

CITY COUNCIL PROCEEDINGS

November 11, 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 November 5, 2020, 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, Council members John Vandenberg, Tom Kobus, Bruce Meysenburg, Kevin Hotovy, City Attorney Jim Egr, City Administrator Clayton Keller and City Clerk Tami Comte. Council member Pat Meysenburg was absent.

Also present for the meeting were: David City High School Assistant Principal Chad Lindsley, City Council member elect Jessica Betzen-Miller, City Council Adviser Dana Trowbridge, Interim Water Supervisor Aaron Gustin, Park/Auditorium employee Nathan Styskal, Sheriff Tom Dion, and Banner-Press reporter Molly Hunter.

Council member Tom Kobus made a motion to approve the minutes of the October 28th, 2020 meeting as presented. Council Member John Vandenberg seconded the motion. The motion carried.

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

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

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

Mayor Zavodny said, "Our employees and crew performed very admirably over the past few days (referencing the ice storm of November 9 and 10, 2020). Also, this evening, I've requested a declaration of emergency and Mark Doehling and Clayton worked on it and so, we've signed that this evening and we will be submitting that. I also want to go on record as thanking Holdrege for sending four people, Auburn for sending two people, Cozad for sending two people and Curtis for sending one person to help out our electric people get the city back up and going after the storm. It could have been much worse. I'm glad that we, over the past few years, have started a program of cutting the trees that were growing into the lines, out, to the extent that we could. I think that saved us a lot of grief from having a lot of the lines just torn straight down. We did have one transformer, I think, that was ripped off a pole, if I understood Pat correctly when we talked. So, we've put the disaster declaration into effect and we really appreciated the mutual aid that we received. Again today, I think we had the whole town out. I don't know if any of you have been out in the country, their pole snapped off and they had

transmission lines on the ground. I do think that it does emphasize, though, when we talked about the different things that can happen, I think you've heard some of us say over and over, it doesn't matter if you have the power plant or no power plant, if you don't have your transmission lines, it doesn't do any good. So, that's the key is keeping those as free from trees and obstructions as possible. I would have to say that I've never seen anything like this in my life. There have been some storms and stuff, but this thick of ice and we're going to see a large loss of trees. There were a lot of chainsaws going today. I kind of wish they would have waited a while because when that ice started falling, it was pretty nasty. Then, some of those trees, being under those branches when the ice went off, if that branch is cracked, that branch was moving and it was pretty dangerous. I didn't hear of any problems with that, so hopefully we got through the day okay. So, that's my summary of the events from the ice storm on the ninth. I have already written a thank you and will give it to Tami tomorrow, thanking the mayors of the cities that sent us help to get up and going and also, I'd like to put something in their newspapers, thanking them. I just want to go on record as saying, I hope they never experience something like we did, but if they do, I would certainly hope that we would be the first ones there to respond in their time of need, because they were there for us. That is much appreciated and on behalf of the citizens of David City, we thank them for that. Alright, I'd open it up to anyone else. Are there any comments about the ice storm or on any of the other department reports? Hearing none, I'd entertain a motion to approve the committee and officer's reports.

Council member Tom Kobus made a motion to approve the Committee and Officers Reports as presented. Council Member Kevin Hotovy seconded the motion. The motion carried. Kevin Hotovy: Yea, Tom Kobus: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Absent, John Vandenberg: Yea, Alan Zavodny (Mayor): Yea
Yea: 5, Nay: 0, Absent: 1

City Administrator Clayton Keller said, "Kirkham Michael has begun the process of designing the fuel system at the airport and this is the first pay estimate for that project."

Council member Tom Kobus made a motion to approve Pay Estimate #1 Kirkham Michael in the amount of \$5,557.42 for the Airport Project No. 3-31-0025-M01 (13). Council Member Bruce Meysenburg seconded the motion. The motion carried. Kevin Hotovy: Yea, Tom Kobus: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Absent, John Vandenberg: Yea, Alan Zavodny (Mayor): Yea
Yea: 5, Nay: 0, Absent: 1

Chad Lindsley, Assistant Principal at David City High School was present and said, "Mr. Denker asked me to send his regards. We actually had a strategic community planning meeting going on right now. At our admin meeting this morning, I volunteered to come here to speak on behalf of the school. The scoreboard project, basically, we're in a unique circumstance and we never know when we may have to utilize the auditorium because of spreading basketball teams out or the wrestling duals, just for spacing. It just came out last week, the twenty-five percent capacity, really put a hamper on all of that. So, we've been working with the City on hosting some of our events. We were supposed to have a junior high wrestling dual here last night, obviously it's hard to have anything when there is no power. But we'll be working on different events that come up and I believe that Mr. Denker has been working with Clayton on that. He wanted me to let you know that the school would be willing to help out financially, in terms of working with the City in financing that project, if it were to pass."

Mayor Zavodny said, "I want to touch upon this too. I've been looking at this for a while. I've talked to a couple of businesses and I believe that we will be able to get a couple of

corporate sponsorships, as well. We're going to have to take the one off of the wall on the east side and probably add one on the west wall. That will take some electrical work. I would have had prices for you but, it's been a week. I never got to it, as I intended to. But, what I'd like to do is, maybe talk to the school a little bit more about what you're thinking, as far as, what you would need for wrestling and basketball. I guess I'd like to see what you're thinking. I do have a book and I've kind of narrowed it down to what I thought would be appropriate."

Assistant Principal Chad Lindsley said, "Pretty much most of the basketball scoreboards would fit the needs of a wrestling dual. I think they can be programmed in. An event that we would have here would be a dual, so it would be team score and time. That would be the most essential things. Honestly, we don't need anything fancy, just something that would function and work for the community and for our athletes and for the schools."

Mayor Zavodny said, "What I'd like to see us do, and probably the easiest is to have the radio ones. Looking at what NSAA is talking about is splitting boys and girls, the double headers that schools always have, certainly, it's going to be a challenge having winter sports, this season. I'm not one hundred percent sure how you'd even do wrestling, especially those kid's tournaments where you have people standing shoulder to shoulder for all day. We're just going to have to see. That being said, obviously, we're talking about COVID-19 later on our agenda. I don't know who I would talk to at the school, we could go through the book that I have. I'd just like to authorize us to pursue it and we'll see what, if any, expense we will even have, if we can get some corporate sponsors."

Assistant Principal Chad Lindsley said, "Doctor Denker would be the contact for the school on this project."

Council member Kevin Hotovy made a motion to authorize the City to pursue new scoreboards for the auditorium. Council Member Tom Kobus seconded the motion. The motion carried.

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

City Administrator Clayton Keller said, "We have our Request for Proposals ready to put out for the City Engineer and Street Superintendent. We currently have those with one company, being Olsson, and I'd like to keep it with one company, if we could. I will say, real quick, since this RFP process would go into the month of January, and our Street Superintendent services are calendar year, so it ends December 31st, later in the agenda we have where we are hiring Olsson back on as the Street Superintendent for next year and as we finish up this selection process, we can appoint someone else to be our Street Superintendent. That way, we don't go any part of the calendar year without a Street Superintendent, which is necessary for us to receive our funding from the State. The Request for Proposals, the way that we've written it, allows us to be more qualifications based, so there will be a selection committee of myself, I've got a couple of employees that I'd like to be on that committee and I would like two members of the Council to be a part of that selection committee, as well. The selection committee will go over the proposals, do the interviews with the engineering firms, preferably in-person interviews. They will make the recommendation to the whole Council as to which firm we should go with."

Council member Tom Kobus made a motion to approve the RFP for an engineering services agreement. Council Member John Vandenberg seconded the motion. The motion carried.

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

REQUEST FOR PROPOSALS Professional Engineering Services/City Engineer

The City is an Equal Employment Opportunity (EEO) organization, which does not discriminate on the basis of race, religion, color, sex, age, marital status, national origin, sexual orientation, or disability in consideration of a contract award. The successful Proposer will be required to comply with all federal, state, and local laws and regulations.

- Release of RFP: November 11, 2020
- Deadline for Submittal: January 8, 2021 by 4:00 pm (CDT)

General Information

The City of David City (the "City") is seeking to contract with a professional engineer or engineering firm to provide City Engineering services and serve as Street Superintendent.

The purpose of this Request for Proposal (RFP) is for the City to receive responses from qualified professional engineers or engineering firms for street superintendent services and municipal engineering services including the duties of City Engineer. A Proposal is requested for furnishing professional services pertinent to the scope of services outlined below. Please return your proposals by January 8, 2021 by 4 pm (CDT) electronically to ckeller@davidcityne.com or by mail to City of David City, 557 N. 4th Street, PO Box 191, David City, NE 68632 demonstrating the qualifications of your firm to meet criteria contained herein.

Interviews for this project will be conducted by a selection committee no later than January 15, 2021. The engineering services agreement will be brought before City Council for approval on January 27, 2021. Please note if your firm is the selected firm it will be necessary to negotiate a contract by no later than January 25, 2021 in order to seek approval at the January 27, 2021 City Council meeting.

Should you have any questions, please contact, by e-mail, City Administrator Clayton Keller at ckeller@davidcityne.com.

Scope of Services

The selected firm will provide a designated individual to fulfill the duties of the position of "City Engineer" as required by Neb. Rev. Stat. § 17-213.01 and § 17-569.01 and to perform other related duties as directed by the City Council. In addition to providing the services of City Engineer, the selected firm shall provide other services as listed below. Such services are for the purpose of illustration only and services may not be limited to the items listed here.

Advisory Services

- (1) Attendance at meetings of the City Council. The "City Engineer" shall attend all special meetings or work sessions of the City Council, as requested. Regular meetings are held on the second and fourth Wednesday evenings of each month.
- (2) Advising Officials. The "City Engineer" shall advise the City Council, Planning Commission and other City officials, employees, etc. through telephone conferences, meetings, and correspondence.
- (3) Consultation on City utilities and facilities. The "City Engineer" shall furnish advice and consultation on the operation, maintenance, and permitting of the City's water distribution system, stormwater drainage system, wastewater system and plant, and other City-owned facilities under the direction of the City Council.
- (4) Serve as Street Superintendent for the City in accordance with the County Highway and City Street Superintendent Act.

Public Works Construction Projects

- (1) Analyze/study improvement projects. The "City Engineer" will be required to prepare preliminary engineering analysis, cost estimate and feasibility studies for various public works improvements.
- (2) Prepare bid/contracts. The "City Engineer" will be requested to prepare detailed plans, specifications, bid and contract documents for public works construction projects. In addition, the "City Engineer" will prepare a final cost estimate, required applications of approval of the construction by other governmental agencies, and assist the City in negotiating the acquisition of any necessary right-of-way or easement.
- (3) Review bids. The "City Engineer" shall assist the City in the review of bids submitted for construction, in the selection of qualified contractors and in the inspection of construction work. The "City Engineer" will provide general supervision of the contractor for Public Works construction projects.

Capital Project Management

- (1) Assist department heads in identifying capital projects. The "City Engineer" may be requested to identify current and possible future capital projects and document budget, scope, schedule, status, organizational responsibility and funding sources.

The professional services contract entered into by and between the City and City Engineer shall specify the scope of included services. The City reserves the right to enter into additional agreements with the City Engineer or other engineering firm for specified projects (e.g. the design or construction observation of major public improvements), to contract with third parties for such services, or if within the scope of the City Engineer agreement, utilize the same to provide for such services. The City anticipates that the negotiation of the scope of services and the format of payment for such services shall be a collaborative undertaking between the City and the successful respondent, but requests that each respondent provide a proposal outlining their suggested approach (e.g. monthly retainer for a specified amount of work; hourly; hourly plus expenses; blended approach; etc.)

Insurance Requirements

The City Engineer shall maintain insurance coverage as set forth in Attachment A.

Submittal Requirements

The response to this RFP must be organized according to the following format. Information should be concise and specific to address each request and be limited to a total of 25 pages (25 sheets of paper, including tabs).

