

CITY COUNCIL PROCEEDINGS

November 9, 2022

The City Council of the City of David City, Nebraska, met in open public session at 7:00 p.m. in the meeting room of the City Office at 490 "E" Street, David City, Nebraska. The Public had been advised of the meeting by publication of notice in The Banner Press on November 3rd, 2022, 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.

Present for the meeting were: Mayor Alan Zavodny, Council President Tom Kobus, Council members Jessica Miller, Kevin Woita, Pat Meysenburg, Bruce Meysenburg, City Attorney Michael Sands, Interim City Administrator/City Clerk Tami Comte. Council member John Vandenberg was absent.

Also present for the meeting were: Deputy City Clerk Lori Matchett, Electric Dept. Supervisor Patrick Hoeft, Water Operator In Charge Dan Sobota, Water/Sewer employees Charles Dresch and Holly Fletcher, Special Projects Coordinator Dana Trowbridge, Council member elect Keith Marvin, Don Prochaska, Ron Pleskac, Ryan Ruth with First State Insurance, Rick Schneider, Dan Schwartzkopf and Jason Boyd with Jones Group, and Sheriff Tom Dion.

The meeting opened with the Pledge of Allegiance.

Mayor Alan Zavodny informed the public of the "Open Meetings Act" posted on the west wall of the meeting room and asked those present to please silence their cell phones. He also reminded the public that if they speak tonight in front of the Council that they must state their name and address for the record.

Council member Pat Meysenburg made a motion to approve the minutes of the October 26, 2022 City Council meeting as presented. Council Member Jessica Miller seconded the motion. The motion carried. Tom Kobus: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Jessica Miller: Yea, John Vandenberg: Absent, Kevin Woita: Yea
Yea: 5, Nay: 0, Absent: 1

Council member Pat Meysenburg made a motion to approve the claims as presented. Council Member Kevin Woita seconded the motion. The motion carried. Tom Kobus: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Jessica Miller: Yea, John Vandenberg: Absent, Kevin Woita: Yea
Yea: 5, Nay: 0, Absent: 1

Mayor Alan Zavodny stated that the next item on the agenda was committee and officers reports.

Mayor Alan Zavodny stated that it is the City's intention to move forward with negotiations and engagement of M.E. Collins to pave the streets with the understanding that the work/bid will be in-line with the engineer's estimate.

Mayor Alan Zavodny congratulated everyone who ran in the general election and was elected and commended everyone who ran for election.

Water Operator In Charge Dan Sobota introduced the water/sewer departments newest employees Charles (Matthew) Dresch and Holly Fletcher.

Mayor Alan Zavodny welcomed the new employees to the team.

Council member Bruce Meysenburg made a motion to approve the committee and officer reports as presented. Council Member Pat Meysenburg seconded the motion. The motion carried.

Tom Kobus: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Jessica Miller: Yea, John Vandenberg: Absent, Kevin Woita: Yea
Yea: 5, Nay: 0, Absent: 1

Council member Pat Meysenburg made a motion to approve Change Order #1 in the amount of \$(26,070.70) and Payment #1 for Midlands Contracting, Inc. in the amount of \$360,943.15 for the Akrs Water & Sewer Utility Extension. Council Member Kevin Woita seconded the motion. The motion carried.

Tom Kobus: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Jessica Miller: Yea, John Vandenberg: Absent, Kevin Woita: Yea
Yea: 5, Nay: 0, Absent: 1

(This space left intentionally blank)

CHANGE ORDER

No. 1



Date of issuance: 10/28/2022 Effective Date: 10/28/2022

Project: Akrs Water/Sewer Utility Extension	Owner: City of David City, Nebraska	Owner's Contract No.: N/A
Contract: Base Bid – Unit Price		Date of Contract: August 10, 2022
Contractor: Midlands Contracting, 10075 1 st Ave, Kearney, NE 68847		Engineer's Project No.: 022-01722
The Contract Documents are modified as follows upon execution of this Change Order:		

Description:
 1. Final quantity adjustment during construction. Large deduct occurred from removal of the last block of sewer main prior to bidding, but the original bid quantity was included with the bid.

Attachments: Cost Proposal #1 (2 pages), dated 8/19/2022, and final quantity spreadsheet.

