

## CITY COUNCIL PROCEEDINGS

August 12, 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 August 6<sup>th</sup>, and an affidavit of the publisher is on file in the office of the City Clerk. The Mayor and members of the City Council acknowledged advance notice of the meeting by signing the Agenda which is a part of these minutes. The advance notice to the Public, Mayor, and Council members conveyed the availability of the agenda, which was kept continuously current in the office of the City Clerk and was available for public inspection 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.]

Mayor Zavodny stated that before the meeting started, he wanted to declare a vacancy in Ward #1 for Council member Trowbridge's seat due to a change in residency. Mayor Zavodny said, "Council member Trowbridge, I want to take this opportunity to thank you for your service as mayor and certainly as a member of this Council and your work did not go unnoticed and was very much appreciated. I will also declare at this time that I will not be appointing someone to that vacancy. Given the logistics and time, by the time we'd advertise and go through the process, we have an election coming up in November and I certainly don't want to be put in the position of choosing someone to fill that vacancy when we have people vying for that seat. I will be involved in voting until the new Council is seated in December. That brings everyone up to date on what our plan is and you will hear me called as we vote. My plan, moving forward is, we have a few projects that I would like Council member Trowbridge to see through since he's been working on them and so he's going to work in an advisory capacity for us and do some consultation for us as we finish those projects. He will still be involved and, obviously, in December we'll have a new Council seated."

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

Also present for the meeting were: Park/Auditorium Supervisor Bill Buntgen, Park employee Nathan Styskal, Sheriff Tom Dion, Planning Commission member Keith Marvin, Paul Gahan, Jim Angell, Deb Dinkelman, Cornerstone Insurance Group representative Janice Hamilton, LARM representatives Clint Simmons, Dave Bos and Craig Wiebelhaus.

The meeting opened with the Pledge of Allegiance.

Mayor Zavodny informed the public of the "Open Meetings Act" posted on the north wall by the entrance and asked those present to silence their cell phones.

The minutes of the July 22<sup>nd</sup>, 2020 meeting of the Mayor and City Council were approved upon a motion by Council member Kobus and seconded by Council member Pat

Meysenburg. Voting AYE: Council members Hotovy, Pat Meysenburg, Vandenberg, Kobus and Mayor Zavodny. Voting NAY: None. The motion carried. Council member Bruce Meysenburg was absent.

Mayor Zavodny asked for consideration of claims. Mayor Zavodny stated that he is asking for the claim to Constructor's to be removed from consideration since it is its own agenda item. Council member Kobus made a motion to authorize the payment of claims and Council member Pat Meysenburg seconded the motion. Voting AYE: Council members Pat Meysenburg, Hotovy, Kobus, Vandenberg, and Mayor Zavodny. Voting NAY: None. The motion carried. Council members Bruce Meysenburg was absent.

Mayor Zavodny stated that the next item on the agenda was consideration of progress estimate #23 for Constructors, Inc. in the amount of \$187,988.66. Mayor Zavodny said, "I've talked to some business owners and I looked at the amount that they reduced for adjustments and it seems like a very small amount, considering the amount of work that needs to be done. We have some very fine cracks in the concrete work and that just shouldn't be in this new of a thing. Whatever the reason is, I don't think that the ratepayers of David City should be on the hook for work that isn't the quality that it needs to be, considering that we spent over nine million on this project. So, I think there needs to be a little more work because once you pay them, they won't come back and I think some retainage is going to be necessary if we're going to have to pay someone to go in and fix some of those things. That was my rationale for holding off on that and not moving forward. In talking to Chris, there were some concerns that he had. We went in and did some work that I thought was part of the contract, too. As far as, painting lines and those kinds of things. How do you feel? This is the last payment, so we have no recourse whatsoever once this is paid. I think that there are just some things that need to be talked about."

Council member Hotovy made a motion to table progress estimate #23 for Constructors, Inc. until further repairs are completed. Council member Pat Meysenburg seconded the motion. Voting AYE: Council members Pat Meysenburg, Vandenberg, Hotovy, Kobus and Mayor Zavodny. Voting NAY: None. Council member Bruce Meysenburg was absent. The motion carried.

Mayor Zavodny asked for any comments or questions concerning the Committee and Officer Reports.

City Administrator Clayton Keller said, "I can say something about the second item on the Building Inspector's report. On here it says "assist with State Fire Marshal inspection for Gary Meister's three-plex. Enforcement actions." Ray went out today with Gary and the State Electrical Inspector. The Electrical Inspector noticed a fourth electrical panel and started asking questions. It's setup to be a four-plex instead of a tri-plex. So, they brought in the State Fire Marshal and so Gary Meister is going to revise his plan to show that it's going to be a four-plex. He'll have to have those plans approved by the City and the State Fire Marshal before he can continue."

Council member Pat Meysenburg said, "It went from what to what?"

City Administrator Clayton Keller said, "It went from a three-apartment building to a four-apartment building."

Mayor Zavodny said, "I'll be honest, I think it went from a two-apartment building."

Council member Pat Meysenburg said, "It went from a two to a three, now to a four?"

City Administrator Clayton Keller said, "Yes."

Planning Commission member Keith Marvin said, "If I remember right, the Planning Commission only granted his conditional use permit for a tri-plex. So, he's in violation of that permit too, if I remember correctly."

Mayor Zavodny said, "Counsel, what is our recourse on this because I have a serious issue with him putting in a four-plex at this point. Why do we have a process if you can just do what you want outside of the permit?"

City Attorney Jim Egr said, "Boy, that's a heck of a question. I think we say that he has to cease and desist construction until we get this thing worked out. He's in total violation of the permit."

Planning Commission member Keith Marvin said, "He came to us to ask for a rezoning so he could put a tri-plex on and a tri-plex is a conditional use and we granted the tri-plex contingent upon the Council approving the rezoning, which you did."

Mayor Zavodny said, "I know that the demand has been great, but that's not a justification for going now to a four-plex. What's to stop him from putting a second floor on and having an eight-unit apartment building? You've got to have rules. I have an issue with that. I don't think that you can approach things that way. So, that's going to be problematic. If the Council is supportive of that, my position, and I can't imagine what could be presented to make me change this is, we've already changed it to a three I don't want it to go to a four. I don't even know how that would work."

Council member Pat Meysenburg said, "I don't know how he figured that out."

Mayor Zavodny said, "How do you go from three to four in that small of an area?"

Council member Pat Meysenburg said, "At first he didn't know if he could put a three-plex on there for sure. Now, he's made it a four-plex?"

Mayor Zavodny said, "I don't think we can do that. I think it's a mistake."

City Attorney Jim Egr said, "I think it's a cease and desist. That's what we have Ray for is to issue a cease and desist."

Mayor Zavodny said, "Is there anything else on the committee and officer's reports? Sheriff, I always appreciate you being here. Is there anything else on law enforcement? It's all good?"