- Contain a letter of interest (no more than one page long);
- Provide the name of the engineer proposed to provide services to the City and who will have the main contact with the City. This individual is expected to remain the responsible engineer throughout the engagement. The lead engineer must be licensed to practice in the State of Nebraska, and must have at least five (5) years' experience practicing as an engineer with a practice focused on representation of local government(s) and must hold a Class A Street Superintendent License;
- Provide information about the Proposer's experience in providing engineer services to Nebraska local governments. List the similar projects or engagements that have been completed by the assigned persons within the past three years;
- Provide at least three references from these organizations including names, contact persons, and phone numbers;
- Provide a list of all other local governments currently being represented by the Respondent;
- Provide information about the Proposer's capacity and capability to perform on short notice and in a timely manner, and the Proposer's proposed approach to communicating with the City;
- Describe any conflicts of interest or ethical considerations related to representation or affiliation with any boards, organizations, committees, or clients, including, but not limited to, other municipalities, governmental, and/or quasi-governmental entities;
- The location of staffing and firm resources expected to be made available to serve the City of David City;
- Information on the Proposer's ability to handle the assigned work with the current staff and the workload already assigned to the key persons;
- The firm's ability to research, apply for and obtain project funding (in the form of grants, loans, and legislative appropriations), and its success rate doing so for other clients;
- The firm's ability to assist City of David City with preparing and submitting project documentation (including reports and permits) required by local, state and federal regulatory agencies;
- The basis on which compensation will be determined and estimated amounts.

Selection Criteria

The City of David City City Council will evaluate each firm's submission based upon the criteria stated in this Request for Proposals and the ability to execute the services. Following the evaluation process, the City of David City will then select the firm that the City considers most qualified and negotiate a fee. The City reserves the right to negotiate modifications to the RFP that it deems acceptable. The City reserves the right to terminate this process in the event it deems the progress towards a contract to be insufficient. Firms will be evaluated in accordance with the weighted criteria listed below.

<u>Criteria</u>	<u>Weight</u>
1. Experience and qualifications; no conflicts	30%
2. Past performance and references	20%
3. Understanding of the City's Needs	20%
4. Location of Firm and Staff Assigned to this Project	15%
5. Overall Ability to Execute Services	15%

Non-Discrimination, E-Verify Requirement, Indemnification

Equal Opportunity

In the performance of this Contract, the selected individual or firm shall not discriminate against any employee, or applicant for employment, on the basis of race, color, religion, sex, disability, marital status, national origin or age.

Compliance with Laws

The selected individual or firm shall perform their respective services in accordance with all applicable laws and regulations enacted and promulgated by the United States, the State of Nebraska, or any political subdivision thereof which govern the conduct of the contractors or subcontractors during the performance of their obligations under this Contract, and they shall be deemed to be included in this Contract as though written out in full in this Contract.

E-Verify

The selected individual or firm shall be required to use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program authorized by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. 1324a, known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee.

Indemnification

The selected individual or firm shall indemnify and hold harmless the City from any and all liability, damage, cost or expense which the City may incur or be liable to pay to any third party as a result of any and all negligent acts or omissions of the engineer.

**ATTACHMENT A
INSURANCE REQUIREMENTS**

Section 1. Insurance. The City Engineer shall not commence work under this Contract until the City Engineer has obtained all insurance required under this Contract and such insurance, and such insurance company has been approved by the City, nor shall the City Engineer allow any subcontractor to commence work on his subcontract until all similar insurance required of the subcontractor has been so obtained and approved. The City Engineer shall either (1) require each subcontractor to procure and to maintain during the life of its subcontract insurance of the type, and in the same amounts, as specified in the following paragraphs; or (2) insure the activities of the subcontractors in the City Engineer's own policy.

Section 2. Required Insurance Limits. City Engineer shall, at a minimum, maintain the following insurance during the term of the Contract:

- 2.1 Commercial General Liability. The City Engineer shall take out, and maintain during the life of this Contract, Commercial General Liability Protection including Products Liability and Completed Operations, Broad Form Property Damage, Personal Injury, and Contractual Liability coverage that shall protect the City Engineer and any subcontractor performing work covered by this Contract from claims for damages for personal injury, including accidental death, as well as from claims for property damages, which may arise from operations under this Contract, whether such operation be by the contractor or by any subcontractor or by anyone directly or indirectly employed by either of them.

The General Liability insurance policy shall also be endorsed to have any aggregate apply separately to this Project.

Coverage Limits Shall Be:

Each Occurrence	1,000,000.00
Medical Expenses	5,000.00
Personal & Adv Injury	1,000,000.00
Products-Comp/Op Agg	1,000,000.00

- 2.2 Automobile Insurance. The City Engineer shall take out and maintain, during the life of this Contract, comprehensive automobile liability insurance for any vehicles engaged in operations within the terms of this Contract.

Coverage Limits Shall Be:

Combined Single Limit	1,000,000.00
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- 2.3 Excess/Umbrella Liability. The City Engineer shall take out and maintain umbrella or excess coverage to apply in excess of Commercial General Liability, Employers Liability, and Auto Liability policies. The Excess/Umbrella Liability insurance policy shall also be endorsed to have any aggregate apply separately to this Project.

Coverage Limits Shall Be:

Each Occurrence	4,000,000.00
Aggregate	4,000,000.00

- 2.4 Workers Compensation Insurance. The City Engineer shall take out and maintain during the life of this Contract, and before any work is commenced, Workers Compensation and Employers Liability insurance for all of the City Engineer's employees employed at the site of the Project. The policy will be endorsed to include a waiver of subrogation in favor of the City.

Coverage Limits for Employers Liability Insurance Shall Be:

Each Accident	1,000,000.00
Disease-EA Employee	1,000,000.00
Disease-Policy Limit	1,000,000.00

Workers compensation coverage limits will be statutory.

- 2.5 Professional Liability Insurance. Professional Liability Insurance for errors and omissions in the performance of the Work under this Contract in an amount of not less than One Million Dollars (\$1,000,000.00); provided however, City Engineer may, with the concurrence of the Owner, accept an amount of not less than Five Hundred Thousand Dollars (\$500,000.00) for said insurance from any professional or other City Engineer retained by City Engineer as a subcontractor on the Project.

- 2.6 Special Provisions.

2.6.1 City shall be included as additional insured on City Engineer's General Liability Policy and Excess/Umbrella Liability Policy. This shall be noted in the Special Provisions section of the certificate of insurance.

- 2.6.2 The City Engineer's General Liability Policy shall contain a severability of interest clause and shall be noted in the Special Provisions section of the Certificate of Insurance.
 - 2.6.3 All insurance coverage shall be maintained until one (1) year after completion of the Work.
 - 2.6.4 City Engineer's general liability and umbrella (excess liability) insurance will be primary and not contributory.
- 2.7 Proof of Carrying Insurance. The City Engineer shall furnish the City with satisfactory proof of coverage of the insurance required in a reliable company with an A.M. Best Rating of A-VII or better before commencing any work. Such proof shall consist of certificates executed by the respective insurance company's representative. Upon request of the City, the City Engineer shall submit the original insurance policies for inspection and approval of the City before work is commenced. Said policies shall not thereafter be cancelled or permitted to expire without notice being provided at least 30 days in advance to the City and consented to by the City.
- 2.8 If the City Engineer shall at any time fail to insure or keep insured as aforesaid, or if any insurance policies required hereunder cannot be obtained for any reason, the City may require City Engineer to cease any and all operations until coverage is obtained. If such insurance coverage is not obtained within a reasonable period of time, to be determined solely by the City, the City may terminate this Contract.

City Administrator Clayton Keller said, "This is a project for the airport that we need to go and do another selection process for a Land Use Planning Firm to update our Airport Layout Plan, which is necessary for us to put into our Capital Improvement Program the extension of runway #32. We can't just go ahead and use Kirkham Michael because the process that we did a few months ago where we ended up choosing them, that was specifically for the Capital Improvement items and this is outside that scope. So, in order for us to get federal funding, we have to go through the selection process again."

Mayor Zavodny said, "I also want to say that I had a conversation with Butler County Development and Jeff and another individual were there from Timpte and we talked about our reasoning for wanting to look at this and certainly with jets wanting to land for Timpte and I think they've recognized the potential advantage to having that here in town. Michael Foods has an opportunity for that, as well. It's also something that if you have in place, I think you're going to have another business, potentially, down the road, we have to be forward thinking. If there is the possibility of landing a jet here, then David City would be a good place to go. One of the things that we're probably going to have to consider is that they're looking for a place for a prison and I would like to go on record as saying that I don't want that here. I think that we could, potentially, attract some other businesses, too, if we have the ability to land jets."

Council member Bruce Meysenburg made a motion to approve the Request for Qualifications for Land Use Planning Services to update the Airport Layout Plan for the David City Municipal Airport. Council Member John Vandenberg seconded the motion. The motion carried.

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

Yea: 5, Nay: 0, Absent: 1

NOTICE TO AIRPORT CONSULTANTS

The City of David City Nebraska, (Sponsor) is hereby soliciting Statement of Qualifications from airport consultants for an updated airport layout plan (ALP) that is anticipated to be completed within the next two years at the David City Municipal Airport (93Y) located in David City, Nebraska. This project is subject to receipt of Federal funding and/or State funding:

This update will focus on incorporating current design standards and the need to extend Runway 32. Airport Data and Information Portal (ADIP) formally Airport GIS.

A qualification-based selection process conforming to FAA Advisory Circular 150/5100-14E *Architectural, Engineering, and Planning Consultant Services for Airport Grant Projects* will be utilized to select a consultant. Fee information will not be considered in the selection process and shall not be submitted with the Statement. Fees will be negotiated before the start of the project. The agreement(s) between the Sponsor and the selected consultant will be subject to all applicable Federal Rules and Regulations as identified in AC 150/5100-14E.

Consultants will be rated by a selection committee according to the following selection criteria and the weight given to each:

1. Capability to perform all aspects of the projects (20%) — qualifications of prime firm (and subconsultants, if any);
2. Relevant experience of key personnel from prime firm (and subconsultants, if any) and role; 20 %.
3. Knowledge of FAA standards, policies, and procedures (15%);
4. Recent experience with airport layout plans at similarly-sized airports (15%);
5. History of meeting schedules and staying within budget (15%); and
6. Understanding of the project's potential challenges and Sponsor's concerns (15%).

The Sponsor intends to short list up to three of the highest rated firms based on the submittals and conduct phone, informal, and/or formal interviews.

Statements must be concise and contain no more than twenty-eight (28) pages of material (14 sheets of paper, double sided). This excludes the front and back covers, the two-page cover letter (1 sheet of paper, double sided), table of contents, section dividers, and resumes. Consultants must submit five (5) hard copies of their Statement and a PDF of their Statement (submitted via email) to the following person:

Mr. Clayton Keller
City Administrator
City of David City
557 4th Street, P.O. Box 191

David City, NE 68632
402.367.3135
ckeller@davidcityne.com

All statements must be received by 4:00 PM on January 11, 2021. Statements received after this deadline will not be considered. The Sponsor reserves the right to reject any and/or all Statements. Submittals will become property of the Sponsor.

Statements are to be provided in a package marked with "Airport Statement of Qualifications" in the lower left-hand corner and the sender's name and address in the upper left-hand corner. Please make the email subject line: "Airport Statement of Qualifications" and request delivery/read receipts to confirm it was received on time.

Inquiries

All questions must be submitted via email by 4:00 PM on January 4, 2021. Emails may be sent to the above contact or to the Airport Manager, Chris Kroesing, at ckroesing@davidcityne.com. Answers will be sent via reply email no later than 4:00 PM on January 6, 2021. For more information, please contact Clayton Keller at 402-367-3135.

Mayor Zavodny stated that the next item on the agenda was consideration/discussion of what to do with the bricks leftover from the Downtown Redevelopment Project.

City Administrator Clayton Keller said, "Now that we're finally finished with the Downtown Renovation Project, we have, Chris Kroesing estimated, about fifty semi-truck loads of bricks. He would like a few truck loads for the City to keep and then the rest of them, he doesn't particularly care how we get rid of them. I think that's the Council's prerogative anyway, to decide how we sell those."

Council member Tom Kobus said, "I don't think he needs truck loads, does he? They sit around forever."

City Clerk Tami Comte said, "He said that he'd like six dump trucks full."

Council member Tom Kobus said, "Oh, I thought you were talking semi-loads."

Mayor Zavodny said, "That doesn't seem unreasonable to me. Not all of the bricks are the ones that we would want to put in because there are two different kinds."

Council member Bruce Meysenburg said, "I had a couple of constituents call me and their feelings were that we should keep them all, just as a backup in case we need some on the streets that are brick yet. I don't know – if we get rid of them, are they going to be worth anything?"

Mayor Zavodny said, "I think that we do have some interest already in some. This is a decision that we need to be making because, I've been noticing for a while and then I keep forgetting, if you look at fifth street just over the railroad tracks, to the north, I don't know what is happening there, but it's something not good. I don't know if it's the water line and we've had some erosion underneath, but we have such a dip there and that's brick. So, the question

is if you go fix whatever is causing that, are you going to concrete over it for the residential? Most of the new streets we put in in town have gone to concrete and they've held up well and they work well, so the question is how much of the residential would you continue to have brick, anyway? That's a decision that this body needs to make. Where are we going to store them? You can't keep them out there, people are just going to steal them."

