such as washing hands or utilizing hand sanitizer; and

WHEREAS, the NDHHS Division of Public Health has found that community-based transmission of COVID-19 has been identified in all counties of the State; and

WHEREAS, the provisions of Nebraska Revised Statutes §17-112 provide authority to city councils to adopt By-Laws and Ordinances for the well-being of the cities. Further, Nebraska Revised Statutes §17-112 allows towns to make regulations for the public health and safety of the people and Nebraska Revised Statutes §17-112 vests the authority of towns to make such public health regulations to city councils; and

WHEREAS, the City's goal is to reduce the risk of the spread of the COVID-19 virus, and reduce the potential for additional impacts to the local economy, while also acknowledging that community mitigation measures reduce the number of fatalities and those needing hospital care.

WHEREAS, it has been determined that the virus which causes COVID-19 spreads very easily and sustainably between people, particularly within indoor environments with limited fresh air exchange but also amongst persons in close physical proximity who cannot adequately social distance; and

WHEREAS, the CDC, NIH, the Surgeon General of the United States and NDHHS Division of Public Health have all recommended that persons wear a face covering to reduce the risk of spreading COVID-19 when within 6 feet of other persons (along with other mitigation measures); and

WHEREAS, the Mayor and City Administrator have discussed this matter in detail and recommend the following emergency ordinance measures to the City Council for adoption; and

WHEREAS, COVID-19 presents a clear and present danger to the general population of David City and it behooves the community for the Council to take this emergency measure requiring the wearing of face coverings in certain situations to protect the public health.

NOW, THEREFORE the David City City Council adopts the following Emergency Public Health regulations:

Employees of all businesses shall wear a face covering over their mouth and nose when interacting with the public and whenever they are within six feet of a customer or any co-worker who is not a member of the same household.

1. Members of the public entering or queued to enter; remaining in or exiting from, any business, governmental or non-profit owned premises including without limitation any outdoor area where business of any sort is conducted, work site, work place, or government building, must wear a face covering, such as a fabric mask, scarf, or bandana over their nose and mouth. Policies regarding face coverings in governmental buildings within the geographical boundaries of the City of David City adopted by the governmental entity having jurisdiction over such buildings are hereby recognized by this ordinance and shall control in such buildings. Property owners shall have the authority to regulate the requirement to wear masks by any person, while on the premises of their property, by allowing persons to temporarily remove their masks while remaining on the premises when it is practical or becomes necessary to do so based upon the requirements of the services provided.
2. Members of the public entering or queued to enter; remaining in or exiting from a restaurant or an establishment serving alcoholic beverages for the purpose of picking up food for take-out or any other purpose must wear a face covering over their mouth and nose. Members of the public dining indoors or outdoors at a restaurant may remove face covering while seated at their table. Members of the public must wear a mask when entering, using or leaving the restroom of a restaurant.
3. Residents, visitors, and members of the public entering or present at a residential or commercial building complex of greater than two (2) units must wear a face covering over their nose and mouth while in common areas and communal spaces when social distancing of at least six feet from non-household members is not practiced.
4. As used herein "face covering" means a covering made of cloth, fabric, or other soft or permeable material, without holes or exhalation air valves, that covers the nose, mouth, and surrounding areas of the lower face. A face covering may be factory made or homemade and improvised from ordinary household materials.
5. Notwithstanding the above this order does not require children under 10 years of age to wear face covering (parents should make their own judgment). Face covering is not recommended for children less than 2 years of age.
6. A face covering is also not required to be worn by any person if said person can show a medical professional has advised that wearing a face covering may pose a risk to said person for health-related reasons.
7. A person may temporarily remove their mask when in a business if obtaining a service or product that requires verification of the person's identity or age.
8. Due to the potential impending danger of COVID-19 and pursuant to Nebraska Revised Statutes § 17-613 and Section 1-408 of the David City Municipal Code, the Mayor hereby proclaims that this Ordinance requires immediate operation

upon posting of this Ordinance in at least three of the most public places in the city. This Ordinance shall be in full force and effective from and after its passage, approval, and publication as provided by law and City Ordinance. This Ordinance shall expire on November 30, 2020 at 11:59 p.m. unless otherwise extended by Ordinance of the City Council.

PASSED AND APPROVED this 14th day of October, 2020.