CHANGE IN CONTRACT PRICE	CHANGE IN CONTRACT TIMES
Original Contract Price: \$ <u>397,013.85.00</u>	Original Contract Times: Substantial Completion (days or date): <u>November 1, 2022</u> Ready for Final Payment (days or date): <u>November 15, 2022</u>
[Increase] [Decrease] from previously approved Change Orders No. <u> </u> to No. <u> </u> : \$ <u>0</u>	[Increase] [Decrease] from previously approved Change Orders No. <u> </u> to No. <u> </u> : Substantial Completion (days or date): <u>N/A</u> Ready for Final Payment (days or date): <u>N/A</u>
Contract Price prior to this Change Order: \$ <u>397,013.85.00</u>	Contract Times prior to this Change Order: Substantial Completion (days or date): <u>November 1, 2022</u> Ready for Final Payment (days or date): <u>November 15, 2022</u>
Decrease of this Change Order: \$ <u>26,070.70</u>	Increase of this Change Order: Substantial Completion (days or date): <u>92</u> Ready for Final Payment (days or date): <u>96</u>
Contract Price incorporating this Change Order: \$ <u>370,943.15</u>	Contract Times with all approved Change Orders: Substantial Completion (days or date): <u>November 1, 2022</u> Ready for Final Payment (days or date): <u>November 15, 2022</u>

RECOMMENDED: By: <u></u> Engineer (Authorized Signature) Title: <u>Senior Engineer</u> Date: <u>10/28/2022</u>	ACCEPTED: By: _____ Owner (Authorized Signature) Title: _____ Date: _____	ACCEPTED: By: <u></u> Contractor (Authorized) Title: <u>PM</u> Date: <u>10/28/2022</u>
Approved by Funding Agency (if applicable): By: _____ Title: _____ Date: _____		

Cc: City of David City; Midlands Contracting (Contractor); Olsson File
 F:\2022\01501-02000\022-01722\60-Construction\02-Change Management\Change Orders\21-10-28_Change Order_01 022-01722.docx



COST PROPOSAL REQUEST

- OWNER
- ENGINEER
- CONSULTANT
- CONTRACTOR

PROJECT NAME:	Akrs Water/Sewer Utility Extension	REQUEST NO.:	001
PROJECT #:	022-01722	DATE ISSUED:	August 17, 2022
OWNER:	City of David City, NE	ENGINEER:	Olsson; Lincoln, NE
TO CONTRACTOR:	Midlands Contracting 10075 1 st Ave Kearney, NE 68847	ADDITIONAL INFO HERE:	n/a

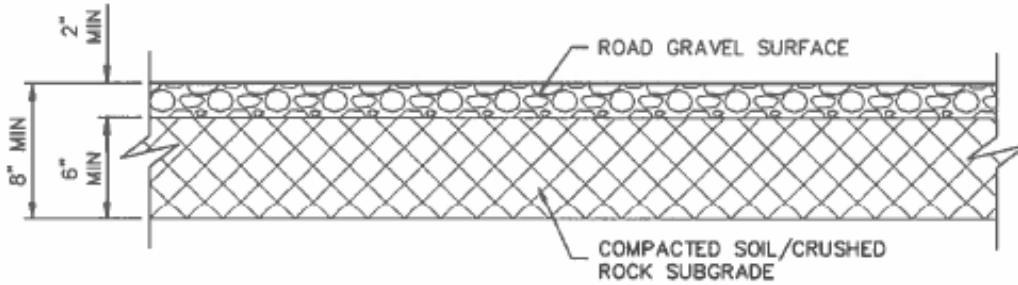
NOTES: Please submit an itemized cost proposal for changes in the contract costs and schedule, for proposed modifications to the Contract Documents as described below and as shown in attachments. Submit cost proposal within 7 calendar days or notify the Engineer in writing of the date on which you anticipate submitting the requested proposal.

THIS IS **NOT** A CHANGE ORDER, A CONSTRUCTION CHANGE DIRECTIVE OR A DIRECTION TO PROCEED WITH THE WORK DESCRIBED IN THE PROPOSED MODIFICATIONS.

Description: Add a unit price for the following item with the associated detail:

Aggregate Roadway Surfacing. This Bid Item shall include all necessary materials, homeowner coordination, unclassified excavation, subgrade preparation, placing, mixing, compaction, and incidental work for constructing aggregate surfacing in accordance with the plans and specifications. Additional surfacing required as a result of Contractor's operations shall be provided at the Contractor's expense. The pay item is one (1) ton in place with an initial quantity of 35 tons.

The location of this crossing is on Sheet 6 of 13, which is a homeowners drive at 3661 MN Road/Hwy 15.