City Clerk Tami Comte said, "I think that Chris said that he's going to store them out at the Sewer Lagoon. Is that correct, Aaron?"

Interim Water Supervisor Aaron Gustin said, "Yes. We have a spot set up for him. He wants to palletize them, even if we have to do some type of cheap shelter for them."

Mayor Zavodny said, "We're probably going to have to hand pick them and get the best of the best and stack them nicely and then liquidating them would probably make some sense. It doesn't make sense to store, probably, all of them for eternity."

City Clerk Comte said, "I do have a list of people who have contacted me that are interested in purchasing some bricks."

City Council advisor Dana Trowbridge said, "There, probably, lies the challenge, as to how we do that. Broken Bow went through the same thing a number of years ago. They took bids from around the country, and I think their bricks went into Iowa. The fellow in Iowa that bid the bricks, set up a plan in the town that each person could buy x number of bricks, that was a citizen and lived in the community. Bricks have more value than you might think. They'll surprise you. I think they are worth fifty cents a piece to the people in town and I'm guessing that the guy buying the entire lot of them won't pay that kind of money, but the fifty cents is still a fair price for an eight-pound brick. Anyway, they let the people come and do it. That's the challenge. How do you safely allow John Q. Public to access this City-owned site, City-owned property, and load five or six hundred bricks into whatever and leave. First of all, how do you police that? How do you collect? How do you prevent him from hurting himself while he's doing it and suing you for the benefit?"

Mayor Zavodny said, "Jim (City Attorney Egr), the rules that govern us are either auction or bid, so do we have to sell these on a bid basis? How would we dispose of this city property legally?"

City Attorney Jim Egr said, "Well, the statute is...I don't think that we have ten-thousand-dollars worth of bricks there, do we?"

Council member Hotovy said, "You've got more than that."

Mayor Zavodny said, "To dispose of public property, legally, it's got to be by public auction or bid, is that a fair assessment?"

City Attorney Jim Egr said, "Well, yes, but if you sell them at different periods of time, you can get around that statute."

Mayor Zavodny said, "Which brings us back to that concern, then. Somebody wants to put in a back patio and wants a hundred of them, we're going to have people coming and going, and liability and that kind of thing...."

City Attorney Jim Egr said, "The way that you address that is exactly what Aaron said. You put them on pallets and you say that you're going to sell five pallets on such and such a date and put in your bid."

Mayor Zavodny said, "Ok. Let me give you an alternative. What if we sold the lot of them to the guy in Iowa and let him distribute them and get us out of the selling brick business."

City Council advisor Dana Trowbridge said, "That would be the thought. If you did a request for bids, and it included having them allow people to come through and buy up to x number of bricks per person, at whatever price, that is paid to the City. Let them set somebody out there on Saturday, from one to four, or whatever, so John Q. Public can find out that he can't put a hundred bricks in his trunk because they weigh eight pounds apiece."

Mayor Zavodny said, "You'll have people who think they can get a trunk load. That seems to be a pretty good idea, I think. We do a bidding process. Let somebody bid for them and then we could write into the agreement with that person that up to ten percent of them be sold locally, if there is that much demand. I don't know what that number is, I was just throwing that out there."

Council member Bruce Meysenburg said, "I think that you've got to offer them to the people here in town, at least to some degree."

Mayor Zavodny said, "That's something that we could do. We could put out a memorandum of understanding or something of interest. If we have these bricks available, who would be interested that lives in the corporate city limits."

Council member Tom Kobus said, "Maybe people would buy them all."

Mayor Zavodny said, "Maybe they would. Then we're in the brick selling business again."

City Council advisor Dana Trowbridge said, "Are you talking great quantities?"

Mayor Zavodny said, "I'd like to just gauge the interest of how much local demand there was? We might find out that if we make two hundred available, you could take the rest and do whatever you need to do with them. We'll see if we can put something together and at a subsequent meeting, we can try to come up with a bid process and then some kind of an agreement that people from our community have the opportunity to buy some."

Council member Bruce Meysenburg made a motion to pass and adopt Resolution No. 31-2020 approving the law enforcement contract. Council Member Tom Kobus seconded the motion. Kevin Hotovy: Yea, Tom Kobus: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Absent, John Vandenberg: Yea, Alan Zavodny (Mayor): Yea

Yea: 5, Nay: 0, Absent: 1 The motion carried and Resolution No. 31-2020 was passed and adopted as follows:

RESOLUTION NO. 31-2020

WHEREAS, the County of Butler, State of Nebraska, hereinafter referred to as the "County" and the City of David City, State of Nebraska, hereinafter referred to as the "City," desire to enter into an agreement to provide law enforcement services to the City of David City, Nebraska; and

WHEREAS, a copy of the agreement which has been fully signed by the County and the City is on file with the Butler County Clerk's Office and the City Office of David City, Nebraska.

NOW, THEREFORE, BE IT RESOLVED by the City of David City, Nebraska and the Butler County Board of Supervisors that the Agreement Between Butler County, Nebraska and the City of David City, Nebraska to Provide Law Enforcement Services made and entered into on the 28th day of October 2020 is duly adopted and ratified.

CITY OF DAVID CITY, NEBRASKA

November ____, 2020

Alan Zavodny, Mayor

ATTEST:

Tami Comte, City Clerk

BUTLER COUNTY, NEBRASKA

November ____, 2020

David W. Mach, Chairman Butler County
Board of Supervisors

ATTEST:

Stephanie L. Laska, County Clerk

Council member Tom Kobus made a motion to authorize Mayor Zavodny to sign the Certification of City Street Superintendent and Resolution No. 32-2020 signing of the Year-End Certification of City Street Form 2020. Council Member Bruce Meysenburg seconded the motion. Kevin Hotovy: Yea, Tom Kobus: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Absent, John Vandenberg: Yea, Alan Zavodny (Mayor): Yea
Yea: 5, Nay: 0, Absent: 1 The motion carried and Resolution No. 32-2020 was passed and adopted as follows:

Do not recreate or revise the pages of this document, as revisions and recreations will not be accepted.
Failure to complete and return: If a municipality had an appointed and Licensed City Street Superintendent for all or part of Calendar Year 2020 and the municipality does not complete and return the original Signing Resolution, original Year-End Certification, and a copy of the documentation of the city street superintendent(s) appointment to the NDOT by December 31, 2020, the municipality will not receive an Incentive Payment for Calendar Year 2020.

RESOLUTION
SIGNING OF THE
YEAR-END CERTIFICATION OF CITY STREET SUPERINTENDENT
2020

Resolution No. 32-2020

Whereas: State of Nebraska Statutes, sections 39-2302, and 39-2511 through 39-2515 details the requirements that must be met in order for a municipality to qualify for an annual Incentive Payment; and

Whereas: The State of Nebraska Department of Transportation (NDOT) requires that each incorporated municipality must annually certify (by December 31st of each year) the appointment of the City Street Superintendent to the NDOT using the Year-End Certification of City Street Superintendent; and

Whereas: The NDOT requires that such certification shall also include a copy of the documentation of the city street superintendents appointment, i.e., meeting minutes; showing the appointment of the City Street Superintendent by their name as it appears on their License (if applicable), their License Number and Class of License (if applicable), and type of appointment, i.e., employed, contract (consultant, or interlocal agreement with another incorporated municipality and/or county), and the beginning date of the appointment; and

Whereas: The NDOT also requires that such Year-End Certification of City Street Superintendent shall be signed by the Mayor or Village Board Chairperson and shall include a copy a resolution of the governing body authorizing the signing of the Year-End Certification of City Street Superintendent by the Mayor or Village Board Chairperson.

Be it resolved that the Mayor Village Board Chairperson of DAVID CITY
(Check one box) (Type Name of Municipality)
is hereby authorized to sign the attached Year-End Certification of City Street Superintendent.

Adopted this 11th day of November, 2020 at David City, Nebraska.
(Month)

City Council/Village Board Members

<u>Council President Kevin Hotovy</u>	_____
<u>Council member Thomas Kobus</u>	_____
<u>Council member Patrick Meysenburg</u>	_____
<u>Council member John Vandenberg</u>	_____
<u>Council member Bruce Meysenburg</u>	_____

City Council/Village Board Member _____
Moved the adoption of said resolution
Member _____ Seconded the Motion
Roll Call: Yes _____ No _____ Abstained _____ Absent
Resolution adopted, signed and billed as adopted.

Attest:

(Signature of Clerk)

Do not recreate or revise the pages of this document, as revisions and recreations will not be accepted.
Failure to complete and return: If a municipality had an appointed and Licensed City Street Superintendent for all or part of Calendar Year 2020 and the municipality does not complete and return the original Signing Resolution, original Year-End Certification, and a copy of the documentation of the city street superintendent(s) appointment to the NDOT by December 31, 2020, the municipality will not receive an Incentive Payment for Calendar Year 2020.

**Year-End Certification of City Street Superintendent
For Determining Incentive Payment
January 1, 2020 to December 31, 2020**

*This certifies that Dave Ziska, License Number S- 1144 Class A,
(Print name of Superintendent as appears on license card) (A or B)
was the appointed City Street Superintendent of David City, NE
(Print name of City or Village)
from January 1, 2020 to December 31, 2020
Month Date Month Date
and actually performed all of the following duties:

1. Developing and annually updating a long-range plan based on needs and coordinated with adjacent local governmental units;
2. Developing an annual program for design, construction, and maintenance;
3. Developing an annual budget based on programmed projects and activities;
4. Submitting such plans, programs, and budgets to the local governing body for approval; and
5. Implementing the capital improvements and maintenance activities provided in the approved plans, programs, and budgets.

And further certifies that the superintending services of the above listed individual were provided by: *(Check one box)*

<input type="checkbox"/> Employment with this Municipality	<input checked="" type="checkbox"/> Contract (consultant) with this Municipality	<input type="checkbox"/> Contract (interlocal agreement) between this Municipality and the following listed Municipality(ies) and/or County(ies)
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Alan Zavodny
Signature of Mayor Village Board Chairperson

* If more than one individual or the City Council or Village Board provided street superintending services during the calendar year, list each successive superintendent using a separate certification. The amount will be computed based on (a) your most recent Federal Census as certified by the Tax Commissioner; (b) whether or not your municipality appointed a licensed City Street Superintendent for all 12 months; (c) class of license, A or B; and (d) whether or not the Superintendent performed all of the duties listed. Reference Neb. Rev. Stat. §§39-2302 and 39-2511 through 39-2515. If your city or village did not have an appointed City Street Superintendent, write "City Council" or "Village Board" as the name of "Superintendent." Failure to return the resolution, certification, and documentation of the superintendents appointment will result in your municipality not receiving an Incentive Payment for Calendar Year 2020.

Note: In addition to this annual, Year-End Certification of Superintendent to the Nebraska Department of Transportation, (due December 31st), the municipality is also responsible for filing the "Municipal Annual Certification of Program Compliance" and "Signing Resolution" with the Board of Public Roads Classifications and Standards (due October 31st). Reference Neb. Rev. Stat. §§39-2115, 39-2119, 39-2120, 39-2121 and 39-2520(2).

Return the completed original resolution and certification, and a copy of the documentation of appointment by December 31, 2020 to:

Highway Local Liaison Coordinator
Boards-Liaison Services Section
Local Assistance Division
Nebraska Department of Transportation
PO Box 94759
Lincoln NE 68509-4759

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Mayor Zavodny stated that the next item on the agenda was consideration/discussion concerning water meters and system.

