

## CITY COUNCIL PROCEEDINGS

September 23, 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 21, 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, Pat Meysenburg, Acting City Attorney Tim Wollmer, City Administrator Clayton Keller and City Clerk Tami Comte. Council member Kevin Hotovy was absent.

Also present for the meeting were: City Council Adviser Dana Trowbridge, Interim Water Supervisor Aaron Gustin, Sheriff Tom Dion, Jill Mefford, Julie Schultz, Jared Storm from Storm Aeronautics, and Banner-Press reporter Molly Hunter.

Council member Tom Kobus made a motion to approve the minutes of the September 9, 2020 meeting as presented. Council Member Pat Meysenburg seconded the motion. The motion carried. Kevin Hotovy: Absent, Tom Kobus: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, John Vandenberg: Yea, Alan Zavodny (Mayor): Yea  
Yea: 5, Nay: 0, Absent: 1

Council member Bruce Meysenburg made a motion to approve progress estimate #23 for Constructors, Inc. in the amount of \$187,988.66 contingent on the walk-through with Mayor Zavodny and Al Hottovy of Leo A. Daly. Council Member Pat Meysenburg seconded the motion. The motion carried. Kevin Hotovy: Absent, Tom Kobus: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, John Vandenberg: Yea, Alan Zavodny (Mayor): Yea  
Yea: 5, Nay: 0, Absent: 1

Mayor Zavodny stated that the next item on the agenda was consideration of closing 5<sup>th</sup> Street between "D" Street and the railroad tracks and "E" Street between 4<sup>th</sup> Street and 6<sup>th</sup> Street on December 1, 2020 for a community Christmas celebration.

Jill Mefford, Chairman of Christmas on the Bricks said, "So, we would like to have that closed to carry on last year's tradition of the Christmas holiday events. We welcome suggestions and opinions for this event. What we've come up with so far, and we've spoken with the businesses, not all of them yet as we are still reaching out to them, is to have the downtown area closed again and bring the big Hallmark set, which is now Christmas on the Bricks set for Mr. and Mrs. Claus. We've also reached out and are looking to have a tree farm put next to Kobza Motors on their slab of cement where people could buy live trees. Bank of the Valley has already said that they want to bring their "live" nativity set back with the camel. We are working with Four Corners Health Dept. and once we get a plan in place, we will submit it. I

speak with Laura and Allison, regularly. We are also going to include a bouncy house for the kids and we talked to the Boy Scouts and they would like to do s'mores downtown where they have 55-gallon drums that they cut in half and they are like troughs and they would have s'mores that people could make. That would be sponsored by the Boy Scouts and their leaders. There is a Christmas/Holiday Farmers Market that could be set up. We would have that on the street in a tent. There are vendors that would like to come and set up. We've worked with the Chamber of Commerce to do "Christmas Bucks". They are actually "Chamber Bucks" but we call them "Christmas On the Bricks Bucks" so people could buy those and then spend money in town and then they would also have their name in a drawing that has already been sponsored by Benes Service. I've spoken with Timpfe and they would like to be involved with something, somehow. So, by closing the streets off, it would be nice to get everything set up and it would be torn down again that same night. We would still have our tree lighting ceremony at 8 o'clock, p.m. A really neat thing is sponsored by Seward County Pheasants Forever and Terry Kriz with Oak Creek. They are going to bring in a huge IMAX screen and it's going to be a hunting simulator. Terry is also working with Nebraska Game and Parks to bring in a trailer that is on display that has the largest antlers and animals and stuff on display for Nebraska. So, he's working with them and maybe they would sell permits and hunting stocking stuffers for people. So, by allowing the streets to be closed that day and in through the evening, hopefully it will bring people to town and keep the businesses busy."

Mayor Zavodny said, "Ok. I have questions. Are we talking about barricading on November 30<sup>th</sup> or just first thing in the morning on December 1<sup>st</sup>?"

Jill Mefford said, "From my understanding from last year, it can only be done, I assumed at 6 a.m. until the evening."

Mayor Zavodny said, "I think we prefer that, I just wanted to make sure."

Jill Mefford said, "That's what we are asking for."

Mayor Zavodny said, "You've talked to the businesses? Even when we had the Hallmark thing and there was one guy that was upset that we were closing down streets and I don't know when we were supposed to do it, exactly, but is there any push back on that?"

Jill Mefford said, "Not yet. We have reached out and invited them, the business owners, to come to our meetings to get opinions or suggestions. We have another one coming up on September 30<sup>th</sup> at the City Office and we'd just like feedback. Yes, it is a pain to close down the streets and affecting some of their business by bringing all of these things in, but we also hope that their businesses are very busy."

Mayor Zavodny said, "Are you having carriage rides at all?"

Jill Mefford said, "No. We're not doing carriage rides that night."

Mayor Zavodny said, "Are you going to have any type of a formal program or the tree lighting?"

Jill Mefford said, "Yes. The tree lighting will be at 8 p.m. We are still working on having a plan in place for that night. Once we get that all together, we'll submit that all to Four Corners and with you, because we'd like you to speak at the tree lighting again."

Mayor Zavodny said, "My last question was with Four Corners, if it's an outdoor event, I don't think that any of the rules apply. It's the inside venues that they are most concerned about. What are they telling you?"

Jill Mefford said, "As of right now, it's estimated that if there are over 500 people to an outdoor event, it's just good to work on compliance with Four Corners."

Mayor Zavodny said, "You're just submitting a plan?"

Jill Mefford said, "Right."

Mayor Zavodny said, "The last thing that I'm going to say before anyone else wants a chance to comment, and I don't want you to read into this that I'm against it whatsoever, but I'm going to encourage the Council tonight to table doing this until we hear from the businesses and we have time. It's only the end of September and maybe by our meeting in October you'll have a more formalized plan. Right now, it's just kind of concepts."

Jill Mefford said, "So, do you recommend that we get in writing from every business that it's ok? What would you like to see?"

Mayor Zavodny said, "I would like you to touch base with them to make sure that none of them are going to gripe about that one day. In a perfect world, it would be a win-win for them. There will be more foot traffic and they'll get more business and people will be focused on using downtown businesses. But there are a few of them who probably don't benefit tremendously from this kind of event. They aren't going to sell more windshield wipers and that kind of thing."

Jill Mefford said, "Where they are selling windshield wipers is not going to be closed."

Mayor Zavodny said, "I understand. That's why I used that because they aren't going to be affected."

Council member Kobus said, "I don't think we should table it. We're going to do it anyway."

Mayor Zavodny said, "Does anybody have any more questions?"

Jill Mefford said, "I don't think that any of us want to go against the businesses, by any means. We wanted to bring this early enough instead of later on and rushing last minute. These are just things that we'd like to see in David City and, hopefully, all of the businesses will be on track with it, and if not, is there something that we can do to make it better for them."

Mayor Zavodny said, "That's actually what I'm asking you to do. Listen to them and see if they have any concerns. If you can mitigate their concern or give them some type of assurance, that's all I'm asking. I think that being involved ahead of time is better than finding out that we've closed their street and it's hard to access their business for a whole day. What day does that land on?"

Jill Mefford said, "It is on a Tuesday. So, if we reach out to every business and we don't get a response from one business, what would you like us to do?"

Mayor Zavodny said, "I don't know that that means that you don't have it. I think that you've given them the opportunity to say "tell us if you have a concern and we'll address it ahead of time" and maybe you can't. Maybe they'll just say no because people can't get up to my business. We may do it anyway, but at least they will have their say, but at least they are involved in the decision making."

Council member Bruce Meysenburg said, "What businesses are we talking about?"

Jill Mefford said, "It would go from Sack Lumber, so the railroad tracks all the way to the edge of the title company. Then you have from Subway all the way to Kobza Motors. The majority of that area, I've talked to. I've tried to talk to all of the businesses and I'll keep trying."

Mayor Zavodny said, "Let me give you an example. I'll use your business, not that you have this concern. We can close the streets, but if you work on someone that is a little more advanced in age or maybe not advanced in age, that has to get in there to get their hair cut or whatever, and get out, can we work on a way so we can have some access to the businesses? You probably have some customers who couldn't walk."

Jill Mefford said, "There is, but also, knowing in advance, I wouldn't schedule them for that day."

Mayor Zavodny said, "You'd want to make sure that Rachelle knew that."

Jill Mefford said, "Right. It'd give every business an opportunity to get their inventory ordered and to get things stocked up. By December 12<sup>th</sup> to the 15<sup>th</sup>, a lot of women are done shopping."

Mayor Zavodny said, "All I want is for us to consider these things in advance. So, do you want to move to close these streets now?"