NOTES:

1. IN GENERAL, THIS CONSTRUCTION SHALL INCLUDE COMBINING THREE INCHES OF CRUSHED ROCK (TYPE C AGGREGATE) IN THE UPPER LAYER OF THE SUBGRADE AND THE APPLICATION OF A TWO (2) INCH ROAD GRAVEL (TYPE D AGGREGATE) SURFACE TO THE CRUSHED ROCK BASE, TO THE WIDTHS AND CROSS SECTION AS PROVIDED BY THE PLANS, REQUIRED CONTRACTORS REMOVAL, OR AS DIRECTED BY THE ENGINEER.
2. THE CRUSHED ROCK MATERIAL SHALL BE DEPOSITED UNIFORMLY UPON AN APPROVED SUBGRADE IN STRAIGHT, SINGLE OR DOUBLE LINES, FOLLOWED IMMEDIATELY THEREAFTER BY SCARIFICATION OF THE ROCK AND SUBGRADE TO PRODUCE A UNIFORM SOIL-ROCK MIXTURE 6 INCHES MINIMUM THICKNESS. THE MIXTURE SHALL BE SPREAD INTO A UNIFORM LAYER AND COMPACTED USING A SHEEPSFOOT ROLLER AND WATER AS REQUIRED. THE ROAD GRAVEL MATERIAL SHALL THEN BE DELIVERED AND UNIFORMLY SPREAD, FOLLOWED IMMEDIATELY BY COMPACTION USING AN APPROVED ROLLER AND WATER AS REQUIRED, TO THE SATISFACTION OF THE ENGINEER.

AGGREGATE ROADWAY OR PARKING DETAIL (A)
 SCALE: 1 1/2" = 1'-0"

Contractor's email response from 8/19/2022 is \$40 per ton.

Attachments: *None.*

REQUESTED BY:

Craig Reinsch
 (Signature)

Craig Reinsch, PE
 (Printed Name and Title)



CERTIFICATE OF PAYMENT NO. 1

Date of Issuance: October 31, 2022

Project: Akrs Water and Sewer Utility Extension, David City, Nebraska

Project No. 022-01722

Contractor: Midlands Contracting, Inc., 10075 1st Avenue, Kearney, Nebraska 68848

DETAILED ESTIMATE		
Description	Unit Prices	Extension
See Attached.		
PLEASE REMIT PAYMENT TO: Midlands Contracting, Inc.		

Value of Work Completed: \$360,943.15

Original Contract Cost: \$397,013.85
 Approved Change Orders: \$-26,070.70
 No. 1
 Total Contract Cost: \$370,943.15

Value of completed work and materials stored..... \$ 360,943.15
 Less retained percentage (0%) \$ 0.00
 Net amount due including this estimate..... \$ 360,943.15
 Less: Estimates previously approved:

No. 1 _____ No. 2 _____ No. 3 _____

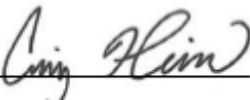
Total Previous Estimates \$ 0.00

NET AMOUNT DUE THIS ESTIMATE \$ 360,943.15

The undersigned hereby certifies, based upon periodic observations as set forth in scope of work and the data included in all applicable payment applications that, to the best of its knowledge, information and belief: (1) the work has progressed as indicated in the applicable payment applications; (2) the work performed and materials delivered by Contractor are in conformance with the plans and specifications; and (3) the Contractor, in accordance with the contract, is entitled to payment as indicated above.

This certification does not constitute a warranty or guarantee of any type. Client shall hold its Contractor solely responsible for the quality and completion of the Project, including construction in accordance with the construction documents. Any duty or obligation of Olsson hereunder is for the sole benefit of the Client and not for any third party, including the Contractor or any Subcontractor.

OLSSON

By 

cc: City of David City, Owner
 Midlands Contracting, Inc., Contractor

Olsson Project File



Contractor's Application for Payment No. 1

Application Period: 10/1/2022 - 10/31/2022	Application Date: 10/31/2022
To (Owner): City of David City, Nebraska	From (Contractor): Midlands Contracting, Inc.
Project: Akes Water and Sewer Extension	Contract: Sewer and Water
Owner's Contract No.:	Contractor's Project No.: Engineer's Project No.: 022-01732