Interim Water Supervisor Aaron Gustin said, "I think Tami, Mr. Mayor, anybody who has been here for quite some time, knows the issues that we have with our meters, with our meter reading system. It goes back a long, long time, from what I hear, with past superintendents. Tami was saying that even as far back as Mr. Janicek had issues with this. Where I sit, currently, I cannot program new meters. Our handheld is at its end. I had called Leo Supan and he placed Troy Shelton, with Elster/Honeywell, in regard to who I contact if I need to purchase a piece of equipment. That handheld that needs replaced - I don't know if anybody has had the opportunity to see this. It's old, the battery lasts about an hour for us and I'll get into a few more details with that in a little bit. I made a request to Mr. Supan for a quote in regard to a new handheld. About eight months ago, I was told by Patrick Waltz that we would be able to utilize our own android-based tablet. A couple of months went by and they eliminated that option. We have to buy what, literally, looks like an android-based phone, through them, that wires their program. We cannot utilize our own tablet or our own android-based device. So, like I said, I contacted Mr. Supan, and he said that he'd get me a quote. He had to call his office, they would put the quote together and send it my way. They have yet to do so and that was well over a month ago. I had a return phone call to request that, I left a message, and I got no answer. So, given the fact that we read meters once a month, like clockwork the nineteenth comes around and we have issues. Right now, I cannot program new meters. Every new meter that we put in is going to be put on a manual read list, and the reason for discussing this tonight is that I would like to discuss a different option in regard to reading meters. Currently, if I am to place an order with Elster/Honeywell, there is a three to six months lead time for me to get what I ordered and when they are ready then they get shipped to us. I'm told it's because of the type of battery that our LAN Id's that transmit to the electric meters used are in high demand. 5G phones, I guess, is the direct competition. So, currently, what we use is a meter like this. I didn't have any Elster/Honeywell meters, but this is basically the same setup. This is a Neptune meter that I can get in a day from Municipal Supply. The costs are roughly equivalent. This is the LAN Id module that has to be through Elster/Honeywell. This is the item that has that battery that is so coveted, and what we do when we are in the field and, Nate has probably done this more times than anyone else, so you have to splice this end off because the Elster/Honeywell meters come with an icor plug that just plugs right in, but we can't get those meters. So, we have to splice this off, connect them here, wire them backwards, actually there's a different pattern to wire up a different meter to this, you pack it in a grease pack and then we hang that. I'm sure that everyone has seen them in their basement, and then we have to hope that it works. At that point, then we use the handheld to program the meter and create a marriage file. To program the meter, create a marriage file, I go and put it in the dock, create the marriage file in their program and then I send that to Lori and she uploads it to Elster and "Voila", that's how you have your water account created through the City process. It's rather extensive. It is a constant headache. Many times, we go, and we will do an install, do everything right, we'll send the marriage file to Lori and for whatever reason, it doesn't read. So, now we have to readdress it. What I would like to do is have everybody think about something that has proven customer service where we would utilize Municipal Supply as our supplier for meters. There is an actual quote in that packet from Todd. I had a previous conversation and put together that summary sheet at the beginning and then he gave me the official numbers. We would go to something like this. Everything is built in and I can get this meter in a day. Currently, we still have meters on a manual read schedule. It takes us half a day to get those. We would replace those with these, along with any other new meter that we have to install as they tend to break. We have about five to six, every month that go out, that we have to replace. Like I said, anything that I replace now, can't read through Elster and they have to go on the manual read schedule, which means gaining access to their houses. If they are willing to send me a picture, I will accept that, but I don't think that too many of the residents here, or anybody around this table, really want me coming into their house every month on the 19th. So, this has

the LAN Id module built in. That time that we spend driving around doing the manual meter reads, we would drive a route, pick up the reading and we would send that direct, after it was all said and done, we would send it to Lori and she would upload it into PowerManager. That was Lori's main concern was whatever we deal with has to work with our billing system. So, I did a little bit of leg work and a little bit of research. There are four cities that are on the back of that summary page that I called, and I asked them "Hey, how does this work for you?" They love it. One of those specifically utilizes PowerManager for their billing software and they claim that it works seamlessly. It took them about a day to set up. There is a one-time fee for setup in PowerManager that is not on that quote of \$800. I spoke with Nicole, with NMPP, and she's the one that gave us that number. So, we have a lot of old manual style meters that are still in the system. Over time, they slow down, and we lose revenue because they slow down. They don't read accurately after five, six, seven years. The life span of a meter is ten years. You're supposed to replace them every ten years. I've spoken with Clayton and I feel that from here on out, we really should replace a set number, every year, and then in ten years, start the rotation over again, as we go. Being able to read them this way, it would take us ten years to be able to completely replace every meter in the system, and probably three to four hundred thousand dollars and that's why I'd like to spread it over the course of ten years and go from there."

Mayor Zavodny said, "I have a few questions. So, Elster we had since 2005 or 2006, roughly, we started that thing, and we were putting them in people's basements? It just hasn't worked out, in recent years, because customer service has been poor, and their technology has gone bad. How many accounts do we have? About 1,200?"

City Clerk Comte said, "Yes, we have about 1,200 water customers."

Mayor Zavodny said, "So, at two hundred and twenty-five, that's about a two hundred and seventy-thousand-dollar investment to replace them all. I'm surprised that Lori is not here because one of the things...."

City Clerk Comte said, "She's on Zoom."

Mayor Zavodny said, "Oh, hi Lori. I want to save her from having a nervous breakdown because Lori and I have had this conversation multiple times. She's always very nice but it is just so frustrating because our billing process is a lot harder than it should be because the system that we have right now doesn't work. To me, some of these have a pretty good track record in some of these other communities. I think that a system like this is what the future is about. My question is always, how do we pay for it? We had our voters approve the half-cent sales tax for water. Do we have any idea how much is in there? Roughly?"

City Administrator Clayton Keller said, "I think about eight hundred thousand."

Mayor Zavodny said, "There are a couple of you that are with me on this, but I hate spending money, but this is a worthwhile one, to me. I look at this as an investment."

Council member Bruce Meysenburg said, "If the meters aren't reading right, we're missing water that should be billed."

Mayor Zavodny said, "That's happening all the time."

Council member Hotovy said, "What percentage, you may not know the exact number and I'm not going to hold you to this, but what percentage of meters for our services in town are ten years or younger?"

Interim Water Supervisor Aaron Gustin said, "Ten years or younger? Lori would probably have a better idea, but we would have to go back quite a way. We're talking almost every meter that we'd have to replace is the old mechanical guts."

Council member Hotovy said, "When those bog down, as you had said, what percentage of misreads can there be?"

Interim Water Supervisor Aaron Gustin said, "That we can pull up. I used my own residence as a guinea pig, and I can get everybody those numbers. We can match what my reading were since the install to the, however many months, ten months or so prior and we can see that. Everybody is aware with the brown water that we've had for years, that iron and that manganese is what builds up on those guts and slows them down."

Council member Hotovy said, "I'm just looking at, to an extent, it's going to partially, maybe even a very small part, pay for itself, by having accurate billing."

Mayor Zavodny said, "I will not make you feel warm and fuzzy, but we have some that we show zero, and some are big users, that's not good. When your proprietary systems of the city are water, sewer and electric, you better not be not making money on one of those. So, we've had several showing zero for a while and Lori says that we have to do something else. You've got to be able to accurately—and let people pay for what they actually use and the people who are paying zero, through no fault of theirs, aren't busting down the city doors and saying that they didn't pay for any water. This is the way that we need to measure what we bill people, accurately. I am perfectly fine with designating some of our half-cent sales tax to switching this over. Now, that's another question. So, let's say that we go with something like this, that's your crew that has to go into every residence and change out the water meters?"

Interim Water Supervisor Aaron Gustin said, "Yes, sir."

Mayor Zavodny said, "How long would that take?"

Interim Water Supervisor Aaron Gustin said, "I can put one person just on water meters. The average install for a water meter with this current setup takes about thirty minutes, and that's without any issues. However, if we were to just go in and swap out the meter, write down the meter number and upload that, it would probably minimize that. If you want an average, your safe number is thirty minutes."

Mayor Zavodny said, "On a perfect day, the most that you could get is sixteen, and we have to get to twelve hundred."

Interim Water Supervisor Aaron Gustin said, "On a perfect day, yes, now if I were to set the entire crew to it, it would take less. Winter is coming up and there is less stuff that we can do in the field and maybe that would help."

Mayor Zavodny said, "Oh, you're in water main break season, so don't jinx yourself."

City Clerk Comte said, "How many would you do in a year?"

Interim Water Supervisor Aaron Gustin said, "If we were to do that, we would try to get them done as soon as possible."

Mayor Zavodny said, "Starting with our problem ones that aren't reading."

Interim Water Supervisor Aaron Gustin said, "Absolutely! Lori has that list. I get the list of ones every month. The manual meter reads list would go away. We would immediately put those on the list to install."

Mayor Zavodny said, "I wish that I could see Lori, but I really hope that she's smiling right now."

City Administrator Clayton Keller said, "Lori, do you have something to share?"

Deputy Clerk Lori Matchett said via Zoom, "No, I don't. I completely go along with Aaron on this."

Interim Water Supervisor Aaron Gustin said, "When I did my research it was on this, Clayton and Tami heard me say this, it is something that will decrease Lori's workload. Her time is better spent on other tasks than meters every month. If we were to do that the location that utilizes PowerManager, I spoke with them and their billing clerk even offered to come up. She put together a little notebook of how to, step by step, and said that she would come and sit with Lori and walk her through it. They enjoy the system that much. If we were to equate the amount of hours that Lori works on just the issues, in regard to water billing, it would total up to quite a bit, would be my guess. Not to mention that she has to wait on us to get out there and be able to do something."

Mayor Zavodny said, "So, for just under three hundred thousand dollars, we can update our billing system, which is one of our proprietary functions of this City, and we have a half-cent sales tax which would pay for it, which is my first question any time that we do anything."

Council member Kobus said, "Can we get any grants?"

Interim Water Supervisor Aaron Gustin said, "That's a great question. I'll have to research that. I will speak with our engineers. They are very well aware of grants and things like that and so is Todd at Municipal Supply, because he has done the set ups on those four and more, so he would be aware, as well."

Mayor Zavodny said, "Here's what I recommend that we do. At our December meeting, we will be swearing in our new councilwoman. We have Pat, who isn't here tonight, so I'm really not in the mood to spend three hundred thousand dollars without our full array. Over the next month, feel free to talk to Lori, to find out what is going on with this system and I would strongly urge us to consider using that half-cent sales tax, part of what we have put away, to update this system or to replace the Elster. The Elster, over the past several years, has been nothing but a headache. It was the right thing to do, based on the information that we had at the time, but now that's going on fourteen years and it's time."

City Clerk Comte said, "We would still use Elster for our electric meters."

Mayor Zavodny said, "That's fine. I just know that we have bills showing zero for months at a time, and that's not a good thing. Okay, thank you for that."

Neptune vs. Elster Meter Read System Comparison

Elster System:

Currently, our Water Handheld System will not communicate with the WTP Computer which is its home station to create Marriage Files for New Meter Installations. Leo Supine with Elster Stated that replacement of the handheld unit is what our next step is to fix this issue.

Handheld Upgrade:		Meter Costs:		5/8 meter
CT60 Handheld:	\$3,500	SM700 meter:		
	\$120.00			
Training:	\$2,250	Nicor Wire:	\$21.00	
Route Manager:	\$2,000	LAN ID:	\$89.00	
Total:	\$7,750	Total:	\$230.00	

Continuous issues arise with our handheld functionality, Route Manager Program, and the subsequent customer service needed to fix these issues. Order Lead Time on new meters is 3-6 months from the time of the order. Lori can no longer manually create a marriage file in office resulting in newly installed meters having to be manually read. A request has been made to Leo Supine of Elster for an official quote for this upgrade. I have been waiting 4 weeks for this quote. The meters require each of the 3 components for complete installation which we have to manually wire and grease pack. This was all supposed to be an easy fix as we were told by Patrick Walz of Elster that could simply use an android based tablet as our new handheld only to have that be changed a few months later.

Neptune System:

I have spoken with Todd Speth of Municipal Supply to see what options were available to us. Neptune is the other meter brand that we use in our system. We primarily utilize this meter over the Elster meter due to its availability (usually here the next day). Neptune offers a meter read program that is sourced through Municipal Supply. There are no separate meter components to wire together. I have spoken with 4 Cities in regards to the use of this system. (See attached comments)

System Startup:		Meter Costs:	5/8
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Power Manager Integration:	\$800	Neptune INT 5/8	\$225.00
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Neptune Complete System: \$16,000
(Includes Read Equipment, Training, Cloud usage, and fees)

Comments:

Syracuse: (Nicole) Works Extremely Well.

Milford: (Lori) Had since before 2012. Very few Hiccups and none that she could specifically recall. Have been integrating to all Neptune and have 25 left that were an old Key In style.

Springfield: (Andie) Great customer service. Consistent. Any time there is an issue there is quick help. Definitely happy with the system.

Louisville: (Cheryl) Has had this system for 5 plus years and no issues. Questions are met with quick and satisfactory customer care.

Mayor Zavodny stated that the next item on the agenda was consideration/discussion concerning COVID-19.