Council member Tom Kobus made a motion to approve closing 5th Street between "D" Street and the RR Tracks and "E" Street between 4th Street and 6th Street on December 1st for a community Christmas celebration. Council Member Pat Meysenburg seconded the motion. The motion carried. Kevin Hotovy: Absent, Tom Kobus: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, John Vandenberg: Yea, Alan Zavodny (Mayor): Nay  
Yea: 4, Nay: 1, Absent: 1

Mayor Zavodny stated that the next item on the agenda was consideration of the request by David City PTO to close 5<sup>th</sup> Street from "C" Street to the railroad tracks on October 31, 2020 for a "Trunk or Treat" event.

Julie Schultz, President of the David City PTO, was present to discuss the "Trunk or Treat" event. Julie Schultz said, "I have emails from Four Corners Health. Do you want to see those?"

Mayor Zavodny said, "Just summarize them quick."

Julie Schultz said, "Ok. I reached out to Four Corners after the library reached out to me to see if we were going to have the event this year. I kind of thought that we weren't going to be able to with everything going on with COVID-19, but the library would like to partner with us instead of doing Trick or Treat Around the Square, to just do one big event that would involve

everybody. So, I reached out to Four Corners and they actually gave us the guidance that said this is a possibility that you can do. I reached out to her yesterday, after the CDC came out with their guidelines as far as Trunk or Treat or Trick or Treating. The guidelines that I gave her that we are working on is that we are going to have six separate starting points, there is one-way traffic, so at every corner there will be a starting point with lines that are marked six feet apart, trying to keep people separate, per their recommendation. The vehicles that are participating are going to be parked every third spot. We're going to have one-way traffic only. There will be traffic monitors at every corner to try to keep people spaced out. We're going to have tables in front of the trunks with the treats laid out so that there is no direct contact with anybody. There will be no bowls of candy for people to reach into. Masks are going to be required, or strongly recommended for everybody. Anybody who has a trunk is going to be required to wear a mask. There will be gloves provided for people who are placing the candy out on the tables. Hand sanitizer and masks will be available at the check in points of all starting locations. It will be pre-packaged items only and no games allowed. Allison emailed me back this morning and said "I think that the guidelines that you have created will allow for a safe event. We are encouraging groups to monitor the congregating of adults/youth when there is an event and sometimes the hardest part of bringing people together is to make sure that they don't congregate to visit. I think that you have plans in place to offer the event for your community and to make it as safe as possible. I hope your meeting goes well and let me know if you have additional questions."

Mayor Zavodny said, "I'm going to start by saying that is an excellent, well put together plan. I think that's what makes me feel better about this. Now, I've read some of the CDC and I know there is a lot of debate on whether Halloween activities should go on or shouldn't from the CDC and some other places. How are you going to keep people from wearing the hard masks? Are you going to get out the word that they shouldn't wear the plastic masks and that they should be more open?"

Julie Schultz said, "Yes. The CDC is actually recommending that everyone wear either a cloth or fabric mask and that you don't put that plastic mask over that. We'll put that out with our flyers and kind of spread that around. We are requesting an extra block this year just so we can space out a little bit more and I think more businesses will be involved. Our hope in doing it on Halloween is that it's a Saturday afternoon from 4-6 is when we're hoping to have the event so that it doesn't affect a lot of businesses in the area."

Mayor Zavodny said, "I hate to see the kids not have that opportunity. They've had enough disruption in their lives for the past six months or so, I believe. Are there any concerns to having this happen? I guess the one thing that I would like to have is somewhat of a disclaimer or a waiver that the City is not liable."

Julie Schultz said, "The school, I'm sure, would appreciate that as well."

Mayor Zavodny said, "That's the one that, I guess, I would require being placed."

Mayor Zavodny asked Acting City Attorney Tim Wollmer, "Does everyone need to sign one of those then?"

Acting City Attorney Tim Wollmer said, "Ideally, you're going to have everyone sign a waiver. That would make us happy, however, I understand there would be some difficulty in doing that."

Julie Schultz said, "We can put that the City and the School are not liable on the flyers."

Acting City Attorney Tim Wollmer said, "That would be good."

Mayor Zavodny said, "You're participating at your own risk."

Acting City Attorney Tim Wollmer said, "Certainly. I think I noticed that on Four Corners and we can certainly get you the language that you need."

Mayor Zavodny said, "I think with that plan and that piece, I'm certainly supportive of this."

Council member Bruce Meysenburg made a motion to approve the request by David City PTO to close 5th Street from "C" Street to the Railroad Tracks on October 31, 2020 for a Trunk or Treat event. Council Member Tom Kobus seconded the motion. The motion carried. Kevin Hotovy: Absent, Tom Kobus: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, John Vandenberg: Yea, Alan Zavodny (Mayor): Yea  
Yea: 5, Nay: 0, Absent: 1

Mayor Zavodny stated that the next item on the agenda was consideration of approving the Scope of Services with Olsson for the southbound right turn lane on "S" Street.

City Administrator Clayton Keller said, "I reached out to Dave Ziska from Olsson to have them provide us with a quote for what it would take to have them be the engineers on this project. The project being the right turn lane at "S" Street for the economic opportunity program that we're doing with the State and Timpfe. This is what he has provided. The lump sum fee is \$29,925 and then at the bottom you have additional items that we could include. He did provide me with the extra dollar amounts of what it would take to hire them for those. I think it was items b. through g. at the bottom of this page. Some of them we may need and some of them we may not."

Mayor Zavodny said, "This is something that we have to do. It's a promise that we made to Timpfe when they committed to us. Also, we did try to get the State to see if they would design it, no offense to Olsson, but to get the State engineers for a small fee, but they told us no. We need to have it engineered and we need to get moving on this."

Council member Tom Kobus made a motion to approve the Scope of Services Agreement with Olsson for the Southbound Right Turn Lane on "S" Street. Council Member Pat Meysenburg seconded the motion. The motion carried. Kevin Hotovy: Absent, Tom Kobus: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, John Vandenberg: Yea, Alan Zavodny (Mayor): Yea  
Yea: 5, Nay: 0, Absent: 1



**SCOPE OF SERVICES  
NE-15 at "S" STREET PAVING IMPROVEMENTS  
SOUTHBOUND RIGHT TURN LANE  
DAVID CITY, NE**

This exhibit is hereby attached to and made a part of the Letter Agreement for Professional Services dated September 8, 2020 between the City of David City, Nebraska ("Client") and Olsson Inc. ("Olsson") providing for professional services. Olsson's Scope of Services for the Agreement is indicated below.

**PROJECT DESCRIPTION AND LOCATION**

Project will be located at: NE-15 at "S" Street Intersection, David City, Nebraska

Project Description: This project will include improvement of an intersection by adding a southbound right turn lane including engineering, grading, paving, drainage analysis, culvert work, utilities, and lighting. ROW acquisition is by others.

**SCOPE OF SERVICES**

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

<b>1.0</b>	<b>Design Phase Services</b>	<b>\$29,925.00 Lump Sum Fee</b>
1.1	Topographic survey of the existing site to include NE - 15 within R.O.W. lines and property pins (where existing) within survey boundary area. Survey shall be supplied in AutoCAD Civil 3D 2010 format.	
1.2	Prepare site layout and dimensional plan.	
1.3	Prepare Stormwater Pollution Prevention Plan (SWPPP), erosion control plan and permit. Contractor/Builder shall be responsible for maintenance, monitoring, and reporting requirements of the SWPPP during construction.	
1.4	Analyze existing drainage structures and recommend improvements.	
1.5	Prepare paving plan and profile construction documents to pave a new southbound right turn lane as described above. Construction documents to include paving plans, geometrics, cross sections, details, grading, proposed storm sewer drainage improvements and specifications.	
1.6	Includes two (2) site visits with Client during design at the 30% and 90% levels.	
1.7	Submit plans to NDOT for approval and assist Client with NDOT permitting. Any permitting fees shall be the responsibility of the Client.	
1.8	Deliverables include construction drawings with specifications, electronic MicroStation files.	
1.9	Prepare a traffic control plan for temporary detours/construction signage.	
1.10	Prepare a construction cost opinion for the project work.	
1.11	Prepare lighting design of the southbound turn lane. Design will include lighting construction plan sheets, circuiting of new lights from existing power source, lighting	

calculations, and electrical details. Olsson will provide the roadway lighting design for the project based on the Illuminating Engineering Society of North America (IESNA) Recommended Practice for Roadway Lighting RP-8-18 and NDOT current standards. Execution of the design will include average maintained foot-candle layouts for the roadway lighting. Roadway lighting design will be based on a LED luminaire style that meets the state standards and is approved by the City.

- 1.12 Respond to written Requests for Information (RFIs) from the site lighting Contractor during bidding and construction phases. Review of Shop Drawings and other Submittals pertaining to lighting portion of the work.