Sheriff Tom Dion said, "Yes."

City Administrator Clayton Keller said, "On a good note, the Kozisek sidewalk was installed."

Council member Kobus made a motion to accept the committee and officer's reports as presented. Council member Hotovy seconded the motion. Voting AYE: Council members Vandenberg, Hotovy, Pat Meysenburg, Kobus and Mayor Zavodny. Voting NAY: None. The motion carried. Council member Bruce Meysenburg was absent.

Council member Hotovy made a motion to accept the audit for fiscal year ended September 30, 2019 as presented at the July 22<sup>nd</sup>, 2020 City Council meeting by Adam Elm of Schumacher, Smejkal, Brockhaus & Herley, P.C. Council member Pat Meysenburg seconded the motion. Voting AYE: Council members Pat Meysenburg, Kobus, Hotovy, Vandenberg and Mayor Zavodny. Voting NAY: None. The motion carried. Council member Bruce Meysenburg was absent.

Council member Hotovy made a motion to appoint Tami Comte as City Clerk-Treasurer for the City of David City. Council member Kobus seconded the motion. Voting AYE: Council members Pat Meysenburg, Hotovy, Vandenberg, Kobus and Mayor Zavodny. Voting NAY: None. The motion carried. Council member Bruce Meysenburg was absent.

Council member Hotovy made a motion to appoint Lori Matchett as the Deputy City Clerk for the City of David City. Council member Kobus seconded the motion. Voting AYE: Council members Hotovy, Pat Meysenburg, Kobus, Vandenberg and Mayor Zavodny. Voting NAY: None. The motion carried. Council member Bruce Meysenburg was absent.

Council member Kobus made a motion to pay the \$199 registration fee (after rebate) to allow City Administrator Clayton Keller to attend the International City/County Manager's Association Annual Conference in 2020. Council member Pat Meysenburg seconded the motion. Voting AYE: Council members Pat Meysenburg, Kobus, Hotovy, Vandenberg, and Mayor Zavodny. Voting NAY: None. The motion carried. Council member Bruce Meysenburg was absent.

Mayor Zavodny stated that although we had a strong recycling program in David City, there was just no market for it and so, unfortunately, the only thing to do is to continue the suspension of the program.

Council member Kobus made a motion to continue the suspension of the recycling program indefinitely. Council member Pat Meysenburg seconded the motion. Voting AYE: Council member Hotovy, Vandenberg, Kobus, Pat Meysenburg and Mayor Zavodny. Voting NAY: None. The motion carried. Council member Bruce Meysenburg was absent.

At 7:17 p.m. Mayor Zavodny opened the Public Hearing to consider amending the Zoning Ordinance No. 1060 Article 5: Zoning Districts Section 5.15 I-2 Heavy Industrial District by amending Section 5.15.03 Conditional Uses as follows: 4. Auto Wrecking Yards, Junk Yards, Salvage Yards, and Scrap Processing Yards. Mayor Zavodny asked if anyone wished to comment during the Public hearing.

City Administrator Clayton Keller said, "So, we have a salvage yard of sorts in a residential area that doesn't have anywhere to go because we say that we regulate it in a certain zone, but then we don't say anywhere in our code that that's where we want it. So, this is us saying that's where it belongs so that we can then regulate it. I'm not sure if Keith has anything else to add."

Planning Commission member Keith Marvin said, "I think that the thing was that the heading in number 4 in 5.15.03 didn't match up with the title in the supplemental regs that would cover salvage yards, etcetera, so it was pointed out to us so we just made the two match up and move forward. It's a housekeeping issue."

Mayor Zavodny said, "You're cleaning up and making language consistent."

Mayor Zavodny asked if anyone else wished to make any further comment on the Public Hearing at this time. Hearing none, Mayor Zavodny closed the Public Hearing at 7:19 p.m.

Council member Hotovy introduced Ordinance No. 1355 amending the Zoning Ordinance No. 1060 Article 5: Zoning Districts Section 5.15 I-2 Heavy Industrial District by amending Section 5.15.03 Conditional Uses as follows: 4. Auto Wrecking Yards, Junk Yards, Salvage Yards, and Scrap Processing Yards. Mayor Zavodny read Ordinance No. 1355 by title. Council member Hotovy made a motion to suspend the statutory rule that requires that an Ordinance be read on three separate days. Council member Pat Meysenburg seconded the motion. Voting AYE: Council members Hotovy, Pat Meysenburg, Kobus, Vandenberg, and Mayor Zavodny. Voting NAY: None. The motion carried. Council member Bruce Meysenburg was absent.

Council member Hotovy made a motion to pass Ordinance No. 1355 on the 3<sup>rd</sup> and final reading. Council member Kobus seconded the motion. Voting AYE: Council members Pat Meysenburg, Vandenberg, Hotovy, Kobus, and Mayor Zavodny. Voting NAY: None. Council member Bruce Meysenburg was absent. The motion carried and Ordinance No. 1355 was passed on 3<sup>rd</sup> and final reading as follows:

### **ORDINANCE NO. 1355**

AN ORDINANCE, TO AMEND ZONING ORDINANCE NO. 1060, BY AMENDING: ARTICLE 5: SECTION 5.15 I-2 HEAVY INDUSTRIAL BY AMENDING 5.15.03 CONDITIONAL USES; REPEALING ANY ORDINANCE OR RESOLUTION IN CONFLICT THEREWITH; PROVIDING AN EFFECTIVE DATE THEREOF; AND PROVIDING FOR PUBLICATION OF THE ORDINANCE IN PAMPHLET FORM.

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF DAVID CITY, BUTLER COUNTY, NEBRASKA, THAT THE FOLLOWING SECTION OF ZONING ORDINANCE NO. 1060 BE AMENDED AS FOLLOWS:

#### **ARTICLE 5 ZONING DISTRICTS**

#### **SECTION 5.15 I-2 HEAVY INDUSTRIAL DISTRICT**

#### **5.15.03 Conditional Uses.**

#### **4. Auto Wrecking Yards, Junk Yards, Salvage Yards, and Scrap Processing Yards.**

This Ordinance shall be in full force and effect from and after passage, approval and publication or posting as required by law.

PASSED AND APPROVED THIS 12<sup>th</sup> day of August, 2020.

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Mayor Alan Zavodny

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City Clerk Tami L. Comte

Mayor Zavodny stated that the next agenda item was approving the Local Authority/Business Economic Opportunity Program Agreement with Timpfe.

City Administrator Clayton Keller stated that the State of Nebraska had originally said that they didn't need the agreement with Timpfe updated and then they decided that maybe they should have it updated.