Mayor Zavodny said, "Well, I'm going to start with what I think was a very good decision, which is our "Christmas on the Bricks", we're going to pull the plug on that thing, for the most part. They are having a fundraiser, but that's about it for that event. If you've seen the new Directed Health Measures from the governor, he stopped short on a mask mandate, but did limit crowds to twenty-five percent of capacity. Sporting events, it looks like it's going to be four family members at most, and six feet has to occur. We're going to talk when we go into executive session, I'm going to share some information. Overall speaking, we are in the red with Four Corners. There are people who would complain about the matrix of how that is figured, and that type of thing. I'm not here to discuss that. What I'm here to discuss is that we have to be responsible and try to slow this thing down. The good news is that it looks like the vaccine has a chance. It's going to be harder for rural America because it has to be kept so cold. Fed Ex and some other companies are trying to figure out how to keep it that cold to get it to us here in the sticks. I think in urban places that will be easier to do. But, even at that, health care workers, which it should be, and your most vulnerable are going to get that first. I believe, and the most reliable reports I've seen is we're not probably looking at a really good relief from this until next fall. It's going to be a long haul. Some people are experiencing some very serious long-term effects from this. Yes, ninety-nine percent of the people have mild symptoms, and they move on, but you don't want to be one of those people who feel like they have glass in their lungs. I think that we need to do what we can to see that that doesn't happen. With updating our health department calls, I will say, Seward is really seeing things accelerate quickly. York isn't doing great. It is, actually, almost impossible to get into "Test Nebraska" the same week that you make that request. If you're feeling ill, it's probably best to go through a clinic or something that they'll try to do a test. It's also slowing down results. I will say, contact tracing, this thing is so out of control that it's almost off the table anymore because of community spread. It is what it is. This pandemic is here and we're going to have to deal with it. We certainly have to be smart with what we are doing. Clayton and I, over the past few days, we're requiring masks when employees are driving in vehicles together because we've had some positives among our employees. Try to operate the city with a whole department down, that's not going to go well. Splitting some shifts, doing some things to try to be careful, are things that we're doing. I think that the reason that we put this on the agenda when we've been talking about it, is the game has changed. I think that the governor has recognized that. You can't go into a restaurant and have a party of more than eight. You're going to have to go to two different tables, that kind of thing. You hear quite a bit that people are letting their guard down. I don't know if any of you know who Kermit Brashear is, but his son lives in Seward and

he said he had a few people over and they let their guard down and he was really sick. He's a forty-eight-year old guy with no underlying health conditions. So, you don't know how it's going to impact any given person. It's different for everyone. And the virus does mutate and so we have to consider that, as we move forward. Hopefully, it will get weaker. From the first virus, to where it is today, hopefully, it's not as severe and life threatening as it was initially. That's the highlights of what our Four Corners Health Department calls have been like and then there are a few other things that we'll talk about, not in public session. Any questions or comments?"

Interim Water Supervisor Aaron Gustin said, "I do have a question. What would the Council like me to do regarding the individual in my department that tested positive? This Friday will be the fourteenth day mark regarding allowing this individual to come back to work."

Mayor Zavodny said, "Fourteen days is good, but I'd like to see a negative test before they return. That's a pretty common protocol. Some places require two negative tests, but if it's been fourteen days and you can test negative, I think we're safe enough."

City Council Advisor Dana Trowbridge said, "Are you going to address community events? A lot of doctors are asking the question, and the patients are saying, I think it started at the wedding. Are we going to control the events that we have control over?"

Mayor Zavodny said, "I think that we can certainly enforce our capacities if someone wants to have a wedding here, and funerals the same thing. Four Corners has said, I'm glad you raised that because I didn't think about it, the schools are actually doing relatively well. It's the church dinners, the faith community that Laura McDougall talks about. You have a whole lot of people together, and the bad part is that the workers there are the older ladies, older people who are faithful church members, but if there's a soup supper, they'll be there. If there is any kind of a meal, they will be there, working. That's the super spreader. That's where people are at a big risk and you have vulnerable people getting sick. I think that we have to adhere to the new Directed Health Measures, again salons in close contact are going back to masks, the tattoo parlors, those kinds of things. I think in the community, we will look at everything. They still have to go through Four Corners to get approval for things that they want to do, but what she has said is that your problematic things are your faith community things and people just letting their guard down. They are sick and tired of it and then they slip up. Thanksgiving is coming up and then Christmas. College kids will be coming home as their semesters end. We need to lead by example. If you've seen me around town, I'm wearing it all the time. Not to make any kind of political statement, not to do anything else, it's because I want to be respectful to people that I might pass in the grocery store and try not to spread it to them. The fact is that you may get it even though you've done everything right. There are no guarantees. Just because you have a mask on doesn't guarantee that you're not going to get it. Most of us probably will. We need to try to take care of ourselves as best we can and the community as best we can."

Council member Kobus said, "I agree with Skip. I think that we ought to do away with sports. I think that's a big, big no-no."

City Council Advisor Dana Trowbridge said, "We can't control a lot of those. We can control the ones that are on city property. We can control the Christmas event that is on "E" Street downtown."

Council member Kobus said, "That's fine, but if you're going to have sports, then they need to enforce the 'so many family members' and 'so many feet apart'."

Mayor Zavodny said, "That's absolutely true and I believe that you're going to see more of those. I don't think that they've exactly figured out how to do wrestling yet. I don't know how you do that. It's not been said yet, but there's been talk that they're going to make basketball players wear masks while they play. They are going to super limit the amount of people and they are going to encourage the schools to not have the boy/girl double headers and to split your gyms up the most that you can, four family members is the max. That's coming from the Nebraska School Activities Association. I think the schools will be smart. I will credit our schools for trying to be leaders in this, too. They've taken grief over some of the things that they've tried to implement. It's just the right thing to do. I love sports, but weighing the risk versus where we are at, moving inside, football – I could see where you could keep that fairly safe because you're outside and people were trying to distance. Although, toward the end of the season, I'll have to admit, those young people like to scoot together and warm up. You can't be the police of "Hey, you can't be doing that"."

Council member Kobus said, "Not so much basketball, but the little kids wrestling, you get tons of kids together, they don't care."

Mayor Zavodny said, "That would be a super spreader, so I think that the sponsoring entities are going to have to be really careful to say that mom and dad are just going to go, or just immediate family. They're going to have to stagger things. Instead of one day tournaments, they may have to go to two day to bring less people in."

Council member-elect Jessica Miller said, "As a wrestling parent, I will let you know that they are looking at Striv.tv. Parents won't be allowed in there. It will just be the teams and the wrestlers. You also have to realize that most of the problems are not in the schools and there is a lot of data that supports that the kids are not getting it, it's the parents that are testing positive and there is articles out there that tell you that kids don't have a protein which the virus is attaching to. As you grow older, you develop this protein, and the virus attaches to that protein. We have yet to see a positive case in our elementary school and in our center, where I work. You don't see the cases. The reason why we follow DHM's and wear masks is so we can keep the workers in the building. The schools are following the DHM's that are put in place and they are doing everything that they can to protect, but it's the parents that are passing it on to the teenagers who are also not masking in school. The schools are doing everything to protect the kids and to keep the kids in school. The goal is to keep the kids in school."

Mayor Zavodny said, "One thing that I will share that Four Corners shares, and it's available to anybody because it's on their website, is that Polk County has had eleven deaths. Most of them have been in the higher age group range. Butler County is at three, York County and Seward are around that same number. Polk has the fewest number of cases, but the highest number of deaths. The biggest groups now are the 50-60-year old's and that 20-year old group. That's where your concentration of the highest number are. Most of the deaths, at least from Polk County, from what I've heard, are in the 70's and 80's. So, you get it in a nursing home, or a vulnerable population and it can go quickly. They cannot claim it until they see it on the death certificate. There are a few that they believe will be COVID-19 related that haven't been reported yet. The things that we can control, we should control to try to keep people safe, without infringing on people's rights. I might sound a little bitter right now and I don't mean to and hopefully, you'll indulge me and forgive me, but I thought that some of the people who came to speak when we talked about this were a little wild-eyed and just not willing to accept a different point of view. I think that's disappointing. I respected each one of them and listened to what they had to say but, look at your numbers. The numbers are the numbers."

It's not me giving an opinion, it's not me saying that we need to do this, it's not me trying to control if you decide to wear a mask or not, it is how you slow this down and keep the fewest number of people sick and that could have the ultimate bad outcome. People are going to have to make their own decisions, respect them and I'll be the first to get mad at someone if they shame them for wearing a mask. But you should also not yell at someone for not wearing a mask. It's not your job to parent your neighbor or someone who passes you in the grocery store. Be responsible yourself and conduct yourself accordingly."

Council member Kevin Hotovy made a motion to authorize Mayor Zavodny to sign a letter agreement for professional services with Olsson concerning the Class "A" Street Superintendent for January through December 31, 2021. Council Member Tom Kobus seconded the motion. The motion carried.

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



LETTER AGREEMENT FOR PROFESSIONAL SERVICES

10/12/2020

Mayor and City Council
City of David City
P O Box 191
David City, NE 68632-0191

Re: **AGREEMENT FOR PROFESSIONAL SERVICES**
Street Superintendent Services Agreement – 2021 (the "Project")
David City, Nebraska

Dear Mayor and City Council Members:

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

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

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

STREET SUPERINTENDENT SERVICES

- Guidance and consultation for development and updates to the one- and six-year street plans
- Attendance at one public hearing related to the one- and six-year plan
- Review and updates to the street lane mile report
- Guidance and consultation of program compliance to the Nebraska Board of Public Roads Classifications and Standards

Exclusions

- Surveying – legal, topographic and construction staking
- Geotechnical
- Environmental Reviews and Permitting
- Project Design
- Bidding Services
- Preparation of preliminary engineering reports, studies, assessments, etc.
- Construction Administration and Observation
- Materials Testing

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

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

SCHEDULE FOR OLSSON'S SERVICES

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

Anticipated Start Date: January 1, 2021
Anticipated Completion Date: December 31, 2021

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

COMPENSATION

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

➤ Olsson's Scope of Services will be provided as follows:

- Street Superintendent Services: \$4,000 Fixed Fee

TERMS AND CONDITIONS OF SERVICE

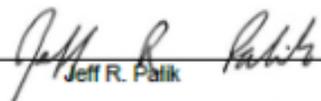
We have discussed with you the risks, rewards and benefits of the Project, the Scope of Services, and our fees for such services and the Agreement represents the entire understanding between Client and Olsson with respect to the Project. The Agreement may only be modified in writing signed by both parties.

Client's designated Project Representative shall be Tami Conte.

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

OLSSON, INC.

By  _____
David D. Ziska

By  _____
Jeff R. Patik

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

CITY OF DAVID CITY, NEBRASKA

By _____
Signature

Print Name _____

Title _____

Dated _____

Attachments
General Provisions

GENERAL PROVISIONS

These General Provisions are attached to and made a part of the respective Letter Agreement or Master Agreement, dated October 12, 2020 between the Village of Harrison, Nebraska ("Client") and Olsson, Inc. ("Olsson") for professional services in connection with the project or projects arising under such Letter Agreement or Master Agreement (the "Project(s)").

As used herein, the term "this Agreement" refers to these General Provisions, the applicable Letter Agreement or Master Agreement, and any other exhibits or attachments thereto as if they were part of one and the same document.

SECTION 1—OLSSON'S SCOPE OF SERVICES

Olsson's scope of services for the Project(s) is set forth in the applicable Letter Agreement or Master Agreement ("Scope of Services").

SECTION 2—ADDITIONAL SERVICES

2.1 Unless otherwise expressly included, Scope of Services does not include the categories of additional services set forth in Sections 2.2 and 2.3.

2.2 If Client and Olsson mutually agree for Olsson to perform any optional additional services as set forth in this Section 2.2 ("Optional Additional Services"), Client will provide written approval of the agreed-upon Optional Additional Services, and Olsson shall perform or obtain from others such services and will be entitled to an increase in compensation at rates provided in this Agreement. Olsson may elect not to perform all or any of the Optional Additional Services without cause or explanation:

2.2.1 Preparation of applications and supporting documents for governmental financial support of the Project(s); preparation or review of environmental studies and related services; and assistance in obtaining environmental approvals.

2.2.2 Services to make measured drawings of or to investigate existing conditions of facilities.

2.2.3 Services resulting from changes in the general scope, extent or character of the Project(s) or major changes in documentation previously accepted by Client where changes are due to causes beyond Olsson's control.

2.2.4 Services resulting from the discovery of conditions or circumstances which were not contemplated by Olsson at the commencement of this Agreement. Olsson shall notify Client of the newly discovered conditions or circumstances and Client and Olsson shall renegotiate, in good faith, the compensation for this Agreement, if amended terms cannot be agreed upon, Olsson may terminate this Agreement and Olsson shall be paid for its services through the date of termination.