**Summary of Fees:**

Site Civil Engineering Services	\$21,125.00 Lump Sum Fee
Site Surveying Services	\$3,800.00 Lump Sum Fee
<u>Site Lighting Design Services</u>	<u>\$5,000.00 Lump Sum Fee</u>

**Total Estimated Fees** **\$29,925.00 Lump Sum Fee**

**Not included as part of this agreement, but can be added as additional services under separate agreement or amendment:**

- a. Title reports, appraisals, legal descriptions, property acquisition negotiations. Land acquisition activities shall be by others. **Exclude, don't expect to need.**
- b. Legal and/or boundary surveys. **\$2,500 for legal work for ROW locating**
- c. Bid phase services (e.g. Advertisement, plan distribution, attending bid letting, bid tabulation, bid award, council meeting, etc.) **\$3,000**
- d. Construction phase services (e.g. Submittal review, administration, meetings, staking, observation, testing, etc.). **\$29,465.00 observation & \$5,500 staking, \$4,500 GNCV admin.**
- e. Geotechnical soil borings and soils report. **\$5,600**
- f. SWPPP maintenance, monitoring and reporting. **Incl. with const. services.**
- g. NDOT permitting fees. **No permit fees from NDOT.**
- h. Creation of paving districts or setting assessments.
- i. Assistance with any grants, TIF funding or funding documentation.

Mayor Zavodny stated that the next item on the agenda was consideration/discussion concerning allowing Storm Aeronautics to install a gravel road and a Jet A fuel tank at the airport.

Jared Storm, owner of Storm Aeronautics said, "The aircraft that we use out there uses Jet A fuel and I know that they are doing 100 LL fuel system, so we are just asking to be able to put in our own system for Jet A fuel out there. I talked to Clayton about this. Our pads, on the northeast corner, that's where we would pad aerial spray, which we've never sprayed out of this airport, ever, but this next year we will and so we're looking to put a tank in there. Roth sprays out of there and has their own fuel barrel right there. That's all I'm asking for. As far as the gravel road goes, there is no way to get trucks in there, where we'd have fuel. We had thought, originally, of going through Forney's, but I talked to Chris Kroesing today and there is a gate by where the jet is at, on the pole. That would be a lot easier. His only concern was going across that asphalt there for Roth's. I would put concrete there, where we cross that, so it wouldn't tear up his asphalt."

Mayor Zavodny said, "Have you discussed this with Roth at all?"

Jared Storm, owner of Storm Aeronautics said, "No. I haven't talked to him. I've talked to Kirkham Michael and they told me where we could legally put it for the FAA. It's got to be 320 feet away from the runway. In the lease that I have, there would be room there. They have to send in the form to the FAA to get approval, which, that could be a nightmare because it's the federal government and the FAA is not really working a whole lot these days. We would just need it for next summer, like by June of next year. I'm just asking you to consider that. You don't have to vote on it now. I need to get concrete lined up. We'll have to put concrete where the fuel pad is going to sit, too."

Mayor Zavodny said, "For the record, I just opened a letter before the meeting from the NDOT, Division of Aeronautics and they seem to be on board with doing it and they will help us with engineering and cost estimates and those kinds of things."

Jared Storm, owner of Storm Aeronautics said, "That's just for the 100 low-lead."

Mayor Zavodny said, "For our fuel, right."

Jared Storm, owner of Storm Aeronautics said, "The thing about that, too, is that you have to do a spill-containment plan and since you're putting in your own fuel system, it would be the right time because you could just add our system to that plan instead of doing two plans."

Mayor Zavodny said, "Ok. That's for the fuel spill? We've run into this before with the spray."

Jared Storm, owner of Storm Aeronautics said, "Yes. You'll have to do a spill containment plan for your fuel barrels so we will just add our tank onto that plan and it won't cost any more or anything, but you're going to have to do one anyway. This would be the time to do it. The Wahoo airport is shutting down next year for almost the whole summer so we're going to be forced to aerial spray out of the David City Airport, the whole next summer. So, we're going to have to have a fuel system out here. Plus, because we have Storm Aeronautics, plus we aerial spray and most of that is in Wahoo and we want to move all of that to David City and use Wahoo as a satellite."

Mayor Zavodny said, "So, we will have no cost?"

Jared Storm, owner of Storm Aeronautics said, "No. I will pay for all of this. I'm not paying for the 100 low-lead system, but I'll pay for the Jet A fuel. I think that the 100 low-lead system is smart for the airport because all of those hangars out there are getting filled up and they need to have access to a fuel system and not have to call up the City to come out and get them fuel all the time."

Mayor Zavodny said, "I think that we recognized that."

Council member Tom Kobus made a motion to approve allowing Storm Aeronautics to install a gravel road and Jet A fuel tank at the airport. Council Member Pat Meysenburg seconded the motion. The motion carried.

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

Mayor Zavodny stated that the next item on the agenda was consideration of a ground lease with Storm Land Holdings.

City Administrator Clayton Keller said, "So, Lori came to me a couple of weeks ago and asked me what we wanted to do with this because our ground lease requires that we renegotiate the numbers, if they need to be changed, whether increasing or decreasing, and we need to do that every two years, per the agreement. The FAA had us put that in in 2016. So, since we just changed the rental amount for the farm land, we had to change the lease amount for this, per the agreement. So, I talked with Jared and we agreed on an amount."

Jared Storm, owner of Storm Aeronautics said, "Let me ask, is this by a per acre basis out there? Is that how you did it?"

Mayor Zavodny said, "It's a little more complicated than that, but ostensibly, you can convert it to a per acre cost."

Jared Storm, owner of Storm Aeronautics said, "So, is Forney's changing and everybody out there, or Roth, or just mine and the farmer?"

Council member Kobus said, "What's good for one is good for all."

Jared Storm, owner of Storm Aeronautics said, "You've got Roth Aerial Spray out there, plus you've got a seed dealer and you've got Forney that works on trucks."

Mayor Zavodny said, "I think we'd have to consider all of them. That is the only fair way to go. Alright, if you guys have reached an agreement here, then what I'd like to stipulate is that we look at all of them."

Council member Tom Kobus made a motion to approve the Second Amendment to the Ground Lease for Storm Land Holdings. Council Member Bruce Meysenburg seconded the motion. The motion carried.

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

## **SECOND AMENDMENT TO GROUND LEASE**

This Second Amendment to Ground Lease ("Amendment") is made by and between the CITY OF DAVID CITY, NEBRASKA, a Nebraska municipal corporation ("Landlord"), and STORM LAND HOLDINGS, LLC, a Nebraska limited liability company ("Tenant").

WHEREAS, the Landlord and Tenant entered into a Ground Lease dated September 10, 2014; a copy of the same is attached hereto, marked Exhibit "1", and incorporated herein by this reference as if fully set fourth; and

WHEREAS, the demised premises are part of the David City Municipal Airport (the "Airport"); and

WHEREAS, the Landlord has received, is receiving and plans to receive Federal Aviation Administration ("FAA") Airport Improvement Program ("AIP") grants; and

WHEREAS, as part of the AIP grants there are requirements to receive these grants for which Landlord has signed grant assurances and these grant assurances obligate the Landlord to comply with certain FAA requirement policies; and

WHEREAS, the Landlord and Tenant agree that compliance with the AIP grant is important to all concerned.

NOW, THEREFORE, in consideration of the terms and conditions of the foregoing, which is incorporated herein by this reference, and other good and valuable consideration, the Landlord and Tenant agree as follows:

1. Section 4 is hereby deleted in its entirety and the following substituted:

4.) **Annual Rent.** Tenant agrees to pay Landlord the annual sum of Two Thousand One Hundred Forty-Eight and 39/100 Dollars (\$2,148.39) per year, or One Hundred Seventy-Nine 03/100 Dollars (\$179.03) per month, and the annual rent will be adjusted once for every succeeding two (2) year period thereafter based upon the increase or decrease, as the case maybe, int the CPI for the prior two (2) years pursuant to FAA compliance Manual, 5190.6B, Chapter 9, page 9-6, item e, Escalation Provision. Farmland values would be visited every two (2) years to follow the trend from the rental formulas as per the University of Nebraska-Lincoln AG Econ site. Landlord and Tenant agree that the annual rent to be paid hereunder by Tenant shall allow Landlord to maintain a fee and rental structure for the Demised Premises and the facilities and services related thereto, which will make the Airport as self-sustaining as possible under the circumstances.

2. Except as otherwise provided in this Amendment, the terms, conditions and agreements contained in the Ground Lease and any previous amendments shall continue in full force and effect and shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. The terms used in this Amendment shall have the same meanings as in the Ground Lease unless otherwise indicated.



STATE OF NEBRASKA     )  
  ) ss.  
COUNTY OF BUTTLER     )

Before me, a notary public, qualified for said County, personally came JARED STORM, Manager of STORM LAND HOLDINGS, LLC, a Nebraska limited liability company, as Tenant, known to me to be the identical person who signed the foregoing instrument and acknowledged the execution thereof to be his own voluntary act and deed on behalf of said limited liability company.