Council member Hotovy made a motion to approve the Local Authority/Business Economic Opportunity Program Agreement with Timpfe. Council member Kobus seconded the motion. Voting AYE: Council members Vandenberg, Hotovy, Kobus, Pat Meysenburg and Mayor Zavodny. Voting NAY: None. Council member Bruce Meysenburg was absent. The motion carried and the agreement is as follows:

**DAVID CITY/TIMPTE INC.  
ECONOMIC OPPORTUNITY PROGRAM AGREEMENT**

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THIS AGREEMENT is entered into by and between the City of David City, 557 N 4<sup>th</sup> ST, PO Box 191, David City, NE 68632, hereinafter the "LA", and Timpte, Inc., 1827 Industrial Drive, David City, NE 68632, hereinafter the "Business", and who together will be collectively referred to as "the Parties".

**WHEREAS**, the purpose of this Agreement is to define the terms and conditions applicable to the Parties for utilizing State of Nebraska Economic Opportunity Program Funds (hereinafter "EOP" or "EOP Funds"), in a manner consistent with Neb. Rev. Stat. §39-2806. Nebraska law provides for the expenditure of EOP Funds to finance transportation improvements to attract and support new businesses and business expansions by successfully connecting such businesses to Nebraska's multimodal transportation network, and to increase employment, create high-quality jobs, increase business investment, and revitalize rural and other distressed areas of the state.

**WHEREAS**, the Business has committed to a project that meets the criteria of the State's Economic Opportunity Program; and

**WHEREAS**, the LA has committed to entering into a Program Agreement with the Business to implement the project consistent with the State's Economic Opportunity Program guidelines and Neb. Rev. Stat. §39-2806; and

**WHEREAS**, the Parties understand that the LA will also be entering into a separate Program Agreement with the State of Nebraska, Department of Transportation (hereinafter the "State") to implement the project consistent with the State's Economic Opportunity Program guidelines and Neb. Rev. Stat. §39-2806;

**NOW THEREFORE**, in consideration of the mutual promises and understandings specifically set forth herein, the LA and the Business jointly agree to the following:

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**I. Project Description/Objective:**

- 1.1 **Project Location:** NE-15 / "S" Street intersection in David City, NE  
**Current Jurisdictional Authority:** David City  
**Key Project Features and Project Description/Objective:**

This project will make improvements to an intersection on NE-15 and "S" ST in David City. The improvement will involve adding a right turn lane on southbound NE-15 at "S" ST. The improvements are necessary as a result of an expansion by the business and are recommended by a traffic study. The project is anticipated to include all activities associated with improvement of an intersection by adding a right turn lane, including (but not limited to) engineering, grading, paving, drainage analysis, culvert work, utilities and lighting. ROW acquisition may be required.

This project meets the objectives of the EOP because it provides a transportation connection that will facilitate business expansion in the area, attract high quality jobs and encourage capital investment within the state of Nebraska as a result.

- 1.2 **Estimated Positive Economic Impact resulting from the Project:**

Anticipated number of new jobs	41
Anticipated number of retained jobs	286

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Anticipated private capital investment	\$10,000,000 - \$14,000,000
Village/City/MPO/area impacted by improvement	David City

**II. Division and Reimbursement of Costs:**

Type of Work	Anticipated EOP Funds %	LA Funds %	Business Funds %	Total
Preliminary Engineering and Property Acquisition	\$40,000	\$8,500	\$8,500	\$57,000
Construction	\$140,000	\$29,750	\$29,750	\$199,500
Project Closeout	\$20,000	\$4,250	\$4,250	\$28,500
<b>TOTAL:</b>	<b>\$200,000</b>	<b>\$42,500</b>	<b>\$42,500</b>	<b>\$285,000</b>

- 2.1 The Parties understand that construction and engineering expenses which will be approved for reimbursement (hereinafter "Eligible Expenses") may only include the necessary, reasonable, and customary costs, fees and other expenses that are incurred to complete a transportation project, and will be determined solely at the discretion of the State subject to the Program Agreement entered into between the LA and the State. Expenses which are generally eligible include, but are not limited to, the usual and customary design, engineering, construction, inspection, and right of way expenditures. Expenses which are generally ineligible include, but are not limited to, utility placement and/or established utility relocation, refinancing or payment of existing debt, and betterments or improvements which are above and beyond the original scope and objective of the transportation project.
- 2.2 The Parties understand that the State's **maximum reimbursement amount** to the LA for Eligible Expenses incurred upon the project is **\$200,000.00**. Any remaining balance necessary to complete the project as defined in this Program Agreement shall be attributed as follows:
- Any remaining balance shall be shared by the Parties, with 50% paid by the LA and 50% paid by the Business.
- The Parties are responsible for ensuring that funds are available to meet their financial obligations to complete this EOP project as contemplated by the Parties and as set forth in this Program Agreement, including the availability of funds necessary to complete the project if the State's maximum reimbursement amount is exceeded or for any project costs determined by the State to be ineligible for reimbursement.
- 2.3 The Parties understand that State EOP Funds will be made available for reimbursement of Eligible Expenses upon receipt by the LA, generally in accordance with the following Phasing schedule:
- a. **Phase I: Preliminary Engineering and Property Acquisition:** 20% of the State's EOP Funding will be disbursed upon:
- i. documentation that the LA governing body has formally approved and set aside all matching funds identified herein to be utilized for the completion of this project;
  - ii. documentation that the Business has officially and formally committed to the project in this LA/Business Program Agreement;

- iii. verification of compliance with all right-of-way requirements and completion of final design plans consistent with provisions 3.1, 3.2.a and 3.2.b below; and
  - iv. receipt by the State of a billing invoice/request for reimbursement setting forth all Eligible Expenses thus far.
- b. **Phase II: Construction:** An additional 70% of State's EOP Funding will be disbursed to the LA according to the following schedule:
- i. **Initial 30% upon:**
    - A. documentation of a properly awarded construction contract for the project consistent with provisions 3.1 and 3.2.c below, such that construction is ready to commence; and
    - B. receipt of a billing invoice/request for reimbursement setting forth all Eligible Expenses thus far.
  - ii. **Additional 40% upon:**
    - A. completion of approximately one-half of project construction in a manner consistent with provisions 3.1 and 3.2.d.
    - B. receipt of a billing invoice/request for reimbursement setting forth all Eligible Expenses thus far.
- c. **Phase III: Project Closeout:** The final disbursement of EOP Funds, up to the final 10% of the original EOP funding amount, will be paid to the LA upon receipt of:
- i. a final billing invoice/request for reimbursement which sets forth a complete and final accounting of all Eligible Expenses incurred to complete the project, as more specifically set forth in provision 2.4.b below; and
  - ii. a full and complete copy of the as-built plans.
- 2.4 a. All billing invoices/requests for reimbursement must be submitted to the LA in a manner consistent with the State's billing processing system so that timely payment may be made, and must include all necessary state and federal tax documentation required by the State to process payment. Billing invoices/requests for reimbursement shall only be submitted to the LA after amounts due exceed \$1,000.00, and shall be submitted to the LA no more frequently than monthly. Billing invoices/requests for reimbursement by the Business must contain adequate documentation to substantiate the expenses incurred, and to determine compliance with the EOP program application and the LA's Program Agreement with the State. Noncompliant invoices or requests for reimbursement will not be paid; notice and explanation of a noncompliant invoice or request for reimbursement will be returned to the Business within thirty (30) days of receipt by the LA.
- b. The final billing invoice/request for reimbursement must be received no later than one year from the date of completion of the project; if a final invoice is not received within one year of completion of the improvement, the most recent billing invoice/request for reimbursement received by the Business will be considered the final invoice submitted upon the improvement, and any and all obligation by the LA to pay additional funds will terminate.
- 2.5 All obligations set forth in this Program Agreement, including all obligations of the LA to reimburse costs as set forth herein, shall terminate immediately without penalty or further payment required if, in any fiscal year, the Nebraska Legislature fails to appropriate or otherwise make available funds for the work contemplated herein. In such an event, the LA will provide the Business with written notice setting forth the effective date of termination.