2.2.5 Providing renderings or models.

2.2.6 Preparing documents for alternate bids requested by Client.

2.2.7 Analysis of operations, maintenance or overhead expenses; value engineering; the preparation of rate schedules; earnings or expense statements; cash flow or economic evaluations or; feasibility studies, appraisals or valuations.

2.2.8 Furnishing the services of independent professional associates or consultants for work beyond the Scope of Services.

2.2.9 Services necessary due to the Client's award of more than one prime contract for the Project(s); services necessary due to the construction contract containing cost plus or incentive-savings provisions; services necessary in order to arrange for performance by persons other than the prime contractor; or those services necessary to administer Client's contract(s).

2.2.10 Services in connection with staking out the work of contractor(s).

2.2.11 Services during out-of-town travel or visits to the site beyond those specifically identified in this Agreement.

2.2.12 Preparation of operating and maintenance manuals.

2.2.13 Services to redesign some or all of the Project(s).

2.2.14 Preparing to serve or serving as a consultant or witness or assisting Client with any litigation, arbitration or other legal or administrative proceeding.

2.2.15 Services relating to Construction Observation, Certification, Inspection, Construction Cost Estimating, project observation, construction management, construction scheduling, construction phasing or review of Contractor's performance means or methods.

2.3 Whenever, in its sole discretion, Olsson determines additional services as set forth in this Section 2.3 are necessary to avoid a delay in the completion of the Project(s) ("Necessary Additional Services"), Olsson shall perform or obtain from others such services without waiting for specific instructions from Client, and Olsson will be entitled to an increase in compensation for such services at the standard hourly billing rate charged for those employees performing the services, plus reimbursable expenses, if any:

2.3.1 Services in connection with work directive changes and/or change orders directed by the Client to any contractors.

2.3.2 Services in making revisions to drawings and specifications occasioned by the acceptance of substitutions proposed by contractor(s); services after the award of each contract in evaluating and determining the acceptability of an unreasonable or excessive number of substitutions proposed by contractor(s); or evaluating an unreasonable or extensive number of claims submitted by contractor(s) or others in connection with the Project(s).

2.3.3 Services resulting from significant delays, changes or price increases occurring as a direct or indirect result of material, equipment or energy shortages.

2.3.4 Additional or extended services during construction made necessary by (1) work damaged during construction, (2) a defective, inefficient or neglected work by any contractor, (3) acceleration of the progress schedule involving services beyond normal working hours, or (4) default by any contractor.

SECTION 3—CLIENT'S RESPONSIBILITIES

3.1. Client shall provide all criteria and full information as to Client's requirements for the Project(s); designate and identify in writing a person to act with authority on Client's behalf in respect of all aspects of the Project(s); examine and respond promptly to Olsson's submissions; and give prompt written notice to Olsson whenever Client observes or otherwise becomes aware of any defect in the Olsson's services.

3.2 Client agrees to pay Olsson the amounts due for services rendered and expenses within thirty (30) days after Olsson has provided its invoice for such services. In the event Client disputes any invoice item, Client shall give Olsson written notice of such disputed item within fifteen (15) days after receipt of such invoice and shall pay to Olsson the undisputed portion of the invoice according to the provisions hereof. If Client fails to pay any invoiced amounts when due, interest will accrue on each unpaid amount at the rate of thirteen percent (13%) per annum from the date due until paid according to the provisions of this Agreement. Interest shall not be charged on any disputed invoice item which is finally resolved in Client's favor. Payment of interest shall not excuse or cure any default or delay in payment of amounts due.

3.2.1 If Client fails to make any payment due Olsson for services and expenses within thirty (30) days after receipt of Olsson's statement therefore, Olsson may, after giving seven (7) days written notice to Client, suspend services to Client under this Agreement until Olsson has been paid in full all amounts due for services, expenses and charges and Client will not obtain any license to any Work Product or be entitled to retain or use any Work Product pursuant to Section 7.1 unless and until Olsson has been paid in full and Client has fully satisfied all of its obligations under this Agreement.

3.3 Payments to Olsson shall not be withheld, postponed or made contingent on the construction, completion or success of the Project(s) or upon receipt by the Client of offsetting reimbursements or credit from other parties who may have caused the need for additional services. No withholdings, deductions or offsets shall be made from Olsson's compensation for any reason unless and until Olsson has been found to be legally liable for such amounts.

3.4 Client shall also do the following and pay all costs incident thereto:

3.4.1 Furnish to Olsson any existing and/or required borings, probings or subsurface explorations; hydrographic surveys; laboratory tests or inspections of samples, materials or equipment; appropriate professional interpretations of any of the foregoing; environmental assessment and impact statements; property, boundary, easement, right-of-way, topographic or utility surveys; property descriptions; and/or zoning or deed restrictions; all of which Olsson may rely upon in performing services hereunder.

3.4.2 Guarantee access to and make all provisions for Olsson to enter upon public and private property reasonably necessary to perform its services on the Project(s).

3.4.3 Provide such legal, accounting, independent cost estimating or insurance counseling services as may be required for the Project(s); any auditing service required in respect of contractor(s)' applications for payment; and/or any inspection services to determine if contractor(s) are performing the work legally.

3.4.4 Provide engineering surveys to establish reference points for construction unless specifically included in Olsson's Scope of Services.

3.4.5 Furnish approvals and permits from all governmental authorities having jurisdiction over the Project(s).

3.4.6 If more than one prime contractor is to be awarded the contract for construction, designate a party to have responsibility and authority for coordinating and interfacing the activities of the various prime contractors.

3.4.7 All fees and other amounts payable by Client under this Agreement are exclusive of taxes and similar assessments. Without limiting the foregoing, Client is responsible and liable for all sales, service, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any federal, state, county or local governmental authority on any amounts payable by Client under this Agreement, other than any taxes imposed on Olsson's income. In the event any governmental authority assesses Olsson for taxes, duties, or charges of any kind in connection with Scope of Services provided by Olsson to Client, Olsson shall be entitled to submit an invoice to Client, its successors or assigns, for the amount of said assessment and related interest and penalties. Client shall pay such invoice in accordance with Olsson's standard payment terms.

3.5 Client shall pay all costs incident to obtaining bids or proposals from contractor(s).

3.6 Client shall pay all permit application review costs for government authorities having jurisdiction over the Project(s).

3.7 Contemporaneously with the execution of this Agreement, Client shall designate in writing an individual to act as its duly authorized Project(s) representative.

3.8 Client shall bear sole responsibility for:

3.8.1 Jobsite safety. Neither the professional activities of Olsson, nor the presence of Olsson or its employees or sub-consultants at the Project shall impose any duty on Olsson relating to any health or safety laws, regulations, rules, programs or procedures.

3.8.2 Notifying third parties including any governmental agency or prospective purchaser, of the existence of any hazardous or dangerous materials located in or around the Project(s) site.

3.8.3 Providing and updating Olsson with accurate information regarding existing conditions, including the existence of hazardous or dangerous materials, proposed Project(s) site uses, any change in Project(s) plans, and all subsurface installations, such as pipes, tanks, cables and utilities within the Project(s) site.

3.8.4 Providing and assuming all responsibility for: interpretation of contract documents; Construction Observations; Certifications; Inspections; Construction Cost Estimating; project observations; construction management; construction scheduling; construction phasing; and review of Contractor's performance, means and methods. Client waives any claims against Olsson and releases Olsson from liability relating to or arising out of such services and agrees, to the fullest extent permitted by law, to indemnify and hold Olsson

harmless from any and all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, relating to such actions and services.

3.9 Client releases Olsson from liability for any incorrect advice, judgment or decision based on inaccurate information furnished by Client or others.

3.10 If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including hazardous materials, encountered on the site, Olsson may immediately stop work in the affected area and report the condition to Client. Client shall be solely responsible for retaining independent consultant(s) to determine the nature of the material and to abate or remove the material. Olsson shall not be required to perform any services or work relating to or in the area of such material until the material has been removed or rendered harmless and only after approval, if necessary of the government agency with jurisdiction.

SECTION 4—MEANING OF TERMS

4.1 The "Cost of Construction" of the entire Project(s) (herein referred to as "Cost of Construction") means the total cost to Client of those portions of the entire Project(s) designed and specified by Olsson, but it will not include Olsson's compensation and expenses, the cost of land, rights-of-way, or compensation for or damages to, properties unless this Agreement so specifies, nor will it include Client's legal, accounting, insurance counseling or auditing services, or interest and financing charges incurred in connection with the Project(s) or the cost of other services to be provided by others to Client pursuant to Section 3.

4.2 The "Salary Costs": Used as a basis for payment mean salaries and wages (base and incentive) paid to all Olsson's personnel engaged directly on the Project(s), including, but not limited to, engineers, architects, surveyors, designers, draftsmen, specification writers, estimators, other technical and business personnel; plus the cost of customary and statutory benefits, including, but not limited to, social security contributions, unemployment, excise and payroll taxes, workers' compensation, health and retirement benefits, sick leave, vacation and holiday pay and other group benefits.

4.3 "Certify" or "a Certification": If included in the Scope of Services, such services shall be limited to a statement of Olsson's opinion, to the best of Olsson's professional knowledge, information and belief, based upon its periodic observations and reasonable review of reports and tests created by Olsson or provided to Olsson. Olsson shall not be responsible for constant or exhaustive observation of the work. Client understands and agrees that any certifications based upon discrete sampling observations and that such observations indicate conditions that exist only at the locations and times the observations were performed. Performance of such observation services and certification does not constitute a warranty or guarantee of any type, since even with diligent observation, some construction defects, deficiencies or omissions in the work may occur. Olsson shall have no responsibility for the means, methods, techniques, sequences or procedures selected by the contractor(s) or for the contractor's safety precautions and programs nor for failure by the contractor(s) to comply with any laws or regulations relating to the performance or furnishing of any work by the contractor(s). Client shall hold its contractor(s) solely responsible for the quality and completion of the Project(s), including construction in accordance with the

construction documents. Any duty under this Agreement is for the sole benefit of the Client and not for any third party, including the contractor(s) or any subcontractor(s). Olsson shall sign pre-printed form certifications only if (a) Olsson approves the form of such certification prior to the commencement of its services, (b) such certification is expressly included in the Scope of Services, (c) the certification is limited to a statement of professional opinion and does not constitute a warranty or guarantee, express or implied. It is understood that any certification by Olsson shall not relieve the Client or the Client's contractors of any responsibility or obligation they may have by industry custom or under any contract.

4.4 "Opinion of Probable Cost": An opinion of probable construction cost made by Olsson. In providing opinions of probable construction cost, it is recognized that neither the Client nor Olsson has control over the costs of labor, equipment or materials, or over the contractor's methods of determining prices or bidding. The opinion of probable construction costs is based on Olsson's reasonable professional judgment and experience and does not constitute a warranty, express or implied, that the contractor's bids or the negotiated price of the work on the Project(s) will not vary from the Client's budget or from any opinion of probable cost prepared by Olsson.

4.5 "Day": A calendar day of 24 hours. The term "days" shall mean consecutive calendar days of 24 hours each, or fraction thereof.

4.6 "Construction Observation": If included in the Scope of Services, such services during construction shall be limited to periodic visual observation and testing of the work to determine that the observed work generally conforms to the contract documents. Olsson shall not be responsible for constant or exhaustive observation of the work. Client understands and agrees that such visual observations are discrete sampling procedures and that such procedures indicate conditions that exist only at the locations and times the observations were performed. Performance of Construction Observation services does not constitute a warranty or guarantee of any type, since even with diligent observation, some construction defects, deficiencies or omissions in the work may occur. Olsson shall have no responsibility for the means, methods, techniques, sequences or procedures selected by the contractor or for the contractor's safety precautions and programs nor for failure by the contractor to comply with any laws or regulations relating to the performance or furnishing of any work by the contractor. Client shall hold its contractor(s) solely responsible for the quality and completion of the Project(s), including construction in accordance with the construction documents. Any duty under this Agreement is for the sole benefit of the Client and not for any third party, including the contractor or any subcontractor. Client, or its designees shall notify Olsson at least twenty-four (24) hours in advance of any field tests and observations required by the construction documents.