WITNESS my hand and notarial seal on \_\_\_\_\_, 2020

\_\_\_\_\_  
Notary Public

**EXHIBIT "1"**

**[ Attach copy of Ground Lease and previous Amendments]**

**FIRST AMENDMENT TO GROUND LEASE**

This First Amendment to Ground Lease ("Amendment") is made by and between the CITY OF DAVID CITY, NEBRASKA, a Nebraska municipal corporation ("Landlord"), and STORM LAND HOLDINGS, LLC, a Nebraska limited liability company ("Tenant").

WHEREAS, the Landlord and Tenant entered into a Ground Lease dated September 10, 2014; a copy of the same is attached hereto, marked Exhibit "1", and incorporated herein by this reference as if fully set forth; and

WHEREAS, the Demised Premises are a part of the David City Municipal Airport (the "Airport"); and

WHEREAS, the Landlord has received, is receiving and plans to receive Federal Aviation Administration ("FAA") Airport Improvement Program ("AIP") grants; and

WHEREAS, as part of the AIP grants there are requirements to receive these grants for which Landlord has signed grant assurances and these grant assurances obligate the Landlord to comply with certain FAA requirement policies; and

WHEREAS, the FAA has notified the Landlord by letter dated July 7, 2015 that the Ground Lease is not in full compliance with the grant assurances; a copy of said letter is attached hereto, marked Exhibit "2", and incorporated by reference as if fully set forth; and

WHEREAS, the Landlord and Tenant agree that compliance with the AIP grant is important to all concerned.

NOW, THEREFORE, in consideration of the terms and conditions of the foregoing, which is incorporated herein by this reference, and other good and valuable consideration, the Landlord and Tenant agree as follows:

1. The following sentence is added to the end of Section 1.B. as follows:

The Tenant shall adhere to the rules and regulations, if any, of the Landlord's Airport, as well as local ordinances, building codes, fire codes, and such related codes. Landlord shall impose substantially comparable rules and regulations for use of the Airport which shall be nondiscriminatory and uniformly enforced.

2. Sections 2.A. and B. are deleted in their entirety and the following substituted:

A. **Initial Term.** The term of the Ground Lease ("Term") shall commence on the date of this Ground Lease (the "Commencement Date") and shall terminate at 11:59 p.m. on September 9, 2063 ("Initial Term").

3. Section 4 is hereby deleted in its entirety and the following substituted:

4. **Annual Rent.** Tenant agrees to pay Landlord during the first two (2) years of the initial fifty (50) year Term, the annual sum of One Thousand Nine Hundred Seventy-One and no/100 Dollars (\$1,971.00) per year, or One Hundred Sixty-Four and 25/100 Dollars (\$164.25) per month, and the annual rent will be adjusted once for every succeeding two (2) year period thereafter based upon the increase or decrease, as the case may be, in the CPI for the prior two (2) years pursuant to FAA Compliance Manual, 5190.6B, Chapter 9, page 9-6, item e, Escalation Provision. Farmland values would be visited every two (2) years to follow the trend from the rental formulas as per the University of Nebraska-Lincoln Ag Econ site. Landlord and Tenant agree that the annual rent to be paid hereunder by Tenant shall allow Landlord to maintain a fee and rental structure for the Demised Premises and the facilities and services related thereto, which will make the Airport as self-sustaining as possible under the circumstances.

4. Section 6 is hereby deleted in its entirety and the following substituted:

6. **Impositions.** Commencing on the Commencement Date, Landlord shall pay for every Imposition, as hereinafter defined, imposed upon the Demised Premises during the Term. "Impositions" shall mean ad valorem real estate taxes, betterment assessments (special or general, ordinary or extraordinary), water and sewer taxes, and any other charges made by any public authority which, upon assessment or upon failure of payment, becomes a lien upon the Demised Premises and the Airport in general, and whose installments become delinquent during the Term of this Ground Lease. Tenant shall pay such Impositions imposed exclusively as a result of Tenant's Improvements and personal property located on the Demised Premises and Tenant's proportional share of Impositions to the Airport in general, which are also paid by other tenants of the Airport.

5. The following sentence is added to the end of Section 7.B. as follows:

Notwithstanding the foregoing, in the event of any inconsistencies between the AIP grant requirements and this Section 7.B., the requirements of the AIP grant shall control.

6. The following sentence is added to the end of Section 10 as follows:

Tenant understands and agrees that Landlord's construction of the taxiway, electricity, water and other utilities to the Demised Premises shall be non-exclusive to Tenant and other tenants of the Airport and are for the mutual nondiscriminatory benefit of all tenants of the Airport. All utilities available to tenants of the Airport shall be separately metered to each user and each tenant shall be billed directly for the use of such services and shall pay the same when due.

7. A new Section 19.L is added as follows:

I. Landlord and Tenant agree and understand that this Ground Lease and any Leasehold Mortgage shall be subordinate to the provisions of any existing or future agreement between Landlord and the United States relative to the operation or maintenance of the Landlord's Airport, the execution of which have been or may be required as a condition precedent to the expenditure of federal funds for the development of the Landlord's Airport. Tenant further agrees and acknowledges that any Leasehold Mortgage shall be subject to and subordinate to this Ground Lease and the Leasehold Mortgage shall be limited to the leasehold rights of Tenant in the Demised Premises and the Building.

8. A new Section 34 is added as follows:

34. **FAA and AIP Requirements.** Tenant will be compatible with all Airport operations so that Landlord can meet all FAA and AIP grant requirements that prohibit interfering with the landing and taking off of aircraft or interfering with navigational aids/communications equipment, prohibits activities with potential to attract wildlife, etc.

9. Except as otherwise provided in this Amendment, the terms, conditions and agreements contained in the Ground Lease shall continue in full force and effect and shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. The terms used in this Amendment shall have the same meanings as in the Ground Lease unless otherwise indicated.

10. In the event that there is any inconsistency between the Ground Lease and this Amendment, this Amendment and any further amendments thereto shall govern.

LANDLORD:

CITY OF DAVID CITY, NEBRASKA,  
a Nebraska municipal corporation

By:  01/13/16  
Alan Zavodny, Mayor Date  
for the City of David City,  
Nebraska, a Nebraska  
municipal corporation

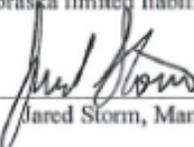


ATTEST:

  
Joan E. Kovar, City Clerk

TENANT:

STORM LAND HOLDINGS, LLC,  
a Nebraska limited liability company

By:  01/13/16  
Jared Storm, Manager Date

STATE OF NEBRASKA     )  
  ) ss.  
COUNTY OF BUTLER     )

Before me, a notary public, qualified for said County, personally came ALAN ZAVODNY, Mayor, and JOAN E. KOVAR, City Clerk, for the CITY OF DAVID CITY, NEBRASKA, a municipal corporation, as Landlord, known to me to be the identical persons who signed the foregoing instrument and acknowledged the execution thereof to be their own voluntary act and deed on behalf of said municipal corporation.

WITNESS my hand and notarial seal on Jan 13th, 2016.

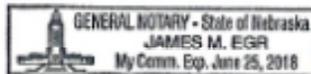


[Signature]  
Notary Public

STATE OF NEBRASKA     )  
  ) ss.  
COUNTY OF BUTLER     )

Before me, a notary public, qualified for said County, personally came JARED STORM, Manager of STORM LAND HOLDINGS, LLC, a Nebraska limited liability company, as Tenant, known to me to be the identical person who signed the foregoing instrument and acknowledged the execution thereof to be his own voluntary act and deed on behalf of said limited liability company.

WITNESS my hand and notarial seal on Jan 13th, 2016.



[Signature]  
Notary Public

## AIRPORT GROUNDS LEASE AGREEMENT

This Agreement to lease airport grounds ("Lease") is made and entered into as of this 10th day of October, 2012 by and between the city of David City, Nebraska, ("Landlord"), and Storm Flying Service, LLC, a Nebraska limited liability company, with its principal offices at 390 E. Sloup Drive, Wahoo, NE 68066 ("Tenant"). The Lease shall become effective on October 1, 2012 ("Effective Date").

Landlord owns and has clear title to a tract of land approximately 115 feet by 42 feet depicted on the attached photo and diagram ("Diagram") and all abutting tracts of land, all of which are located between the taxiway to runway 14 and the hangar building depicted as structure no. 10 on the Terminal Area Plan, which are part of the David City Municipal Airport premises. The Diagram is incorporated herein by this reference.

Tenant desires to lease said tract of for the construction of a containment pad to be used for Tenant's aerial applicator business from time to time. In addition, Tenant desires to lease the tract of land abutting the East side of such containment pad and continuing to the taxiway to runway 14 for the construction of a taxiway between the containment pad and said taxiway in such dimensions as depicted on the Diagram (both said tracts are hereafter collectively referred to as "Grounds").