**III. Additional Obligations, Declarations, and Certifications:**

- 3.1 **[PROVISION REQUIRED BY STATE/LA PROGRAM AGREEMENT]** The Parties agree to comply with all applicable federal, state and local laws, ordinances, rules and regulations relating to the activities carried out by the Parties under this Program Agreement, including but not limited to the requirements of Neb. Rev. Stat. §4-108 to 4-114 to utilize a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska; Neb. Rev. Stat. §81-3445, governing the use of professional architects or engineers for projects which exceed \$100,000; and Neb.Rev.Stat. §81-3437 requiring designation of a coordinating professional. The Business further agrees to cooperate and provide any and all efforts requested or required by the LA so that the LA may meet the terms of its Program Agreement with the State.

The LA and the Business agree to commit all reasonable efforts and resources necessary to carry out the provisions of this Program Agreement, understanding that failure to comply with the terms set forth herein may result in the State's termination of the EOP project, and the State's demand for reimbursement from the Parties of all EOP funds disbursed thus far.

- 3.2 **[PROVISION REQUIRED BY STATE/LA PROGRAM AGREEMENT]** It is understood that the LA will be required by its Program Agreement with the State to accept responsibility for the management, planning, design, right-of-way activities, bid letting, construction, construction engineering and future operation and maintenance of this project subject to terms which will be specifically set forth in the Program Agreement between the State and the LA. A copy of the Program Agreement between the State and the LA will be provided to the Business. To implement the project as contemplated by the Parties, the following assignment of duties and responsibilities between the LA and the Business will apply during the term of this Program Agreement:

The LA will accept responsibility for the management, planning, design, right-of-way activities, bid letting, construction, construction engineering and future operation and maintenance of this project subject to terms which will be specifically set forth in the Program Agreement between the State and the LA.

In addition, the Parties understand and agree that:

a. Prior to advertising for bids for the project, the LA will be required to certify to the State that all necessary right-of-way, temporary and permanent easements, and temporary use permits have been properly obtained by the LA and that the project is legally prepared to proceed. The State may, in some circumstances, require that a dedication of property be made to the ownership of the LA to ensure that funds utilized upon the project result in a meaningful contribution to a purpose generally beneficial to the citizens of the State of Nebraska.

b. The LA will be required to provide plans which have been prepared and signed by a licensed professional engineer for the State's review, and the State must review all plans and specifications prepared by the LA prior to letting. In the event the project connects to, physically touches or impacts a portion of the state highway system, the LA will be required to provide plans for review which meet the higher NDOR standard highway design and construction requirements applicable to State highway projects.

c. The LA will be required to advertise the project, accept bids, and award the contract for construction of the project in a manner consistent with applicable state and local law. The State shall be entitled to terminate the program agreement in the event no contract has been awarded by December 31, 2021, and recovery of EOP funds disbursed thus far to the LA may commence as more specifically set forth in provision 3.5 below.

d. The LA will be required to oversee construction to ensure the project is constructed as described or shown upon the approved plans, specifications, and estimates, or as amended by any approved change orders.

- 3.3 **[PROVISION REQUIRED BY STATE/LA PROGRAM AGREEMENT]** The Business and the LA agree to maintain records and documentation of the project for at least five years after termination/expiration of this Program Agreement, including but not limited to: books kept in accordance with generally accepted accounting principles, detailed records of expenditures, recipients and uses of all funds paid and disbursed in conjunction with this Program Agreement, as well as final design plans, as-built plans, and structural material certifications. Each shall make such documentation available to the other to copy or review upon request, within a reasonable time period, and in particular in a manner sufficient to respond or comply with internal or external audit requirements of the LA, the Business, and/or the State.
- 3.4 **[PROVISION REQUIRED BY STATE/LA PROGRAM AGREEMENT]** The Business must submit an annual economic impact progress report to the the LA by **December 1st** of each subsequent year after completion of the project, for a period of five consecutive years after completion of the project.
- 3.5 **[PROVISION REQUIRED BY STATE/LA PROGRAM AGREEMENT]** The Parties understand that in the event the LA or the Business fails to meet the terms of this Program Agreement, or in the event the Business does not fulfill its commitment to locate operations on the site or demonstrate positive economic impact as contemplated or described within provisions 1.1 and 1.2 of this Program Agreement (also known as “default”), the State may immediately provide the LA with notice of termination of funding and seek reimbursement and repayment of all EOP funds disbursed thus far upon the project from the LA. In the event of such occurrence, the Business shall immediately reimburse and repay the LA for all EOP funds disbursed thus far to the Business by the LA; all EOP funds reimbursed and repaid by the Business to the LA shall then be repaid by the LA to the State.

Furthermore, in the event of termination of this Program Agreement, the Parties agree to the following terms regarding reimbursement and repayment of non-EOP funds expended upon the project by the Business and the LA up to the date of termination:

If the termination is due to the Business’s failure to fulfill its commitment to locate operations on the site or demonstrate positive economic impact as contemplated by this Program Agreement, the Business shall reimburse and repay the LA 50% of non-EOP funds expended by the LA upon the project up to the date of termination.