4.7 "Inspect" or "Inspection": If included in the Scope of Services, such services shall be limited to the periodic visual observation of the contractor's completed work to permit Olsson, as an experienced and qualified professional, to determine that the observed work, generally conforms to the contract documents. Olsson shall not be responsible for constant or exhaustive observation of the work. Client understands and agrees that such visual observations are discrete sampling procedures and that such procedures indicate conditions that exist only at the locations and times the observations were performed. Performance of such observation services does not constitute a warranty or guarantee of any type, since even with

diligent observation, some construction defects, deficiencies or omissions in the work may occur. Olsson shall have no responsibility for the means, methods, techniques, sequences or procedures selected by the contractor(s) or for the contractor's safety precautions and programs nor for failure by the contractor(s) to comply with any laws or regulations relating to the performance or furnishing of any work by the contractor(s). Client shall hold its contractor(s) solely responsible for the quality and completion of the Project(s), including construction in accordance with the construction documents. Any duty under this Agreement is for the sole benefit of the Client and not for any third party, including the contractor(s) or any subcontractor(s). Client, or its designees, shall notify Olsson at least twenty-four (24) hours in advance of any inspections required by the construction documents.

4.8 "Record Documents": Drawings prepared by Olsson upon the completion of construction based upon the drawings and other data furnished to Olsson by the Contractor and others showing significant changes in the work on the Project(s) made during construction. Because Record Documents are prepared based on unverified information provided by others, Olsson makes no warranty of the accuracy or completeness of the Record Documents.

SECTION 5—TERMINATION

5.1 Either party may terminate this Agreement, for cause upon giving the other party not less than seven (7) calendar days written notice of default for any of the following reasons; provided, however, that the notified party shall have the same seven (7) calendar day period in which to cure the default:

5.1.1 Substantial failure by the other party to perform in accordance with the terms of this Agreement and through no fault of the terminating party;

5.1.2 Assignment of this Agreement or transfer of the Project(s) by either party to any other entity without the prior written consent of the other party;

5.1.3 Suspension of the Project(s) or Olsson's services by the Client for more than ninety (90) calendar days, consecutive or in the aggregate.

5.2 In the event of a "for cause" termination of this Agreement by either party, the Client shall, within fifteen (15) calendar days after receiving Olsson's final invoice, pay Olsson for all services rendered and all reimbursable costs incurred by Olsson up to the date of termination, in accordance with the payment provisions of this Agreement.

5.2.1 In the event of a "for cause" termination of this Agreement by Client and (a) a final determination of default is entered against Olsson under Section 6.2 and (b) Client has fully satisfied all of its obligations under this Agreement, Olsson shall grant Client a limited license to use the Work Product pursuant to Section 7.1.

5.3 The Client may terminate this Agreement for the Client's convenience and without cause upon giving Olsson not less than seven (7) calendar days written notice. In the event of any termination that is not the fault of Olsson, the Client shall pay Olsson, in addition to payment for services rendered and reimbursable costs incurred, for all expenses reasonably incurred by Olsson in connection with the orderly termination of this Agreement, including but not limited to demobilization, reassignment of personnel, associated overhead costs, any

fees, costs or expenses incurred by Olsson in preparing or negotiating any proposals submitted to Client for Olsson's Scope of Services or Optional Additional Services under this Agreement and all other expenses directly resulting from the termination and a reasonable profit of ten percent (10%) of Olsson's actual costs (including overhead) incurred.

SECTION 6—DISPUTE RESOLUTION

6.1. Mediation

6.1.1 All questions in dispute under this Agreement shall be submitted to mediation. On the written notice of either party to the other of the election to submit any dispute under this Agreement to mediation, each party shall designate their representatives and shall meet within ten (10) days after the service of the notice. The parties themselves shall then attempt to resolve the dispute within ten (10) days of meeting.

6.1.2 Should the parties themselves be unable to agree on a resolution of the dispute, and then the parties shall appoint a third party who shall be a competent and impartial party and who shall be acceptable to each party, to mediate the dispute. Any third party mediator shall be qualified to evaluate the performance of both of the parties, and shall be familiar with the design and construction progress. The third party shall meet to hear the dispute within ten (10) days of their selection and shall attempt to resolve the dispute within fifteen (15) days of first meeting.

6.1.3 Each party shall pay the fees and expenses of the third party mediator and such costs shall be borne equally by both parties.

6.2 Arbitration or Litigation

6.2.1 Olsson and Client agree that from time to time, there may be conflicts, disputes and/or disagreements between them, arising out of or relating to the services of Olsson, the Project(s), or this Agreement (hereinafter collectively referred to as "Disputes") which may not be resolved through mediation. Therefore, Olsson and Client agree that all Disputes shall be resolved by binding arbitration or litigation at the sole discretion and choice of Olsson. If Olsson chooses arbitration, the arbitration proceeding shall proceed in accordance with the Construction Industry Arbitration Rules of the AAA.

6.2.2 Client hereby agrees that Olsson shall have the right to include Client, by consolidation, joinder or other manner, in any arbitration or litigation involving Olsson and a subconsultant or subcontractor of Olsson or Olsson and any other person or entity, regardless of who originally initiated such proceedings.

6.2.3 If Olsson chooses arbitration or litigation, either may be commenced at any time prior to or after completion of the Project(s), provided that if arbitration or litigation is commenced prior to the completion of the Project(s), the obligations of the parties under the terms of this Agreement shall not be altered by reason of the arbitration or litigation being conducted. Any arbitration hearings or litigation shall take place in Lincoln, Nebraska, the location of Olsson's home office.

6.2.4 The prevailing party in any arbitration or litigation relating to any Dispute shall be entitled to recover from the other party those reasonable attorney fees, costs and expenses incurred by the prevailing party in connection with the Dispute.

6.3 Certification of Merit

Client agrees that it will not assert any claim, including but not limited to, professional negligence, negligence, breach of contract, misconduct, error, omission, fraud, or misrepresentation ("Claim") against Olsson, or any Olsson subconsultant, unless Client has first provided Olsson with a sworn certificate of merit affidavit setting forth the factual and legal basis for such Claim (the "Certificate"). The Certificate shall be executed by an independent engineer ("Certifying Engineer") currently licensed and practicing in the jurisdiction of the Project site. The Certificate must contain: (a) the name and license number of the Certifying Engineer; (b) the qualifications of the Certifying Engineer, including a list of all publications authored in the previous 10 years and a list of all cases in which the Certifying Engineer testified within the previous 4 years; (c) a statement by the Certifying Engineer setting forth the factual basis for the Claim; (d) a statement by the Certifying Engineer of each and every act, error, or omission that the Certifying Engineer contends supports the Claim or any alleged violation of any applicable standard of care; (e) a statement by the Certifying Engineer of all opinions the Certifying Engineer holds regarding the Claim or any alleged violation of any applicable standard of care; (f) a list of every document related to the Project reviewed by the Certifying Engineer; and (g) a list of every individual who provided Certifying Engineer with any information regarding the Project. The Certificate shall be provided to Olsson not less than thirty (30) days prior to any arbitration or litigation commenced by Client or not less than ten (10) days prior to the initial response submitted by Client in any arbitration or litigation commenced by someone other than Client. The Certificate is a condition precedent to the right of Client to assert any Claim in any litigation or arbitration and Client's failure to timely provide a Certificate to Olsson will be grounds for automatic dismissal of the Claim with prejudice.

SECTION 7—MISCELLANEOUS

7.1 Reuse of Documents

All documents, including drawings, specifications, reports, boring logs, maps, field data, data, test results, information, recommendations, or opinions prepared or furnished by Olsson (and Olsson's independent professional associates and consultants) pursuant to this Agreement ("Work Product"), are all Olsson's instruments of service, do not constitute goods or products, and are copyrighted works of Olsson. Olsson shall retain an ownership and property interest in such Work Product whether or not the Project(s) is completed. If Client has fully satisfied all of its obligations under this Agreement, Olsson shall grant Client a limited license to use the Work Product and Client may make and retain copies of Work Product for use in connection with the Project(s); however, such Work Product is for the exclusive use and benefit of Client or its agents in connection with the Project(s), are not intended to inform, guide or otherwise influence any other entities or persons with respect to any particular business transactions, and should not be relied upon by any entities or persons other than Client or its agents for any purpose other than the Project(s). Such Work Product is not intended or represented to be suitable for reuse by Client or others on extensions of the Project(s) or on any other Project(s). Client will not distribute or convey such Work Product to any other persons or entities without Olsson's prior written consent which shall include a release of Olsson from liability and indemnification by the third party. Any reuse of Work Product without written verification or adaptation by Olsson for the specific purpose intended will be at Client's sole risk and without liability or legal exposure to Olsson, or to Olsson's independent

professional associates or consultants, and Client shall indemnify and hold harmless Olsson and Olsson's independent professional associates and consultants from all claims, damages, losses and expenses including attorneys' fees arising out of or resulting therefrom. Any such verification or adaptation of Work Product will entitle Olsson to further compensation at rates to be agreed upon by Client and Olsson.

7.2 Electronic Files

By accepting and utilizing any electronic file of any Work Product or other data transmitted by Olsson, the Client agrees for itself, its successors, assigns, insurers and all those claiming under or through it, that by using any of the information contained in the attached electronic file, all users agree to be bound by the following terms. All of the information contained in any electronic file is the work product and instrument of service of Olsson, who shall be deemed the author, and shall retain all common law, statutory law and other rights, including copyrights, unless the same have previously been transferred in writing to the Client. The information contained in any electronic file is provided for the convenience to the Client and is provided in "as is" condition. The Client is aware that differences may exist between the electronic files transferred and the printed hard-copy original signed and stamped drawings or reports. In the event of a conflict between the signed original documents prepared by Olsson and the electronic files, which may be transferred, the signed and sealed original documents shall govern. Olsson specifically disclaims all warranties, expressed or implied, including without limitation, and any warranty of merchantability or fitness for a particular purpose with respect to any electronic files. It shall be Client's responsibility to confirm the accuracy of the information contained in the electronic file and that it accurately reflects the information needed by the Client. Client shall not retransmit any electronic files, or any portion thereof, without including this disclaimer as part of any such transmissions. In addition, Client agrees, to the fullest extent permitted by law, to indemnify and hold harmless Olsson, its officers, directors, employees and sub consultants against any and all damages, liabilities, claims or costs, including reasonable attorney's and expert witness fees and defense costs, arising from any changes made by anyone other than Olsson or from any reuse of the electronic files without the prior written consent of Olsson.

7.3 Opinion of Probable Cost

Since Olsson has no control over the cost of labor, materials, equipment or services furnished by others, or over the contractor(s) methods of determining prices, or over competitive bidding or market conditions, Olsson's Opinion of Probable Cost provided for herein is made on the basis of Olsson's experience and qualifications and represent Olsson's best judgment as an experienced and qualified professional engineer, familiar with the construction industry. Client acknowledges and agrees that Olsson cannot and does not guarantee proposals or bids and that actual total Project(s) or construction costs may reasonably vary from Olsson's Opinion of Probable Cost. If prior to the bidding or negotiating phase Client wishes greater assurance as to total Project(s) or construction costs, Client shall employ an independent cost estimator as provided in paragraph 3.4.3. If Olsson's Opinion of Probable Cost was performed in accordance with its standard of care and was reasonable under the total circumstances, any services performed by Olsson to modify the contract documents to bring the construction cost within any limitation established by Client will be considered Optional Additional Services and paid for as such by Client. If, however, Olsson's Opinion of Probable Cost was not performed

in accordance with its standard of care and was unreasonable under the total circumstances and the lowest negotiated bid for construction of the Project(s) unreasonably exceeds Olsson's Opinion of Probable Cost. Olsson shall modify its work as necessary to adjust the Project(s)' size, and/or quality to reasonably comply with the Client's budget at no additional cost to Client. Under such circumstances, Olsson's modification of its work at no cost shall be the limit of Olsson's responsibility with regard to any unreasonable Opinion of Probable Cost.

7.4 Prevailing Wages

It is Client's responsibility to determine whether the Project(s) is covered under any prevailing wage regulations. Unless Client specifically informs Olsson in writing that the Project(s) is a prevailing wage project and is identified as such in the Scope of Services, Client agrees to reimburse Olsson and to defend, indemnify and hold harmless Olsson from and against any liability, including costs, fines and attorneys' fees, resulting from a subsequent determination that the Project(s) was covered under any prevailing wage regulations.

7.5 Samples

All material testing samples shall remain the property of the Client. If appropriate, Olsson shall preserve samples obtained no longer than forty-five (45) days after the issuance of any document that includes the data obtained from those samples. After that date, Olsson may dispose of the samples or return them to Client at Client's cost.

7.6 Standard of Care

Olsson will strive to perform its services in a manner consistent with that level of care and skill ordinarily exercised by members of Olsson's profession providing similar services in the same locality under similar circumstances at the time Olsson's services are performed. This Agreement creates no other representation, warranty or guarantee, express or implied.