NOW THEREFORE, in consideration of the foregoing, the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

- 1. Lease.** Landlord hereby demises and leases to Tenant the Grounds, and Tenant shall lease the Grounds from Landlord, according to the terms and conditions of this Lease.
- 2. Use.** Tenant shall use the Grounds only for the construction of a containment pad and abutting concrete apron, walkways, and taxiways ("Improvements") for the operation of aerial application and for other aeronautical and airport compatible uses ("Permitted Use"). Tenant shall not allow the Grounds and Improvements (collectively, the "Premises") to be used for any unlawful purposes or for any purpose not compatible with the operation of the David City Airport. Tenant shall keep and maintain the Premises in good condition and repair.
- 3. Term.** The term of this Lease shall be twenty seven (27) years from the Effective Date ("Initial Term"), and shall be automatically renewed for five (5) year periods on the same terms, except for an adjustment to the Rent, for up to four occurrences, provided that Landlord has not notified Tenant, in writing, at least ninety days prior to the end of the Initial Term, or any extension thereof, that the Lease shall terminate. Upon such termination or the end of the Initial

Term and all extensions thereof, Tenant shall have the right of first refusal to enter into a new lease with Landlord on the terms then offered by Landlord to all prospective tenants.

**4. Annual Rent.** The annual rent payable to Landlord hereunder ("Rent") shall be One Thousand Dollars Two Hundred dollars (\$1,200.00), payable in advance each year. Landlord and Tenant shall agree to an equitable adjustment to the Rent at the end of the Initial Term, and at the end of each successive five year extension, if applicable. Said adjustment shall reflect the increase in property values of adjacent tracts of Grounds and shall, in no event, be greater than ten percent (10%). In the event there is no agreement between Landlord and Tenant as to such increase in the Rent, the increase shall be determined by an independent real estate appraiser acceptable to both parties.

**5. Taxes.** Landlord shall be responsible for the payment of all taxes on the Premises.

**6. Indemnification by Landlord.** To the extent permitted by law, Landlord agrees to indemnify and save harmless Tenant from and against all claims of whatever nature from a third party arising from any act, omission, or negligence of Landlord, or of Landlord's contractors, licensees, agents, servants, or employees, or arising from any accident, injury, or damage whatsoever caused to any person, or to the property of any person occurring during the Term in the Leased Premises.

**7. Indemnification by Tenant.** To the extent permitted by law, Tenant agrees to indemnify and save harmless Landlord from and against all claims of whatever nature from a third party arising from any act, omission, or negligence of Tenant, or of Tenant's contractors, licensees, agents, servants, or employees, or arising from any accident, injury, or damage whatsoever caused to any person, or to the property of any person occurring during the Term in the Leased Premises.

**8. Maintenance of Grounds and Improvements.** Tenant shall at all times throughout the term of this Lease, at its sole cost and expense, maintain and repair the Premises. Landlord shall reimburse Tenant for the cost of any Improvements made by Tenant for public use and approved by the Landlord, including, but not limited to, a taxiway to the Grounds.

**9. Compliance with Rules and Regulations.** Tenant shall comply with all rules and regulations of the Landlord for the operation of David City Airport and all applicable federal, state and local statutes, laws, ordinances, rules and regulations.

**10. Default and Remedies.** Tenant shall be in default of this Agreement if (i) Rent is not paid within ten days of the due date; (ii) Tenant vacates or abandons the Premises; or, (iii) any part of the Premises are taken upon execution or by other process of law of law directed against Tenant. Upon such event of default, Landlord may, upon thirty days notice to Tenant, terminate this Lease, recover any unpaid Rent up to the date of termination, reenter and take possession of

the Premises and expel Tenant and remove Tenant's effects. Tenant shall have the right, during the thirty day notice period, to cure any event of default and thereby continue the term of the Lease.

**11. Right to Sublet and Assign.** Tenant shall have the right to sublet any part of the Premises at its sole discretion, without effecting Tenant's obligations under this Lease. This Lease may be assigned by Tenant, upon Landlord's prior written approval, which shall not be unreasonably withheld. Upon such assignment, this Lease shall inure to the benefit of and be binding upon the successors and assigns of Tenant.

**12. Quiet Enjoyment.** As long as Tenant performs all covenants and obligations contained in this Lease, Landlord warrants quiet enjoyment of the Grounds by Tenant; provided that Landlord, its agents or representatives, and any other person authorized by Landlord, may enter upon the Grounds for the purpose of inspecting the Grounds and to exhibit the Grounds to prospective purchasers or lenders.

**13. Condemnation.** In the event of a condemnation or other taking by any governmental agency of all or a portion of the Grounds necessary for Tenant's operation of its business thereon, this Lease will terminate when the condemning authority takes possession of the Grounds. Any such condemnation award shall be paid to Landlord, except that Tenant will have the right to assert a separate claim for moving expenses, business interruption, and leasehold improvements paid for by Tenant.

**14. Authority.** Landlord represents and warrants that the person executing this Lease on behalf of Landlord is authorized to bind Landlord to this Lease by requisite action of the City Council of David City, Nebraska, and, upon Tenant's request, will deliver a certified resolution to that effect.

**15. Access to other Airport areas.** Tenant shall have ready access to all taxiways, runways and public aprons of the David City Airport. Tenant shall have ready access to the Grounds from the road on the airport premises immediately north of the Grounds.

**16. Disposition of Improvements upon Lease Termination.** Upon termination of this Lease and Tenant's failure to exercise its right of first refusal to enter into a new lease with Landlord as provided in paragraph 3 above, the Grounds, along with all improvements thereon shall revert to Landlord's possession.

**17. Subordination to Federal Obligations and Grant Assurances.** If there is a conflict between this Lease and any federal obligation or grant assurance, or any state or federal law or regulation, the federal obligation, the grant assurance, or the state or federal law or regulation, will take precedence and govern.

18. **Governing Law.** This Agreement shall be governed by the laws of the State of Nebraska.

IN WITNESS WHEREOF, the parties have each caused a duly authorized officer to execute this Agreement as of the date first written above.

LANDLORD:

DAVID CITY, NEBRASKA

By:   
Name and Title: Alan Zaroday  
Mayor

TENANT:

STORM FLYING SERVICE, LLC

  
Jared Storm, President

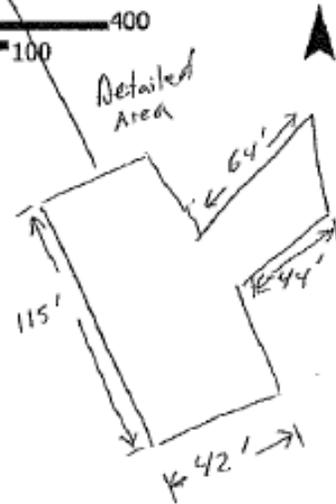


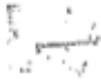
Google earth



David City Airport 10/2/12

Storm Flying Service land lease for  
concrete containment pad and taxiway





U.S. Department  
of Transportation  
Federal Aviation  
Administration

Central Region  
Omaha, Kansas,  
O'Fallon, Nebraska

001 Terminal  
Kansas City, Missouri 64108  
(816) 329-2000

July 7, 2015

Mayor Alen Zavodny  
557 N. Fourth St.  
David City, NE 68632

David City Airport Inconsistencies with  
The FAA Grant Assurances

Mayor Zavodny,

The Federal Aviation Administration (FAA) Central Airports Division (ACE-600) has received a signed ground lease at David City Municipal Airport between the City of David City, Nebraska, (City) and Storm Land Holdings (Storm). This airport lease commenced on September 10, 2014, for a period of fifty four (54) years and one extension for an additional fifty (50) years.

As you are aware, as airport sponsor of David City Municipal Airport, the City has received FAA Airport Improvement Program (AIP) grants. As part of the requirements to receive these grants, the City signed the grant assurances. These grant assurances obligate the City to comply with certain FAA requirements and policies. Among these FAA requirements and policies include Grant Assurance 4, *Good Title*, Grant Assurance 5, *Preserving Rights and Powers*, Grant Assurance 11, *Pavement Preventive Maintenance*, Grant Assurance 22, *Economic Nondiscrimination*, Grant Assurance 23, *Exclusive Rights*, Grant Assurance 24, *Fee and Rental Structure*, Grant Assurance 25, *Airport Revenues*, and Grant Assurance 29, *Airport Layout Plan*.

After the review of the signed ground lease, the FAA believes that several of the ground lease provisions between the City and Storm do not comply with these grant assurances. Thus, the City potentially is in non-compliance of its federal obligations.

Among the lease provisions potentially in non-compliance is Section 2 A. This provision provides an initial term from September 10, 2014 to September 10, 2068, which is a period of 54 years. Section 2 B permits an extension term for an additional 50 years. FAA Policy states that "leases that exceed 50 years may be considered a disposal of the property in that the term of the lease will likely exceed the useful life of the structures erected on the property." (See FAA Airport Compliance Handbook, section 12.3, page 12-3) The FAA contends that such long leases are considered a disposal of the airport property.