Application For Payment
 Change Order Summary

Approved Change Orders			
Number	Additions	Deductions	
1		\$26,070.70	1. ORIGINAL CONTRACT PRICE..... \$ 397,013.85
			2. Net change by Change Orders..... \$ -26,070.70
			3. Current Contract Price (Line 1 + 2)..... \$ 370,943.15
			4. TOTAL COMPLETED AND STORED TO DATE (Column F total on Progress Estimates)..... \$ 360,943.15
			5. RETAINAGE:
			a. X \$360,943.15 Work Completed..... \$
			b. X Stored Material..... \$
			c. Total Retainage (Line 5a + Line 5b)..... \$
			6. AMOUNT ELIGIBLE TO DATE (Line 4 - Line 5.c)..... \$ 360,943.15
			7. LESS PREVIOUS PAYMENTS (Line 6 from prior Application)..... \$
			8. AMOUNT DUE THIS APPLICATION..... \$ 360,943.15
			9. BALANCE TO FINISH, PLUS RETAINAGE (Column G total on Progress Estimates + Line 5.c above)..... \$ 310,000.00
TOTALS		\$26,070.70	
NET CHANGE BY CHANGE ORDERS		-\$26,070.70	

Contractor's Certification

The undersigned Contractor certifies, to the best of its knowledge, the following:

(1) All previous progress payments received from Owner on account of Work done under the Contract have been applied on account to discharge Contractor's legitimate obligations incurred in connection with the Work covered by prior Applications for Payment;

(2) Title to all Work, materials and equipment incorporated in said Work, or otherwise listed in or covered by this Application for Payment, will pass to Owner at time of payment free and clear of all Liens, security interests, and encumbrances (except such as are covered by a bond acceptable to Owner indemnifying Owner against any such Liens, security interest, or encumbrances); and

(3) All the Work covered by this Application for Payment is in accordance with the Contract Documents and is not defective.

Contractor Signature: 

Date: 10/31/2022

Payment of: \$ _____
 (Line 8 or other - attach explanation of the other amount)

is recommended by: _____
 (Engineer) (Date)

Payment of: \$ _____
 (Line 8 or other - attach explanation of the other amount)

is approved by: _____
 (Owner) (Date)

Approved by: _____
 Funding or Financing Entity (if applicable) (Date)

Progress Estimate - Unit Price Work

Contractor's Application

For (Contract):						Application Number:					
Aksy Water and Sewer Extension						1					
Application Period:						Application Date:					
10/1/2022 - 10/31/2022						10/31/2022					
A				B	C	D	E	F			
Item		Contract Information				Estimated Quantity Installed	Value of Work Installed to Date	Materials Presently Stored (not in C)	Total Completed and Stored to Date (D + E)	% (F / B)	Balance to Finish (B - F)
Bid Item No.	Description	Item Quantity	Units	Unit Price	Total Value of Item (\$)						
1	Mobilization-Demobilization-Bonds-Insurance	1	LS	\$ 5,000.00	\$5,000	1	\$5,000.00		\$5,000.00		
2	Clearing & Grubbing	1	LS	\$ 3,000.00	\$3,000	1	\$3,000.00		\$3,000.00	100.0%	
3	Traffic Control	1	LS	\$ 1,000.00	\$1,000	1	\$1,000.00		\$1,000.00	100.0%	
4	Connect to Existing Sanitary Sewer	1	EA	\$ 2,500.00	\$2,500	1	\$2,500.00		\$2,500.00	100.0%	
5	48" Eccentric Manhole	3	EA	\$ 7,000.00	\$21,000	3	\$21,000.00		\$21,000.00	100.0%	
6	48" Flat Top Manhole	1	EA	\$ 6,000.00	\$6,000						\$6,000.00
7	48" Manhole Section - Over 6'	7.7	VF	\$ 400.00	\$3,080	7.7	\$3,080.00		\$3,080.00	100.0%	
8	8" PVC Cap	3	EA	\$ 100.00	\$300	2	\$200.00		\$200.00	66.7%	\$100.00
9	8" PVC SDR35 Sanitary Sewer	967	LF	\$ 60.00	\$58,020	576	\$34,560.00		\$34,560.00	59.0%	\$23,460.00
10	16" C900 PVC Water Main	1396	LF	\$ 155.00	\$216,380	1387	\$214,985.00		\$214,985.00	99.4%	\$1,395.00
11	8" C900 PVC Water Main	16	LF	\$ 80.00	\$1,280	44	\$3,520.00		\$3,520.00	275.0%	-\$2,240.00
12	6" C900 PVC Water Main	1	LF	\$ 70.00	\$70	12	\$840.00		\$840.00	1200.0%	-\$770.00
13	16" Gate Valve w/Box - MJ	2	EA	\$ 11,000.00	\$22,000	2	\$22,000.00		\$22,000.00	100.0%	
14	8" Gate Valve w/Box - MJ	1	EA	\$ 2,700.00	\$2,700	1	\$2,700.00		\$2,700.00	100.0%	
15	6" Gate Valve w/Box - MJ	1	EA	\$ 1,950.00	\$1,950	1	\$1,950.00		\$1,950.00	100.0%	
16	Fire Hydrant Assembly	3	EA	\$ 7,750.00	\$23,250	3	\$23,250.00		\$23,250.00	100.0%	
17	Ductile Iron Fittings - MJ	3889	LBS	\$ 4.05	\$18,084	3991	\$18,558.15		\$18,558.15	102.6%	-\$474.10
18	Connect to Existing Water Main - 4" or Larger	1	EA	\$ 1,400.00	\$1,400	1	\$1,400.00		\$1,400.00	100.0%	
19	Seeding & Mulching	1	LS	\$ 2,500.00	\$2,500						\$2,500.00
20	Erson Control	1	LS	\$ 7,500.00	\$7,500						\$7,500.00
21	Aggregate Roadway Surfacing		Ton	\$40.00		35	\$1,400.00		\$1,400.00	#DIV/0!	-\$1,400.00
Totals							\$197,013.85		\$160,943.15	90.9%	\$36,070.70