7.7 Force Majeure

Any delay in the performance of any of the duties or obligations of either party hereto (except the payment of money) shall not be considered a breach of this Agreement and the time required for performance shall be extended for a period equal to the period of such delay, provided that such delay has been caused by or is the result of any acts of God, acts of the public enemy, insurrections, riots, embargoes, labor disputes, including strikes, lockouts, job actions, boycotts, fires, explosions, floods, shortages of material or energy, or other unforeseeable causes beyond the control and without the fault or negligence of the party so affected. The affected party shall give prompt notice to the other party of such cause, and shall take promptly whatever reasonable steps are necessary to relieve the effect of such cause.

7.8 Equal Employment Opportunity

Olsson and any sub-consultant or subcontractor shall abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in

employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, disability or veteran status.

7.9 Confidentiality

In performing this Agreement, the parties may disclose to each other written, oral, electronic, graphic, machine-readable, tangible or intangible, non-public, confidential or proprietary data or information in any form or medium, including but not limited to: (1) information of a business, planning, marketing, conceptual, design, or technical nature; (2) models, tools, hardware, software or source code; and (3) any documents, videos, photographs, audio files, data, studies, reports, flowcharts, works in progress, memoranda, notes, files or analyses that contain, summarize or are based upon any non-public, proprietary or confidential information (hereafter referred to as the "Information"). The Information is not required to be marked as confidential.

7.9.1 Therefore, Olsson and Client agree that the party receiving Information from the other party to this Agreement (the "Receiving Party") shall keep Information confidential and not use the Information in any manner other than in the performance of this Agreement without prior written approval of the party disclosing Information (the "Disclosing Party") unless Client is a public entity and the release of Information is required by law or legal process.

7.9.2 Prior to the start of construction on the Project, the existence of discussions between the parties, the purpose of this Agreement, and this Agreement shall be considered Information subject to the confidentiality provisions of this Agreement.

7.9.3 Notwithstanding anything to the contrary herein, the Receiving Party shall have no obligation to preserve the confidentiality of any Information which:

7.9.3.1 was previously known to the Receiving Party free of any obligation to keep it confidential; or

7.9.3.2 is or becomes publicly available by other than unauthorized disclosures; or

7.9.3.3 is independently developed by the Receiving Party without a breach of this Agreement; or

7.9.3.4 is disclosed to third parties by the Disclosing Party without restrictions; or

7.9.3.5 is received from a third party not subject to any confidentiality obligations.

7.9.4 In the event that the Receiving Party is required by law or legal process to disclose any of information of the Disclosing Party, the Receiving Party required to disclose such Information shall provide the Disclosing Party with prompt oral and written notice, unless notice is prohibited by law (in which case such notice shall be provided as early as may be legally permissible), of any such requirement so that the Disclosing Party may seek a protective order or other appropriate remedy.

7.9.5 Notwithstanding anything to the contrary herein (or to the contrary of any existing or future nondisclosure, confidentiality or similar agreement between the parties), Olsson is authorized, to use, display, reproduce, publish, transmit, and distribute Information (including, but not limited to, videos and

photographs of the Project) on and in any and all formats and media (including, but not limited to, Olsson's internet website) throughout the world and in all languages in connection with or in any manner relating to the marketing, advertising, selling, qualifying, proposing, commercializing, and promotion of Olsson and/or its services and business and in connection with any other lawful purpose of Olsson. In the event of any conflict or inconsistency between the provisions of this section and any other prior or future nondisclosure, confidentiality or similar agreement between the parties, the terms of this section shall take precedence.

7.9.6 Nothing contained in this Agreement shall be construed as altering any rights that the Disclosing Party has in the Information exchanged with or disclosed to the Receiving Party, and upon request, the Receiving Party will return all Information received in tangible form to the Disclosing Party, or at the Receiving Party's option, destroy all such Information. If the Receiving Party exercises its option to destroy the Information, the Receiving Party shall certify such destruction to the Disclosing Party.

7.9.7 The parties acknowledge that disclosure or use of Information in violation of this Agreement could cause irreparable harm for which monetary damages may be difficult to ascertain or constitute an inadequate remedy. Each party therefore agrees that the Disclosing Party shall be entitled in addition to its other rights to seek injunctive relief for any violation of this Agreement.

7.9.8 The obligations of confidentiality set forth herein shall survive termination of this Agreement but shall only remain in effect for a period of one (1) year from the date the Information is first disclosed.

7.10 Damage or Injury to Subterranean Structures or Utilities, Hazardous Materials, Pollution and Contamination

7.10.1 To the extent that work pursuant to this Agreement requires any sampling, boring, excavation, ditching or other disruption of the soil or subsurface at the Site, Olsson shall confer with Client prior to such activity and Client will be responsible for identifying, locating and marking, as necessary, any private subterranean structures or utilities and Olsson shall be responsible for arranging investigation of public subterranean structures or utilities through an appropriate utility one-call provider. Thereafter, Olsson shall take all reasonable precautions to avoid damage or injury to subterranean structures or utilities which were identified by Client or the one-call provider. Olsson shall not be responsible for any damage, liability or costs, for any property damage, injury or economic loss arising or allegedly arising from damages to subterranean structures or utilities caused by subsurface penetrations in locations approved by Client and/or the one call provider or not correctly shown on any plans, drawings or utility clearance provided to Olsson, except for damages caused by the negligence of Olsson in the use of such information.

7.10.2 It is understood and agreed that any assistance Olsson may provide Client in the disposal of waste materials shall not result in Olsson being deemed as a generator, arranger, transporter or disposer of hazardous materials or hazardous waste as defined under any law or regulation. Title to all samples and waste materials remains with Client, and at no time shall Olsson take title to the above material. Client may authorize Olsson to execute Hazardous Waste Manifest, Bill of Lading or other forms as agent of Client. If Client requests Olsson to execute such documents as its agent, the Hazardous

Waste Manifest, Bill of Lading or other similar documents shall be completed in the name of the Client. Client agrees to indemnify and hold Olsson harmless from any and all claims that Olsson is a generator, arranger, transporter, or disposer of hazardous waste as a result of any actions of Olsson, including, but not limited to, Olsson signing a Hazardous Waste Manifest, Bill of Lading or other form on behalf of Client.

7.10.3 At any time, Olsson can request in writing that Client remove samples, cuttings and hazardous substances generated by the Project(s) from the project site or other location. Client shall promptly comply with such request, and pay and be responsible for the removal and lawful disposal of samples, cuttings and hazardous substances, unless other arrangements are mutually agreed upon in writing.

7.10.4 Client shall release Olsson of any liability for, and shall defend and indemnify Olsson against any and all claims, liability and expense resulting from operations under this Agreement on account of injury to, destruction of, or loss or impairment of any property right in or to oil, gas, or other mineral substance or water, if at the time of the act or omission causing such injury, destruction, loss or impairment, said substance had not been reduced to physical possession above the surface of the earth, and for any loss or damage to any formation, strata, reservoir beneath the surface of the earth.

7.10.5 Notwithstanding anything to the contrary contained herein, it is understood and agreed by and between Olsson and Client that the responsibility for pollution and contamination shall be as follows:

7.10.5.1 Unless otherwise provided herein, Client shall assume all responsibility for, including control and removal of, and protect, defend and save harmless Olsson from and against all claims, demands and causes of action of every kind and character arising from pollution or contamination (including naturally occurring radioactive material) which originates above the surface of the land or water from spills of fuels, lubricants, motor oils, pipe dope, paints, solvents, ballast, bilge and garbage, except unavoidable pollution from reserve pits, wholly in Olsson's possession and control and directly associated with Olsson's equipment.

7.10.5.2 In the event a third party commits an act or omission which results in pollution or contamination for which either Olsson or Client, for whom such party is performing work, is held to be legally liable, the responsibility therefore shall be considered as between Olsson and Client, to be the same as if the party for whom the work was performed had performed the same and all of the obligations regarding defense, indemnity, holding harmless and limitation of responsibility and liability, as set forth herein, shall be specifically applied.

7.11 Controlling Law and Venue

The parties agree that this Agreement and any legal actions concerning its validity, interpretation or performance shall be governed by the laws of the State of Nebraska. It is further agreed that any legal action between the parties arising out of this Agreement or the performance of services shall be brought in a court of competent jurisdiction in Nebraska.

7.12 Subconsultants

Olsson may utilize as necessary in its discretion subconsultants and other subcontractors. Olsson will be paid for all services rendered by its subconsultants and other subconsultants as set forth in this Agreement.

7.13 Assignment

7.13.1 Client and Olsson each are hereby bound and the partners, successors, executors, administrators and legal representatives of Client and Olsson (and to the extent permitted by paragraph 7.13.2 the assigns of Client and Olsson) are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements and obligations of this Agreement.

7.13.2 Neither Client nor Olsson shall assign, sublet or transfer any rights under or interest in (including, but without limitation, moneys that may become due or moneys that are due) this Agreement without the written consent of the other, except to the extent that any assignment, subletting or transfer is mandated by law or the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. Nothing contained in this paragraph shall prevent Olsson from employing such subconsultants and other subcontractors as Olsson may deem appropriate to assist in the performance of services under this Agreement.

7.13.3 Nothing under this Agreement shall be construed to give any rights or benefits in this Agreement to anyone other than Client and Olsson, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Client and Olsson and not for the benefit of any other party. There are no third-party beneficiaries of this Agreement.

7.14 Indemnity

Olsson and Client mutually agree, to the fullest extent permitted by law, to indemnify and hold each other harmless from any and all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, relating to third party personal injury or third party property damage and arising from their own negligent acts, errors or omissions in the performance of their services under this Agreement, but only to the extent that each party is responsible for such damages, liabilities or costs on a comparative basis of fault.

7.15 Limitation on Damages

7.15.1 Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither party's individual employees, principals, officers or directors shall be subject to personal liability or damages arising out of or connected in any way to the Project(s) or to this Agreement.

7.15.2 Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither Client nor Olsson, their respective officers, directors, partners, employees, contractors or subconsultants shall be liable to the other or shall make any claim for any delay damages, any punitive damages or any incidental, indirect or consequential damages arising out of or connected in any way to the Project(s)

or to this Agreement. This mutual waiver of delay damages and consequential damages shall include, but is not limited to, disruptions, accelerations, inefficiencies, increased construction costs, increased home office overhead, loss of use, loss of profit, loss of business, loss of income, loss of reputation or any other delay or consequential damages that either party may have incurred from any cause of action including, but not limited to, negligence, statutory violations, misrepresentation, fraud, deceptive trade practices, breach of fiduciary duties, strict liability, breach of contract and/or breach of strict or implied warranty. Both the Client and Olsson shall require similar waivers of consequential damages protecting all the entities or persons named herein in all contracts and subcontracts with others involved in the Project(s).

7.15.3 Notwithstanding any other provision of this Agreement, Client agrees that, to the fullest extent permitted by law, Olsson's total liability to the Client for any and all injuries, claims, losses, expenses, damages, or claims expenses of any kind arising from any services provided by or through Olsson under this Agreement, shall not exceed the amount of Olsson's fee earned under this Agreement. Client acknowledges that such causes include, but are not limited to, negligence, statutory violations, misrepresentation, fraud, deceptive trade practices, breach of fiduciary duties, strict liability, breach of contract and/or breach of strict or implied warranty. This limitation of liability shall apply to all phases of Olsson's services performed in connection with the Project(s), whether subsequent to or prior to the execution of this Agreement.

7.16 Entire Agreement

This Agreement supersedes all prior communications, understandings and agreements, whether oral or written. Amendments to this Agreement must be in writing and signed by the Client and Olsson.

Council member Kevin Hotovy made a motion to approve going into executive session to discuss public health and safety. Council Member Bruce Meysenburg seconded the motion. The motion carried.

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

Mayor Zavodny stated, "Now at 8:08 p.m. we are going into executive session to discuss the public health and safety." Mayor Zavodny, all of the Council members, Council member-elect Jessica Miller, Council advisor Dana Trowbridge, City Administrator Keller, City Attorney Egr, and Deputy City Clerk Comte went into executive session at 8:08 p.m.

City Attorney Jim Egr stated that a motion and second was not needed to come out of executive session. Therefore, Mayor Zavodny declared the City Council out of executive session at 8:27 p.m.

There being no further business to come before the Council, Council member Kobus made a motion to adjourn. Council member Hotovy seconded the motion. Kevin Hotovy: Yea, Tom Kobus: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Absent, John Vandenberg: Yea, Alan Zavodny (Mayor): Yea
Yea: 5, Nay: 0, Absent: 1 The motion carried and Mayor Zavodny declared the meeting adjourned at 8:28 p.m.

CERTIFICATION OF MINUTES

November 11, 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 November 11, 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