- 3.6 This Program Agreement commences upon signature by the last of all required signatories and terminates 30 days after the LA’s receipt of the final annual progress report unless terminated sooner pursuant to the terms set forth herein, or by the written mutual agreement of the Parties.
- 3.7 This Program Agreement, along with any and all attachments and items incorporated by references herein, contains the entire agreement between the Parties. This Agreement shall be binding upon and inure to the benefit of the Parties hereto, their successors and assigns. The LA and the Business shall adopt all necessary ordinances and/or resolutions as may be necessary to give full force and effect to the terms of this Program Agreement.
- 3.8 **[PROVISION REQUIRED BY STATE/LA PROGRAM AGREEMENT]** The Business agrees to hold the LA and the State harmless from any and all claims, demands, or actions based upon or arising out of the negligent or willful acts or omissions of the Business and its officials, officers, employees, agents, associates, contractors, or subcontractors in the performance of this

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NDOT TEMPLATE FOR LOCAL AUTHORITY/BUSINESS ECONOMIC OPPORTUNITY PROGRAM AGREEMENT

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Program Agreement, or impacting the performance of the Program Agreement between the LA and the State. The LA agrees to hold the Business harmless from any and all claims, demands, or actions based upon or arising out of the negligent or willful acts or omissions of the LA and its officials, officers, employees, agents, associates, contractors, or subcontractors in the performance of this Program Agreement, or impacting the performance of the LA's Program Agreement with the State.

- 3.9 Nothing in this Program Agreement should be construed in any manner as creating or establishing a joint relationship or partnership between the parties, nor shall either party have the right, power or authority to create any obligations or duties, express or implied, on behalf of the other party.

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**IV. Attachments**

- 4.1 Application
- 4.2 **[ADDITIONAL ATTACHMENTS]**

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**V. Additional Terms and Conditions**

- 5.1 **[INSERT TEXT:** Provide **HERE** for all additional terms and conditions negotiated by the parties and/or recommended by your attorney(s):
- a)
  - b)
  - c)

**VI. Final Affirmation and Signatures**

IN WITNESS WHEREOF, the Parties acknowledge they have read and understand this Program Agreement, and that they execute this Program Agreement pursuant to lawful authority granted to them, effective upon the date set forth by the last signatory below:

EXECUTED by the LA this 12 day of August, 2020

Alan Zavodny - Mayor  
Printed Name of Official, including Title

[Signature]  
Signature

EXECUTED by the Business this 13<sup>th</sup> day of August, 2020

Dale D. Jones, President & CEO  
Printed Name of Official, including Title

[Signature]  
Signature

**DISCLAIMER: The following document provides general provisions which are offered as a courtesy by the State of Nebraska Department of Transportation for incorporation into a Local Authority/Business agreement to utilize Economic Opportunity Program Funds (EOP Funds). This document is not intended, nor should it serve, as legal advice or a substitute for legal advice from your own attorney regarding the terms necessary in such an agreement to fully protect the legal rights of the parties, nor is it intended to serve as the full and complete agreement between the parties absent discussion and consideration of additional necessary terms.**

City Administrator Clayton Keller stated that every five years the City needs to select an architectural, engineering and planning consultant for airport grant projects and that way it doesn't have to be done for every project. He stated that Mayor Zavodny, Airport Supervisor Chris Kroesing and himself had met and recommend that the Council appoint Kirkham Michael as the airport consultant for the next five years.

Council member Kobus made a motion to select Kirkham Michael as the Architectural, Engineering, and Planning Consultant for the City of David City airport projects. Council member Pat Meysenburg seconded the motion. Voting AYE: Council members Kobus, Pat Meysenburg, Hotovy, Vandenberg and Mayor Zavodny. Voting NAY: None. The motion carried.

Mayor Zavodny stated that the next item on the agenda was consideration of applying for a groundwater mapping grant, and if awarded will be used towards cost of updating wellhead protection maps.

Mayor Zavodny said, "I think that this is an important thing to do right now, in a county without zoning, given all of the activity that has been happening in the county for the past twelve months or so. I'm fully in support of this endeavor."

City Administrator Clayton Keller said, "Real quick before I let Keith take the stage and explain it a little bit better; in 2010 the State came out with a water flow map of where the City gets its water from and they came out with another map this year that is different than what they gave us ten years ago. The one that they gave us ten years ago was supposed to be good for twenty years. So, the fact that in ten years it shifted, makes me worried and I think that we should do this study so that we are a little more certain of where our water is coming from for the next fifty years."

Mayor Zavodny said, "I think it's important and I happen to know a little bit of this because we have the farm that is just northwest of town, and that is really heavy gravel and sand and really part of a bigger aquifer that heads toward Rising City. We're right on the edge of it. A lot of what happens on the surface can get down to that water so it's an important thing to do."

Planning Commission member Keith Marvin said, "To back up what Clayton said, with all of the chicken barns going in and the previous Council way back when, made the Planning Commission in charge of wellhead protection areas, we decided to do some research and we brought in a gentleman from the Lower Platte North NRD. As Clayton said, the flows have changed in the last ten years on the maps. I've been around long enough that I remember a water flow map that shows water coming from the north. It would be from the west northwest and flowing to the east southeast and that is totally different. Planning Commission member Jim Vandenberg seems to think that is probably the true flow. The maps that we get from DEE are basically their best guess. So, what we are looking at with this grant is that we will know where it's coming from. In some cases, they will paint us a picture both two dimensionally and three dimensionally. I don't know if Clayton has said but I found out today that JEO will write the grant for free and it's due in about a week and a half. Their recommendation is that the Council pay for twenty percent because they know of two other larger cities, our size, that are going for the grant and he knows that they are going with twenty percent."

Mayor Zavodny said, "You know what question is coming. Twenty percent of what?"

Planning Commission member Keith Marvin said, "About \$40,000."

City Administrator Clayton Keller said, "So, about \$8,000."

Planning Commission member Keith Marvin said, "I think that we can score well since we are providing water for Bruno, so we don't only have to think of ourselves, but also the pipeline to Bruno, so we may as well use it to our advantage."

Mayor Zavodny said, "We have to try this. I'm not too sure that even if the grant is not successful that we need to consider protecting ourselves somehow. I would entertain a motion."

Council member Kobus made a motion to approve applying for a groundwater mapping grant, and if awarded will be used towards cost of updating wellhead protection maps. Council member Hotovy seconded the motion. Voting AYE: Council members Hotovy, Vandenberg, Kobus, Pat Meysenburg and Mayor Zavodny. Voting NAY: None. The motion carried. Council member Bruce Meysenburg was absent.

Friends of David City President Deb Dinkelman was present to present a proposal to host "Music in the Park" in the David City Park.

Friends of David City President Deb Dinkelman said, "So, I did my homework and I filled out the long form for Four Counties Health Dept. They followed it up with a phone call and also a letter. Between our conversation and the letter, they have agreed and said that it's a great project. We just need to follow some certain guidelines that they presented for us, which shouldn't be an issue whatsoever. We have a date in mind. We'd like to go with August 23<sup>rd</sup>, which is a Sunday afternoon. We have a quartet lined up, if we get your blessing and they will be there from 4:30 – 6:00 p.m. We're encouraging everyone to bring lawn chairs and social distance."

Mayor Zavodny said, "What area of the park will you be using?"