EXHIBIT "2"



Another issue is Section 4 Annual Rent. The lease rate is only \$510 per year. There is additionally no escalation clause written in the Ground Lease. Grant Assurance 24, *Fee and Rental Structure*, requires that the airport sponsor maintains a fee and rental structure for the facilities and services at the airport which will make the airport as self-sustaining as possible. A monthly rental of \$42.50 without any escalation clause for a period of 104 years does not appear to meet the requirements of Grant Assurance 24, *Fee and Rental Structure*, and Grant Assurance 22, *Economic Nondiscrimination*.

The third issue is Section 6 Impositions. The City has agreed to pay for all ad valorem real estate taxes, betterment assessments, water and sewer taxes, and any other charges made by any public authority which, upon assessment or upon failure of payment, becomes a lien upon Storm's leased property. If such payments by the airport sponsor on behalf of Mr. Storm are only for one commercial tenant and not any of the other commercial tenants, such payments may be considered unjustly discriminatory under Grant Assurance 22.

Section 7 B states that Storm has the right, but not the obligation, to contest at its sole cost and expense, any governmental regulation, judgment, order, statute, rule or decree pertaining to the Leased Property. In addition, at the request of Storm and without cost or expense to the City, the City will join in any contest and execute any and all documents in connection as Storm may reasonably request. Such requirements placed on the airport sponsor appear to be inconsistent with Grant Assurance 5 *Preserving Rights and Powers*, and again Grant Assurance 22, *Economic Nondiscrimination*.

Section 19E requires the City to assign all of its rights, title and interest as Landlord under any sublease of the property and agrees not to terminate, modify, or take any action that would otherwise affect any subleases. Grant Assurance 4, *Good Title*, requires that the airport sponsor holds good title, satisfactory to the Secretary, to the airfield or site thereof. Section 19E appears to prevent the airport sponsor from holding good title without any encumbrances. Assigning the rights under a sublease or allowing the financing organization to have superior rights over the airport sponsor is inconsistent with Grant Assurance 4, *Good Title*, and Grant Assurance 5 *Preserving Rights and Powers*.

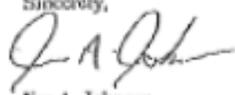
Additionally there is no subordination clause in the Ground Lease. A subordination clause allows an airport sponsor to take corrective action if any of the provisions of a lease or contract are inconsistent with an airport sponsor's federal obligations.

The FAA objects to these provisions. By agreeing to these terms and conditions, the City appears to be in noncompliance with its federal obligations.

Consequently, this office is requiring the City of David City to provide a corrective action plan within 30 days of the date of this letter on how it intends to meet its federal obligations as it pertains to this new ground lease with Storm.



If you have any questions, please contact Lynn Martin at (816) 329-2644.

Sincerely,  
  
Jim A. Johnson  
Airport Division Manager

cc: Andre Arann, NDA  
Ronnie Mitchell, NDA

Mayor Zavodny stated that the next item on the agenda was consideration of an RFQ for the source water protection project.

City Administrator Clayton Keller said, "This is the request for qualifications. I'd like approval from the Council to advertise for the next two weeks in the Banner Press so we can obtain the services of an engineer to do our source water protection project. We just got approval from the State to help pay for this."

Mayor Zavodny said, "The timing on this probably couldn't be better. This is something that we probably really need to have done."

Council member Bruce Meysenburg made a motion to approve the request for qualifications for the water protection project. Council Member Pat Meysenburg seconded the motion. The motion carried.

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

Yea: 5, Nay: 0, Absent: 1

Council member Tom Kobus made a motion to table Resolution No. 26-2020 setting the monthly industrial wastewater billing amount for Michael Foods. Council Member Pat Meysenburg seconded the motion. The motion carried.

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

Yea: 5, Nay: 0, Absent: 1

#### **RESOLUTION NO. 26 - 2020**

**A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF DAVID CITY, BUTLER COUNTY NEBRASKA, to modify the monthly industrial wastewater billing amounts based**



Mayor Zavodny stated that the next item on the agenda was consideration/discussion of the water plant evaluation.

Craig Reinsch, SP Senior Engineer with Olsson, said, "I'm here to present some additional findings to the preliminary report. I last appeared before the Council on May 27<sup>th</sup>, I believe, to present the preliminary report of the evaluation that we discussed. Again, as we have laid this out, we provided preliminary results for discussion to see if we need to add or remove any of those things, and so at that time, the initial instruction from Council was to go through and look at the water plant, see what treatment options were available for a wholistic change or a wholistic update. The reason for that wholistic update was to, again, put together a, for lack of a better term, an all-inclusive package to be considered by funding agencies. We kind of took a little bit of an additional turn by adding the pilot study, where we looked at some jar testing, adding some additional chemicals and seeing what it would look like without lime addition and we collected a lot of good data from that, that was included in the evaluation. The feedback that I got from the Council in May was to look at other options for softening that did not include lime, so I have done so. That's what I'm here to present today. So, we have looked at an option to treat, now. We pulled water quality samples for the report in 2019 and those show that two of the wells, well #10 and well #14, show that maybe they didn't need to be softened. So, we were going down the road that maybe we can do softening, I'm sorry those wells need to be softened. So, we looked at maybe we have treatment just at those wells and that would be one way to remove that. We did some follow up sampling, just to confirm that wasn't a one-off sample and when those results came back, it showed that that was a one-off sample. So, all of the wells in the 2020 Water Quality, are very much in line and show that that was the case. So, we modified our recommendation. We did look at the treatment process called ion exchange. Ion exchange can be used for softening, but, of course, it has its limitations. The water quality that the City has is high in total dissolved solids and other constituents that may get kind of borderline to use ion exchange. Ion exchange for softening doesn't remove the iron and manganese and arsenic that is also a concern. So, even though it is in an option and we could make it work, right now the way the water plant works is you pump it to the top and it flows hydraulically through and you don't have to pump it until it is pumped into the system. If we added this treatment process, we would add another set of pumps to take it through the process and back into the filters where the iron, manganese and arsenic would be removed. So, of course, that is more expensive than the original option. It is less than changing the treatment process entirely, but it would be a substantial change. The big difference is, since I personally haven't worked with a community that has been buying salt and don't know who the local suppliers are, I reached out to the same company that provided the recommendation for the treatment equipment. Looking at their salt suppliers, the cost of salt is much higher than the cost of lime, and you'll be using a lot of it as you're taking the hardness out of the water. The operation and maintenance costs would be eight to ten times, based on the numbers given for using lime. So, the recommendation, based on cost, is still the same as it was when we presented it in May, that the best overall approach to the water plant, in its current state is to update what is there and address that. One of the things to keep in mind with that recommendation is that even though we have put together an all-inclusive consideration, which is beneficial for the City and the wastewater process, where the larger project could be considered for additional funding that maybe bits and pieces could. The City still has the option to go through and say that we'd rather address this system or we'd rather address this. You can kind of take what we have and approach it as an a' la carte approach. We can have that discussion. I know that a smaller group was mentioned as a possibility to see what would make the most sense. So, that is still within the City's prerogative. The City has taken a proactive step in looking at this when they are not required to by the State to make a change. This is

more of what do we do, what is our long-term plan for the water plant. So, you can choose to use this, you can choose to let it sit, that is your prerogative. I would recommend that since you have a report, and it was prepared to submit for funding agency consideration, that if you are amenable to that and you have a scope in mind that you would like to put forward for consideration by the water/wastewater advisory committee, that we do so. They review, they ask questions of me, we make sure that it is ready to be a fundable package and then they provide a funding offer that the City can then consider, do nothing with, you've really lost nothing and you've used the tool that you have created to help answer some of those questions of what are our next steps. What questions can I answer?"

Mayor Zavodny said, "I'm sure that you represented it extremely well. I had red flags go off. If we're borderline, I don't want to spend money on something that may or may not work. We have to be sure that it will work."

Craig Reinsch said, "That's why we are not recommending ion exchange. We're looking at it. The whole reason that we provide different options, like I talked about when we first started, even though you wanted to do something different, my word of caution was that we need to look at what it takes to fix what's there because if you submit it to funding agencies that will be one of their questions, well did you consider fixing what was there and how does that compare to these other costs. That's why it was included and Council wanted another option for softening, which, there are some concerns and that's why I'm not recommending that option."

Mayor Zavodny said, "So, let me summarize this from where I sit and then you can tell me what's wrong. We're not going to pick an eight to ten times more option, so cross a line through that. Ionization is borderline and it could work, now do we have the room to do all of that and what is the expense, cross a line through that. So, if I was to summarize what I think you said is that we have to figure out how to make the process work that we currently have as efficient as we can, and we're going to be using lime for the foreseeable future, because that is what kind of a plant that we built."