No introduction – Did not advance
MAYOR ALAN ZAVODNY

ATTEST:

No introduction – Did not advance
TAMI COMTE, CITY CLERK

(SEAL)

Electric Supervisor Pat Hoeft was in attendance on Zoom and stated that he felt that City Administrator Clayton Keller should be the main representative for the Nebraska Municipal Power Pool and Pat should be the alternate.

Council member Kevin Hotovy made a motion to table Resolution No. 30-2020 appointing an alternate representative to Nebraska Municipal Power Pool. Council Member Pat Meysenburg seconded the motion. The motion carried.

Kevin Hotovy: Yea, Tom Kobus: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, John Vandenberg: Absent, Alan Zavodny (Mayor): Yea
Yea: 5, Nay: 0, Absent: 1

RESOLUTION NO. 30 - 2020

WHEREAS, the City of David City is a member of the Nebraska Municipal Power Pool, and,

WHEREAS, the City appoints a representative and alternate representative to represent the City at meetings.

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

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding ("MOU") is made and entered into as of the Effective Date by and between the City of David City ("DAVID CITY") and Windstream Nebraska, Inc., a Delaware corporation ("WIN") (together, the "Parties" and individually, a "Party"), for the purpose described herein.

WHEREAS, WIN has the opportunity to receive economic assistance from the United States government pursuant to the Coronavirus Aid, Relief, and Economic Security Act (the "CARES Act");

WHEREAS, WIN desires to work with DAVID CITY to build the necessary broadband infrastructure to meet the increasing bandwidth demands of DAVID CITY residents using CARES Act funding.

NOW THEREFORE, this MOU sets forth the intent of the Parties to work together to utilize CARES Act funding in order to build out broadband infrastructure in DAVID CITY (the "CARES Act Project").

1. RESPONSIBILITIES:

The Parties agree to meet at times mutually agreed upon to jointly plan the CARES Act Project, and to coordinate with the other Party's mapping and engineering teams as needed. In addition, WIN Agrees to:

- i. Engineer and design fiber buildouts including the provision of engineered drawings;
- ii. Provide sufficient fiber optic cable for the CARES Act Project that meets the mutually agreed upon requirements of both Parties;
- iii. Install fiber drops to WIN customer premise(s);
- iv. Perform all splicing and OTDR testing required for initial CARES Act Project implementation;
- v. Provide and maintain ownership of all electronics within the WIN System.

2. DEFINITIVE AGREEMENTS

The Parties agree to begin drafting a final set of agreement(s) containing the definitive terms and conditions as to the scope and schedule related to the CARES Act Project to be negotiated in good faith between DAVID CITY and WIN and containing mutually agreeable terms regarding the CARES Act Project described herein consistent with the terms set forth in this MOU (the "Definitive Agreements"). The Parties understand and agree, though, that neither Party may be required to perform any obligation relating to the CARES Act Project unless and until the Definitive Agreements have been fully executed.

3. TERM OF MOU

This MOU shall become effective as of the date last written below (the "Effective Date") and shall continue to be effective until it is terminated, which may occur:

- a) By mutual written consent of the Parties;

- b) By either Party upon written notice to the other Party if the Definitive Agreements are not executed on or before one-hundred twenty (120) days following the Effective Date, unless otherwise extended upon written agreement of the Parties;
or
- c) The execution of the Definitive Agreements.

4. NON-ASSIGNMENT

No Party shall sell, assign, transfer, or otherwise dispose of its rights or obligations under this MOU to any other person without the prior written consent of the other Party or in violation of this Section. Notwithstanding anything to the contrary contained in this MOU, prohibited assignments, transfers or other such dispositions shall not include, and any condition to assignment shall not apply in the event of (i) a transfer of this MOU by a Party ("Assigning Party") to an entity which is the parent, subsidiary, or affiliate of the Assigning Party, or shall directly or indirectly control, be controlled by, or be under common control with, the Assigning Party; (ii) a sale of ownership interest or issuance of new ownership interests, directly or indirectly, in the Assigning Party; (iii) a change of control of the Assigning Party; and/or (iv) a transaction in which any entity succeeds to all or substantially all of the assets of the Assigning Party used to provide service in the same geographic area where the Service Territory is located, whether by merger, consolidation, sale or otherwise, provided that such successor entity has the same approximate ability to perform and assumes in full the obligations of the Assigning Party under this MOU.