Friends of David City President Deb Dinkelman said, "We're going to be just south of the Schweser House."

Mayor Zavodny said, "Do you have any guess on what your crowd size would be?"

Friends of David City President Deb Dinkelman said, "I honestly don't know. What I've heard from the general public, who I've talked to have said they're very excited about it. I think it's a social outlet that's probably much needed."

Mayor Zavodny said, "I think that it's a great idea. I'd feel a lot better about it if we weren't in a pandemic, but I'm not going to be the fuddy-duddy who pulls the plug on this thing. People have to be smart. We're at a point where people have to make their own decisions and be smart. I won't be coming. I'll tell you right now. It's just a decision you make to try to not put yourself in those positions. I'm still a little bit at odds with sporting events. Do we have any additional liability if someone goes to this event and gets sick?"

City Attorney James Egr said, "We're not a sponsor and therefore, I do not believe that we have any further exposure. The park is a public property. It's totally different from the

ballfields. If you have a family picnic, we don't require anybody that has a family reunion, a family picnic, which could have a hundred people, we don't require them to do anything."

Mayor Zavodny said, "That will lead me to my next question. To me, our best option, moving forward, would be to do nothing. It's a public park. We don't take any action to say yes or no. Just go and have it, we're not going to tell you that you can't. That way we're not endorsing it."

City Attorney Egr said, "We're not giving a blessing or anything. It's a public park. You're putting it together. You've done what you're supposed to do by going to Four Corners Health Dept. On this pandemic situation, Four Corners is the overlord from a pandemic standpoint. You've gone to them and they've said that's fine and these are the guidelines that you've got to follow. If you do that, you're fine."

Mayor Zavodny said, "So, my last question would be, since we're not going to tell you that we love the idea and to go ahead, we're not going to say anything. How are you going to enforce that people are social distancing and having their own chairs?"

Friends of David City President Deb Dinkelman said, "It's going to be our committee that will be there that day and the committee members will be in charge of that. They will be instructed ahead of time."

Mayor Zavodny said, "I think it's always good to remind people that we really would like you to not sit close together. If you're at least willing to do that. Alright, so you're aware of it. We will take no action on it. Some of you live close enough and you might hear it, whether you want to or not."

Mayor Zavodny stated that the next item on the agenda was the installation of a Gaga pit at the David City Park by the Friends of David City.

Mayor Zavodny said, "I had to google this. I've never heard of it in my life."

Friends of David City President Deb Dinkelman said, "I hadn't heard of it until about three weeks ago. We were at Gretna at a campground with our grandchildren and there was this big frame there and I had no idea what it was. The grandkids knew what it was and they had so much fun. I spoke to the representative with the playground equipment because we're working with the park and he said that, yes, this is an upcoming thing. People are getting excited about it and it's getting very popular."

City Attorney Jim Egr said, "What is a Gaga pit?"

Friends of David City President Deb Dinkelman said, "Gaga ball is like a big frame. I see you have a picture of one there. We're looking at a 21' ring. It would be made, probably, out of wood. Basically, what the kids do is, they are inside of this big ring and they play dodgeball. The dodgeball is not kicked. You just use your hands. You throw the ball and try to hit the other people in the legs. So, in a nutshell, that's what it is. We originally talked about putting it at the Jaycee Park, because we're working with that project right now. The more that we thought about it, the more that we thought that it's a big piece of equipment and maybe it would be more useful in the city park because of the area down there and the proximity with the pool close by. There are more people in the park, so we're thinking that maybe if we could put that in the park,

we could afford that sooner than putting in the playground equipment in the north part of town. That might be good PR for us in getting the whole playground project up and running. I've talked to Park Supervisor Bill Buntgen and he suggested just south of where the old bathrooms were since it's kind of a fairly level big open area there. He seemed ok with it. Tony Novak would construct it for us. He's given me some plans already."

Mayor Zavodny said, "What is on the inside of it?"

Friends of David City President Deb Dinkelman said, "The one that was in Gretna was sand but I suppose that you could just leave dirt."

Mayor Zavodny said, "I couldn't tell from the picture."

Friends of David City President Deb Dinkelman said, "I would assume there would be some kind of a base."

Mayor Zavodny said, "Maintenance will fall upon the park."

Friends of David City President Deb Dinkelman said, "It will be made with treated wood. I'm very confident that Tony will build it to last. The kids would have to bring their own ball. I think we would also make an instruction board there about what gaga ball is so that kids know what to do with it."

Council member Hotovy said, "So, there would be no cost to the City, other than the maintenance of it?"

Friends of David City President Deb Dinkelman said, "Tony is taking care of all of the installation. We may have to level out a little bit of an area."

Mayor Zavodny said, "I hate to put something there that wouldn't get used because then we're just cluttering it up. That's an issue that we've had with other proposals in the past. You could keep filling up the park until there's no green space left. I'm not talking against it. I'm just asking is this the type of thing that makes more sense than something else that we might consider."

Friends of David City President Deb Dinkelman said, "The nice part about this is that this could be for all ages."

Park/Auditorium Supervisor Bill Buntgen said, "When they called me, I had no idea what this game was about. I googled it this morning and basically, it takes six people at a time to play it."

Friends of David City President Deb Dinkelman said, "Ideally, six or more people, obviously, you're knocking people out as you go along and get hit with the ball. You could play with less than that, I'm sure."

Mayor Zavodny said, "Does anybody else have these around?"

Friends of David City President Deb Dinkelman said, "I haven't seen one, other than the one in Gretna, but other people said that they had seen them and they are very fun. So, they are around."

Park/Auditorium Supervisor Bill Buntgen said, "If we do dirt, it's going to end up as a mud pit."

Mayor Zavodny said, "People not knowing what it is, we don't want it to turn into a chicken fighting ring."

City Administrator Clayton Keller said, "I can attest to the fact that it's very popular with young people right now, teenagers and young kids. I've been a part of a couple of church youth groups where the kids absolutely love it. Whether it's just a fad or if it's going to last, I don't know, but it's very popular right now."

Mayor Zavodny said, "That would be a concern, if it's something that is hot for the next six months and then nobody plays it again and that thing is sitting around. These are all things to consider in the discussion."

Friends of David City President Deb Dinkelman said, "I think we would follow it up with an ad in the paper explaining gaga ball and maybe even a demonstration night for it, too."

Mayor Zavodny said, "If you're smart, you'd hold a gaga tournament or something."

Planning Commission member Keith Marvin said, "I've never heard of it either, but with what Deb described, even if it lasts twelve or twenty-four months, it almost sounds like it's something that could be pulled out and something else put in its place at some point in time. It's not that permanent."

Mayor Zavodny said, "Is Tony going to pour footings?"

Friends of David City President Deb Dinkelman said, "Yes."

Planning Commission member Keith Marvin said, "That's little bit more permanent."