Craig Reinsch said, "Correct. That is similar for others that have made that choice for the long term, as well."

Mayor Zavodny said, "And that, ladies and gentlemen, is water plant operation for dummies."

Craig Reinsch said, "However, there is something that you can read, if you want a little more."

Mayor Zavodny said, "Other questions of Craig?"

City Council Adviser Dana Trowbridge said, "Yes. From that, are we to assume that science and technology have not advanced treatment of water processes involving lime in forty years?"

Craig Reinsch said, "That is a good question and I am happy to answer. If you get into the regulations that the State has, they have a group called Best Available Technologies, right, to be able to treat different items and as we've discussed previously, because the City had this process when the last two wells came on line and arsenic levels were higher, no change was needed at the water plant because that process was able to remove the arsenic out without

changing anything. You had the built-in benefit. This is conventional treatment that has not changed for a while, however a lot of the ways of feeding lime and a lot of the technology associated with it have changed. So, while the process itself hasn't, the method for making it work and monitoring and processing and doing the bits and pieces associated with it have changed."

City Council Adviser Dana Trowbridge said, "And are those the things that you're looking at modifying here to bring us from forty years ago to what is being done in the industry today?"

Craig Reinsch said, "Correct. So, the biggest item is the lime feed and the slaking system. There are better ways to do that, and again, as far as any of us know and understand, that is forty-year old equipment. So, let's take some time and let's look at what we hate about it and let's make sure that we are taking a new and updated process that addresses as many of those things that are challenging as we can."

Mayor Zavodny said, "So, if cost wasn't even a consideration here, we really wouldn't have a better system to chase after. Can we make the adjustments because poor Aaron has had to listen to me complain about lime forever? I hate it, because of the mechanisms that we had to make it work. It clumps up, we've had a lot of trouble and the only way to go in there is manually dig it out and it crusts. With the footprint that we have, without spending a whole lot of money, how involved would updating ours be, so our process would be improved?"

Craig Reinsch said, "So, that is part of that a' la carte approach that we need to sit down and pick what is it that we need to do. Let me answer your question a couple of different ways. Number one, one of the things that we included in there is the contra flow mechanism or the solids contact clarifier mechanism. That would require lifting off the roof, pulling everything out and doing a bunch of things that are invasive. That does not need to be done immediately, but it is something that, again, that piece of equipment is forty years old and we have a plant that is fifty years old where the bottom piece rusted out and broke. The question is when is the right time to go in and take care of that before it's a big issue. Taking care of the lime process in and of itself is, hopefully, removing what's there, putting something in and getting it to fit and then tweaking the process. Other things that have been included include, updating controls and taking care of some of the pumps and motors, taking care of some of the painting, taking a closer look at the aerators, do they need to be removed? Because those haven't been opened and looked inside. From the outside they look fine, but from the inside, we don't know. So, again, that a' la carte approach, really the best way to answer that question, and we need to go to that next step before we get to that point. So, some of them will be less invasive than others."

Mayor Zavodny said, "If I remember, and now we're going off of memory which is always pretty dangerous, but Kirkham Michael, at one time, said maybe you should have a second clarifier so we can move back and forth and do a little maintenance on the one and have a backup plan and not shut down for three weeks. You're saying just take the clarifier that we have and take the roof off and probably replace it. Does that make more sense than adding a second one, comparatively speaking?"

Craig Reinsch said, "With the water quality that you have, as we looked at arsenic in the wells, it looks like we can pump that through the system without exceeding the maximum contaminant levels so that gives you some additional flexibility that other communities don't."

Mayor Zavodny said, "But what happens if we get outside of those parameters? We have no way to deal with it, right? Do you know what I'm saying? That's great for today."

Craig Reinsch said, "Right. Now, one of the things that Aaron does is take a water sample quarterly and so if we are looking at pulling off the roof, replacing and putting something in, then that will be maybe a month or two's worth of work. The existing operation and maintenance manuals have provisions of how do we treat while that clarifier is off and you use some of the other processes."

Interim Water Supervisor Aaron Gustin said, "And we've done that. We have to shut down to clean the clarifier because of the lime and so..."

Mayor Zavodny said, "And what happens when we do that? You get the calls from, now the whole system is breaking loose everything because we're putting raw water into the system."

Interim Water Supervisor Aaron Gustin said, "That's why I would probably think to recommend addressing the filters before that process takes place. Because our only treatment in that, when they shut that down, is through those filters. So, I would address those first, before we do that. I don't know if that is your assessment."

Craig Reinsch said, "So, the last time that the filters were updated and the media replaced was 2006, and so we're getting close to fifteen years, which is about the time to start considering doing something. Do you have the results from the media cores?"

Interim Water Supervisor Aaron Gustin said, "Not yet."

Craig Reinsch said, "Ok. We're kind of in the process, again, the all-encompassing part is included, whether it's needed or not, or when that right time is, we can pull the trigger whenever. We're kind of playing a waiting game of let's-push-the-clarifier-equipment-until-we're-ready-and-then-take-care-of-this. So, at some point you'd have to decide to do it. The question about the second clarifier while, yes, you can put that in and then it's redundant, the real question is, if you only need it every two years, and you have been able to make that work, is that investment enough to be able to justify that addition to the plant when that could be used to address some other things."

Mayor Zavodny said, "That might be true, but you're also saying that we're going to take the roof off and take care of the clarifier that we have. I'd like to see a comparison of what it takes to haul out the old we have now and, basically, refurbish it and put it back or put in a second one."

Council member Kobus said, "Where would you put a second one?"

Mayor Zavodny said, "That was one of my questions back then. I don't think that we have room to do hardly anything on our footprint there. They said there was."

Craig Reinsch said, "Well, I think there is seventy-five feet, going off of memory, but if that serves well, the clarifier is forty feet in diameter and there's seventy-five or seventy feet in front of the plant which could be used. It would be tight. The other thing is in 2006, the same time that the filters were updated, that unit was painted. So, again, it was taken down. I'd have to look and see how long that took. Probably a couple of weeks that it was down for that repair."

Mayor Zavodny said, "Paint doesn't impress me because you could paint a rusty pickup and it might look ok for a while but its function...."

Craig Reinsch said, "Right. So, we can take a closer look to see if we can get a better handle on how much life there is left in that, but again, the point to make and the timing is well for this. The plant is forty years old and a lot of the major components are original, so we need to be thinking about what is the plan upgrade, replacement and modifications for technology."

Mayor Zavodny said, "Ok. Here's what I would like to do. We are just a little over a month from the elections. We're going to have some changes in this group. I'd like to have a small group work on this, but we need to see who is going to be here. So, if we could put it off for until very shortly after the election, get a small group working on this problem. I think that's our best course, because assigning one now doesn't make a lot of sense and maybe there will be somebody with great interest or some of you are hoping that someone comes on the Council that has great interest."

Craig Reinsch said, "If I may, is it the Council's opinion that this is sufficient that I can go ahead and sign and seal and complete this document and then the final version can be prepared for that meeting and discussion?"

Council member Kobus said, "If we would have to pull that clarifier out, how long does it take to put a new one back in, to pull it out and put a new one back in?"

Interim Water Supervisor Aaron Gustin said, "A few months back it was a six month wait time for the actual internals of the clarifier and then a month process to swap it."

Craig Reinsch said, "We're in the middle of that part right now, but the estimate was that it's about a month process to swap. We were looking at changing the upper structure and so that's part of that risk where we decided to build something new as opposed to trying to fix what was there."

City Council Adviser Dana Trowbridge said, "How close to capacity are we now? Do we have some room for community growth?"

Craig Reinsch said, "Yes."

City Council Adviser Dana Trowbridge said, "Ok. Good."

Craig Reinsch said, "So, remember that the plant capacity is 2.5 million gallons per day, which is approximately 1,800 gallons per minute. Right now, it's running at 800 gallons per minute."

City Council Adviser Dana Trowbridge said, "We could double the consumption used and still be fine."

Craig Reinsch said, "Per the operation and maintenance manual, for the original design. Now, the reason why it hasn't been run to full capacity, we've kind of talked about that, but there's been some turnover and that is one of the questions that we have yet to answer of why it's not run at full capacity. I think there's some nervousness with what might happen if that

occurs, but I'm not sure which component is providing that nervousness. Is that a fair assessment?"

Interim Water Supervisor Aaron Gustin said, "I don't know if our infrastructure could handle 1,800 gallons per minute and I do apologize, but I don't want to try to find out."

Council member Kobus said, "If it was engineered for that, it should."

Interim Water Supervisor Aaron Gustin said, "It should – forty years ago."

Council member Kobus said, "And I think we don't have the money to do much with our water plant and I think we just need to bite the bullet and update it and be done with it. I see nothing wrong with that."