5. LIABILITY AND RELATIONSHIP OF THE PARTIES

- a) Nothing herein shall be deemed to constitute a partnership or joint venture among the Parties or any agreement to merge their assets or fiscal or other liabilities or undertakings. No Party shall be permitted to act as an agent of the other Party.
- b) No Party shall make a claim against, nor be liable to, the other Party or their affiliates for any damages, including direct, indirect, special, incidental, consequential or punitive damages, in connection with or arising out of this MOU or the termination thereof, under any theory of law, including damages for lost profits or business opportunity, or injury to business reputation, resulting from the continuation or abandonment of negotiations.

6. NO THIRD-PARTY BENEFICIARIES

There are no third-party beneficiaries to this MOU and nothing in this MOU shall be construed to confer any benefit on any third party.

7. GOVERNING LAW

This MOU shall be governed by and construed in accordance with the laws of the State of Nebraska, in all respects, including matters of construction, enforcement, and performance.

8. MISCELLANEOUS

This MOU may be executed by electronic means, including PDF or email. Electronic signatures and fully-executed copies hereof shall have the same effect as originals for all

purposes. This MOU may be signed in one (1) or more counterparts, each of which will be an original, with the same effect as if the signature thereto and hereto were upon the same instrument; provided, however, that this MOU will not be effective until signed by both Parties.

IN WITNESS WHEREOF, each of the Parties has subscribed this MOU as of the Effective Date.

For and on behalf of City of David City

By: Clayton Keller

Print Name: Clayton Keller

Title: City Administrator

Date: 15 October 2020

For and on behalf of _____

By: _____

Print Name: _____

Title: _____

Date: _____

Mayor Zavodny stated that the next item on the agenda was consideration/discussion of plans for 715 N. 4th Street, David City, NE.

City Administrator Clayton Keller said, "The property at this address is finally cleaned out and I have the key to it. Now, it's up to the Council to decide how they would like to move forward in selling the property, if that's what you wish to do."

Mayor Zavodny said, "It's what I wish to do."

Council member Pat Meysenburg said that he talked to two auctioneers and they both said they recommended not auctioning the property. They said that we should take bids like we did for the lots because if you auction it, you take the chance of someone buying it and doing the same thing that they did the last time.

City Administrator Clayton Keller said, "In response to that, we could make sure that people go through a qualification process before they are allowed to bid. We could make them have a plan that we approve before they are allowed to be part of the auction."

Council members Pat Meysenburg and Tom Kobus both said that they felt like you'd get more from sealed bids.

City Clerk Tami Comte said, "Since this is a redevelopment plan, I think that you need to have a redevelopment plan for it to be redeveloped."

Council member Pat Meysenburg said, "They have to have a plan of what they are going to do with it. If you auction it, you can't do that."

Mayor Zavodny said, "I agree with the way that this discussion is going. I think we proceed using a sealed bid process. I've had some calls from some out-of-town developers. There is some interest that has been expressed. I think we need to set our bid at least what our basis is in it. We can always agree to accept less, if we choose to do so, down the road, but I think that we should put a minimum bid to make people understand that we paid \$90,000 for it on the appraised value and we have some other expenses, probably."

City Council adviser Dana Trowbridge said, "I think we have \$110,000 in it."

Mayor Zavodny said, "A lot of times when they sell farms, they sell them as three tracts or separate, whichever brings the best price."

After much discussion, it was decided to go through the sealed bid process to sell the property at 715 N. 4th Street. It was decided to take bids three ways: the west lot separately, the east lot, which includes the house and out buildings separately, and then both lots together.

Council member Bruce Meysenburg made a motion to approve going out for bids for the house located at 715 N. 4th Street in David City, NE. Council Member Pat Meysenburg seconded the motion. The motion carried.

Kevin Hotovy: Yea, Tom Kobus: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, John Vandenberg: Absent, Alan Zavodny (Mayor): Yea
Yea: 5, Nay: 0, Absent: 1

Council member Kevin Hotovy made a motion to adjourn. Council Member Pat Meysenburg seconded the motion.

Kevin Hotovy: Yea, Tom Kobus: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, John Vandenberg: Absent, Alan Zavodny (Mayor): Yea
Yea: 5, Nay: 0, Absent: 1

The motion carried and Mayor Zavodny declared the meeting adjourned at 8:53 p.m.

CERTIFICATION OF MINUTES

October 14, 2020

I, Tami Comte, duly qualified and acting City Clerk for the City of David City, Nebraska, do hereby certify with regard to all proceedings of October 14, 2020; 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.

Tami Comte, City Clerk