Friends of David City President Deb Dinkelman said, "When you say footings, not cemented footings. The problem that he said you have with that, and I don't understand all of this technical stuff, but he said water would get down in there and then rot the wood. I'm sure that Tony knows what he's doing. It would be a wood frame, from what I understand."

Council member Hotovy made a motion to allow the installation of a Gaga pit at the David City Park by the Friends of David City. Council member Kobus seconded the motion. Voting AYE: Council members Pat Meysenburg, Vandenberg, Hotovy, Kobus and Mayor Zavodny. Voting NAY: None. The motion carried. Council member Bruce Meysenburg was absent.



Example of a Gaga pit

Mayor Zavodny stated that the next item on the agenda was consideration of extending the completion date for Jeff and Cathy Klug for the property at 715 N. 4<sup>th</sup> Street.

City Administrator Clayton Keller said, "I was on the phone with Cathy just the other day. She had fallen and broken her elbow and so she had to have surgery on it. They are still working very hard on getting the house cleaned out and she understands very clearly that they need to be done with this by the end of the month."

City Council Advisor Dana Trowbridge said, "Did she indicate to you that they were able to get it done by the end of August?"

City Administrator Clayton Keller said, "Yes. Based on my conversation with her, it sounds like she's going to get it done before the end of August, within the next week or two."

City Council Advisor Dana Trowbridge said, "They haven't been there frequently, as of late."

City Administrator Clayton Keller said, "Yes. Since she had her surgery and was recovering. Jeff gets there when he can. Since he's a farmer, he's been working on the farm and then comes in every day or every other day, as best he can."

Mayor Zavodny said, "Well, if we set August 31<sup>st</sup> as the date, then what is your recourse if they aren't done? It seems to me that gives enough cushion and is a reasonable time for the Council to establish as a completion date."

City Council Advisor Dana Trowbridge said, "How much have we been paid up to this point?"

City Administrator Clayton Keller said, "Two thousand."

Mayor Zavodny said, "That is a little bit of a concern to me, insofar as they've had several sales. I understand that there's an expense side, but the revenue has been coming in and we're getting toward the tail end of the revenue piece of it. Probably another payment wouldn't be unreasonable."

City Administrator Clayton Keller said, "In our agreement with them it states that they would owe us the remaining \$6,700 at the end of the project."

Mayor Zavodny said, "Ok. So, if we said August 31<sup>st</sup>, that's the end of the project?"

City Administrator Clayton Keller said, "Yes."

Mayor Zavodny said, "Alright. Fair enough."

Council member Kobus made a motion to extend the completion date for Jeff and Cathy Klug to August 31, 2020 for the property at 715 N. 4<sup>th</sup> Street. Council member Pat Meysenburg seconded the motion. Voting AYE: Council members Kobus, Pat Meysenburg, Vandenberg, Hotovy and Mayor Zavodny. Voting NAY: None. The motion carried. Council member Bruce Meysenburg was absent.

Mayor Zavodny stated that the next item on the agenda was consideration of accepting a bid for the City property and liability insurance.

City Administrator Clayton Keller said, "The City went through the insurance bid process again this year. We received three bids, one from LARM, one from Cornerstone Insurance Group and one from Jones Group. Representatives from LARM and Cornerstone are here tonight."

Mayor Zavodny said, "In the supplemental packet that was given to you, you saw the breakdowns of the coverages. There are some issues, as we discussed, we can get deeper in the weeds on this. I'll go first. We all love to keep our business local when possible. With the dollar differences in these, it's a pretty tough sell to the rate payers of David City when there is a \$25,000 difference in what we would expend for insurance services. I was the guy last year that said, "if our local people can get to a very small margin of difference, then I think you can justify saying there are reasons to look at doing that." I say it every year. Hopefully, LARM won't be offended. They've given me no reason to not like them. Anything that we've needed has been taken care of. They've serviced our account well and they are well below the price that we would pay for this. To me, and this is only one person's opinion, it's probably time to quit putting these other people through the pain and time and expense of putting these bids together every year, just to end up with the same result. We might want to take advantage of the discount that we would have available by submitting to a longer term. That's what I have to say, as far as

laying a foundation in the way that I have evaluated looking at this. The Cornerstone bid, my biggest concern is that without the workers comp. piece, it's not an apple's to apple's bid. That price would be higher. Other thoughts, looking at these? If we did go longer term, a three-year bid is a five percent discount, two-years is four percent and you just get two percent with one hundred and eighty days, which would be a six-month notice of termination."

Council member Kobus asked how much the rates would fluctuate if you go for a longer time with the discount.

LARM Representative Clint Simmons said, "We base our rates off of a couple of things, such as admin. costs, but the biggest portion of where our fees go is for reinsurance. So, as reinsurance adjusts there can be some adjustments there. As this year went, you guys actually added about four million dollars of property so, obviously, from what you were paying from last year to this year, you have a total T.I.V. that went up tremendously, too. One of the biggest ones is that home that we put on functional replacement cost. When it comes off, you'll get credit for it. The other thing that can fluctuate is workmen's comp. So, if your work comp. mod, and you guys have had a real good history with work comp. with us, so you're getting a nice significant discount on that."

Mayor Zavodny said, "Do you know what our experience mod is?"

LARM Representative Clint Simmons said, "I believe it's a .81 or .82. Somewhere in there. So, you have a real good mod. They start out at 1 so you're paying twenty percent less than an average municipality or any other business would be paying. Again, loss history has been really good."

Mayor Zavodny said, "At the risk of jinxing us, not only on the work comp. piece but I don't think we've had a big claim on anything, so that's good. As long as we continue that, it benefits the City. Now, other parts of the state have not fared as well."

LARM Representative Clint Simmons said, "This year has been a fairly good year for everybody in the insurance industry, at least in the state of Nebraska. That's all we do is municipal business in the state."

Mayor Zavodny said, "Have you grown?"

LARM Representative Clint Simmons said, "Yes. We've grown tremendously. I think when we originally wrote you guys, which was six years ago, we've gone from seventy-five members, at that point, to a hundred and eighty some members now. Now that the waters have calmed, we've gotten a lot of municipalities, including the City of Columbus that reached out to us and we provided them a quote this year. We've got Nebraska City, we've got Ralston. Those are the larger communities that are now reaching out to us wanting quotes and hopefully will become new members of LARM here in the next few months."

Mayor Zavodny said, "Just so you know that I haven't forgotten, do you have all of your stupid crap behind you?"

LARM Representative Clint Simmons said, "Yes."

Mayor Zavodny said, "Do you have it all ironed out?"

LARM Representative Clint Simmons said, "The lawsuits are over. The new board is in place. Things are really running smooth right now. Dave Bos is our Loss Control Manager and Craig Wiebelhaus is the Claims Manager. I brought them along to introduce them."