Mayor Zavodny said, "We have no other options. So, what you have as far as a report and recommendations seems to be what we've got. So, we should accept that so we have a starting point for that. Now, the a' la carte thing, is what I hope the small group can start to work on and then the Council will be in a better position to make decisions. We haven't put the City in a good financial place by accident because these people, here, are very deliberate in their considerations of how we spend money and where we should spend it. I think that Councilman Kobus just put it very well. We have one option and we're going to have to bite the bullet here, but we have to figure out if that is absolutely our best way and figure out which pieces we're going to say "that's a priority and this is a priority" and figure out how to fund it. That's where we're at, so I would say, if it will work, we should vote to accept the report as it's written and make that our working document."

City Administrator Clayton Keller said, "Before you do a vote, could I ask the Water Supervisor to share his thoughts?"

Mayor Zavodny said, "Yes."

Interim Water Supervisor Aaron Gustin said, "I just wanted to remind the Council that a few months back, we did request a second opinion from JEO in regard to the next thirty, forty, potentially fifty years. If you would like my opinion on this, Craig is extremely thorough, but if we are being the best stewards of the taxpayer's money, that second opinion, I think, we should definitely wait for that. I spoke with Ethan about three weeks ago and he believed that he would be finished before the end of the year. In about two months, he would have what he was going to present to us. It may be exactly what Craig says, but we did hire them to give us that second opinion, to give us that confirmation, or, potentially, a completely different option. I want to remind you of that, otherwise that twelve thousand dollars was wasted."

Council member Kobus said, "How long did he have to do that?"

Interim Water Supervisor Aaron Gustin said, "I do think that we gave him six months and he is under that time limit."

Mayor Zavodny said, "I have a couple things with that. What I remember him saying last time was that he pretty much agreed with everything up to that point. I see no downside in waiting. We're not going to get ramping up on this until after the election."

Interim Water Supervisor Aaron Gustin said, "He did say that he directly contacted a vendor that builds the ion exchange skids. He had our water parameters. The same information that Craig does have, and worked directly with a vendor. We don't have a nitrate issue so they were able to modify and adjust. Between the vendor and Ethan, with JEO, we believe that we will be able to achieve that, however I would like to see proof of softening without lime. He said it makes it more competitive in terms of price. He said that negating the need to treat nitrates and other things that we can treat in our filters, and still using the contact clarifier as a settling unit, negate the lime, treat with the filters, and then primarily only soften, you would soften fifty percent, like Craig said before and then you would reblend it, because you don't want to take all of the hardness out of the water. That claim that he made, I would like to see proof and documentation in a form similar to what Craig is providing us."

Mayor Zavodny said, "That won't be a report based on theory. It would be based on other places that are doing it."

Interim Water Supervisor Aaron Gustin said, "No. That's the only way that I would accept it. Hopes and dreams are great, but..."

Mayor Zavodny said, "We've been at this for over forty years, I'm fine with waiting a couple months."

Council member Kobus said, "The only thing that I can say with that is, if we get nitrates, that's not going to work is what you're saying."

Interim Water Supervisor Aaron Gustin said, "Well, our wells do not currently show any nitrates. We have an undetect on that, but if we go digging wells elsewhere, years down the road, and there's nitrates..."

Mayor Zavodny said, "We're surrounded by a lot of farming and nitrates are a risk."

Council member Kobus said, "You can get that pretty easily."

Interim Water Supervisor Aaron Gustin said, "Those membranes also, if it were to go that route, have the potential to be modified. But, once again, I'm no engineer, but I did just want to remind the Council that we did just spend twelve thousand dollars for a second opinion. I'd like to wait for that."

Mayor Zavodny said, "We don't have to decide anything tonight. There's no downside in waiting for that."

Craig Reinsch said, "Regardless, the recommendation probably won't change. I can wait if it is the Council's prerogative."

Mayor Zavodny stated that they would wait for the second opinion to take any action.

The Water Treatment Plant Evaluation follows the minutes.

Mayor Zavodny stated that the next item on the agenda was consideration of Resolution No. 28-202 allowing the David City Swimming Pool use of David City Water, Sewer and Electric Services without charge from September through April each year.

City Administrator Clayton Keller said, "The swimming pool gets a three hundred dollar service charge each month because of the size of their meter and they wanted to know if they could not have that from September through April, each year, because they aren't using a whole lot of water and the little bit of water that they do use, they would pay for it when they open back up in May."

Interim Water Supervisor Aaron Gustin said, "I believe that we have a similar setup for other accounts."

City Administrator Clayton Keller said, "We do, and in that set up, it requires those departments to set aside those utility dollars that aren't being spent and put them into a contingency fund, which I understand is not currently happening, so I would like to start doing that and this would be the same thing. Those three hundred dollars, each month, would not be an expense, it's something they would set aside for a contingency fund."

Mayor Zavodny said, "I think that makes sense to me, but the one piece I'd like to run by someone before we do that, maybe the auditor to make sure of how we're talking about doing this and if this passes their muster and not be an audit finding. It's structuring differently how we code expenses and that kind of thing. If we could run that by them, I would feel a little better. I'm sure it will be ok, but he may tell you a way to do that. Let's table this item until we can run that by the auditor."

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

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

#### **RESOLUTION NO. 28-2020**

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

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

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

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

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



Mayor Zavodny said, "We will put up signs and post it. I thought of that, too. Usually, the sportsmen in that have pretty good honor and they self-regulate, and if someone else is around, they may regulate it."

Council member Bruce Meysenburg made a motion to pass and adopt Resolution No. 29-2020 placing a "catch and release" of all largemouth bass and bluegill at the David City Park Lakes through December 31, 2022. Council Member Tom Kobus seconded the motion. Kevin Hotovy: Absent, Tom Kobus: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, John Vandenberg: Yea, Alan Zavodny (Mayor): Yea

Yea: 5, Nay: 0, Absent: 1

The motion carried and Resolution No. 29-2020 was passed and adopted as follows:

**RESOLUTION NO. 29-2020**

WHEREAS, the Nebraska Game and Parks Commission restocked the David City Park lakes with largemouth bass and bluegill on September 17, 2020, and,

WHEREAS, Catch and Release is a practice within recreational fishing intended as a technique of conservation. After capture, the fish are unhooked and returned to the water, and,

WHEREAS, Native fish contribute to nutrient recycling and help maintain natural ecosystem processes when they live out their entire lifecycle, from spawning to death, in the aquatic system. Catch and Release fishing improves native fish populations by allowing more fish to remain and reproduce in the ecosystem, and,

WHEREAS, the Nebraska Game and Parks recommends a Catch and Release program after extensive restock on bass and bluegill only until habitat has been established;

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF DAVID CITY, NEBRASKA, that, from September 23, 2020 until December 31, 2022, largemouth bass and bluegill fishing shall be allowed only as Catch and Release on the David City Park lakes to allow for the fish habitat to be established."

Passed and approved this 23<sup>rd</sup> day of September, 2020.

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Mayor Alan Zavodny

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City Clerk Tami L. Comte

Council member Tom Kobus made a motion to table the estimate from Bierman Contracting to install downtown cable system and lighting. Council Member Pat Meysenburg seconded the motion. The motion carried.

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

Mayor Zavodny stated that the next item on the agenda was consideration/discussion concerning the law enforcement contract with Butler County.

City Administrator Clayton Keller said, "We finally have a contract put together. I got it back from Joanna, at our City Attorney's office. The mayor and I have taken a look at it. We have what we want in there. I sent an email out today to all of the law enforcement contract committee. We will meet next Tuesday afternoon to review it and see how the County feels about it. We'll see where it goes from there."

Mayor Zavodny said, "I'm going to speak in generalities. We're asking for a bunch of new things with performance and limiting it to a one-year contract and then reevaluating. I think that they would like a little longer. I would imagine that the County would like a longer-term agreement, but I would hold fast and let's try this for one year because we have all of these Ordinances and we have the vehicles that we have been working through. We have the performance based, which is brand new, that we're putting in and it probably protects the County, to some extent, too. After one year they may say "we hate this thing". I think it's a protection for both sides. Thanks to the committee for getting us to this point and working on it. Hopefully, we'll be able to come to some type of an agreement."

Council member Pat Meysenburg made a motion to authorize Mayor Zavodny to hire legal counsel for litigation concerning land use near the David City Municipal Airport. Council Member Tom Kobus seconded the motion. The motion carried.

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

Council member Tom Kobus made a motion to adjourn. Council Member Bruce Meysenburg seconded the motion. Kevin Hotovy: Absent, Tom Kobus: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, John Vandenberg: Yea, Alan Zavodny (Mayor): Yea  
Yea: 5, Nay: 0, Absent: 1

The motion carried and Mayor Zavodny declared the meeting adjourned at 8:10 p.m.

CERTIFICATION OF MINUTES

September 23, 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 September 23, 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