City Attorney Jim Egr said, "Our office represents a number of villages and we represented Malmo in the big chicken case. Jerry Pigsley stepped in with me. We won that case and I have to say that LARM backed us up on that case. They could have stepped back and said no, but they didn't because they saw that it was important to all of the members of LARM in relation to that case. They backed us up. They put money behind it and because of that, we won that case. They did that for the other members of LARM to make the point that what the Village of Malmo did was correct. Some companies would not have done that. I'm a believer in LARM."

Council member Hotovy said, "Does the \$85,000 number represent the five percent discount already included in that number?"

Mayor Zavodny said, "That's a good question."

LARM Representative Clint Simmons said, "The eighty-five thousand and some change is the five percent discount."

Council member Hotovy said, "That represents the five percent discount?"

LARM Representative Clint Simmons said, "That's correct."

City Council Advisor Dana Trowbridge said, "Mr. Mayor, you make a good point. A number of years ago, when these people started, the questions were – can they make it work, do they know what they're doing and will it work? Over time they've proven that they do know what they are doing, obviously, they are making it work and they are very competitive and help us with City monies. We go through this every year and it becomes questionable, in my mind, of why we do it, as you said earlier, that it will save the rate payers/tax payers in David City another twelve or thirteen thousand dollars over a three year swing if we award it for three years and not have to do this for the next two."

LARM Representative Clint Simmons said, "Just to be clear, you get the five percent discount, then it drops to four and then it drops to two percent the year that you would go out for bids. Just so you have a clear understanding of how that rate structure works."

Council member Kobus made a motion to accept the bid of LARM to provide property and liability insurance for the City of David City for three years. Council member Pat Meysenburg seconded the motion. Voting AYE: Council members Pat Meysenburg, Kobus, Hotovy, Vandenberg and Mayor Zavodny. Voting NAY: None. The motion carried. Council member Bruce Meysenburg was absent.

Council member Hotovy introduced Resolution No. 21-2020 and moved for its passage and adoption. Council member Vandenberg seconded the motion. Voting AYE: Council members Vandenberg, Hotovy, Kobus, Pat Meysenburg and Mayor Zavodny. Voting NAY: None. Council member Bruce Meysenburg was absent. The motion carried and Resolution No. 21-2020 was passed and adopted as follows:

League Association of Risk Management  
2020 - 21 Renewal Resolution

**RESOLUTION NO. 21 – 2020**

WHEREAS, The City of David City is a member of the League Association of Risk Management (LARM);

WHEREAS, section 8.10 of the Interlocal Agreement for the Establishment and Operation of the League Association of Risk Management provides that a member may voluntarily terminate its participation in LARM by written notice of termination given to LARM and the Nebraska Director of Insurance at least 90 days prior to the desired termination given to and that members may agree to extend the required termination notice beyond 90 days in order to realize reduced excess coverage costs, stability of contribution rates and efficiency in operation of LARM; and

WHEREAS, the Board of Directors of LARM has adopted a plan to provide contribution credits in consideration of certain agreements by members of LARM as provided in the attached letter.

BE IT RESOLVED that the governing body of the City of David City, Nebraska, in consideration of the contribution credits provided under the LARM Board's plan, agrees to:

- X Provide written notice of termination at least 180 days prior to the desired termination date, which date shall be no sooner than September 30, 2023. (180 days and 3 year commitment; 5% discount)
- Provide written notice of termination at least 180 days prior to the desired termination date, which date shall be no sooner than September 30, 2022. (180 days and 2 year commitment; 4% discount)
- Provide written notice of termination at least 180 days prior to the desired termination date, which date shall be no sooner than September 30, 2021. (180 day notice only; 2% discount)
- Provide written notice of termination at least 90 days prior to the desired termination date, which date shall be no sooner than September 30, 2023. (90 day notice and 3 year commitment only; 2% discount)
- Provide written notice of termination at least 90 days prior to the desired termination date, which date shall be no sooner than September 30, 2022. (2 year commitment only; 1% discount)
- Provide written notice of termination at least 90 days prior to the desired termination date, which date shall be no sooner than September 30, 2021. (90 day Notice only)

Adopted this 12<sup>th</sup> day of August, 2020.

Signature: \_\_\_\_\_

Title: Mayor Alan Zavodny

Attest: \_\_\_\_\_

Title: City Clerk Tami Comte

Council member Hotovy said, "Just a quick question with regard to the lighting. In working with Musco, and I realize that when they're on they are on for a four-hour time period, but are they more efficient? I'm assuming that LED are more efficient, but do you have a percentage of how much more efficient they are?"

City Administrator Clayton Keller said, "I wrote it down in my notes and I don't have them with me, but they are LED."

Council member Hotovy said, "I had the benefit of being able to watch the whole thing when I was coming from the farm to home and everything is new. They buried all new cables."

Mayor Zavodny said, "I don't want to speak for the schools but I think that their excitement is certainly noticeable. I know that it wasn't uncommon in the past few years for a bank of lights to go out during games. That's embarrassing."

Council member Hotovy said, "Do you have an estimated lifespan? I'm sure weather and events have a lot to do with it."

City Administrator Clayton Keller said, "They started these lights not that long ago and they have a twenty-five-year warranty on them that they will be just as bright on the last day of the warranty as they are on the first day of the warranty. They don't have lights old enough right now to expire that warranty, though they did say that the lights are built to last 400 hours per year for those twenty-five-years. They said that rarely do you find a field that uses them for 400 hours per year. So, it's likely that they will last much longer than twenty-five-years."

Mayor Zavodny stated that the Council members and everyone present were welcome to go out to the football field for a demonstration of the Musco Football Field Lights.

Council member Vandenberg made a motion to go into executive session to discuss the Law Enforcement Contract between the City of David City and Butler County. Council member Pat Meysenburg seconded the motion. Voting AYE: Council members Hotovy, Pat Meysenburg, Vandenberg, Kobus and Mayor Zavodny. Voting NAY: None. The motion carried. Council member Bruce Meysenburg was absent.

Mayor Zavodny stated, "Now at 8:14 p.m. we are going into executive session to discuss the Law Enforcement Contract between the City of David City and Butler County." Mayor Zavodny, all of the Council members, City Administrator Keller, City Attorney Egr, and City Clerk Comte went into executive session at 8:14 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 8:38 p.m.

There being no further business to come before the Council, Council member Kobus made a motion to adjourn. Council member Pat Meysenburg seconded the motion. Voting AYE: Council members Pat Meysenburg, Vandenberg, Hotovy, Kobus and Mayor Zavodny. Voting NAY: None. Council member Bruce Meysenburg was absent. The motion carried and Mayor Zavodny declared the meeting adjourned at 8:39 p.m.



CERTIFICATION OF MINUTES  
August 12, 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 August 12, 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.

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Tami Comte, City Clerk