Council member Kevin Woita made a motion to advance to agenda item #17 discussion concerning employee's health insurance. Council Member Pat Meysenburg seconded the motion. The motion carried. Tom Kobus: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Jessica Miller: Yea, John Vandenberg: Absent, Kevin Woita: Yea
Yea: 5, Nay: 0, Absent: 1

Ryan Ruth, with First State Insurance, introduced himself and presented the options for health insurance coverage with Blue Cross Blue Shield, LIGHT, UHC and Medica as the options. He discussed the possibility of changing from an HSA to an HRA and the possible savings associated with that change.

Rick Schneider, with Jones Group, introduced himself and also introduced Jason Boyd and Don Schwatzkopf, who are also with Jones Group.

Don Schwatzkopf, with Jones Group, introduced himself and presented the options for health insurance coverage with Blue Cross Blue Shield and also Medica.

The Mayor and Council raised concerns regarding in-network versus out-of-network coverage and covering prescriptions for Medica.

Council member Bruce Meysenburg made a motion to adopt the Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation as a condition of receiving Federal financial assistance for the Municipal Airport. Council Member Kevin Woita seconded the motion. The motion carried.

Tom Kobus: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Jessica Miller: Yea, John Vandenberg: Absent, Kevin Woita: Yea
Yea: 5, Nay: 0, Absent: 1

(This space left intentionally blank)

DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM

FOR FAA FISCAL YEARS 2021, 2022 & 2023

David City Municipal Airport David City,

Nebraska

September 15, 2022

POLICY STATEMENT

Section 26.1, 26.23 Objectives/Policy Statement

The **City of David City**, David City, Nebraska, Sponsor of David City Municipal Airport has established a Disadvantaged Business Enterprise (DBE) Program in accordance with regulations of the U.S. Department of Transportation (U.S. DOT), 49 CFR Part 26. The **City of David City** has received Federal financial assistance from the U.S. Department of Transportation, and as a condition of receiving this assistance, the **City of David City** has signed an assurance that it will comply with 49 CFR Part 26 (hereafter referred to as "Part 26").

It is the policy of the **City of David City** to ensure that DBEs as defined in Part 26, have an equal opportunity to receive and participate in U.S. DOT–assisted contracts. It is also the **City of David City’s** policy to engage in the following actions on a continuing basis:

1. Ensure nondiscrimination in the award and administration of U.S. DOT- assisted contracts.
2. Create a level playing field on which DBEs can compete fairly for U.S. DOT-assisted contracts.
3. Ensure that the DBE Program is narrowly tailored in accordance with applicable law.
4. Ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs.
5. Help remove barriers to the participation of DBEs in U.S. DOT assisted contracts;
6. Promote the use of DBEs in all types of federally assisted contracts and procurement activities;
7. Assist the development of firms that can compete successfully in the marketplace outside the DBE Program; and
8. Make appropriate use of the flexibility afforded to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.

Tami Comte, City Administrator, City of David City, has been delegated as the DBE Liaison Officer. In that capacity, **Tami Comte, City Administrator** is responsible for implementing all aspects of the DBE program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by the **City of David City** in its financial assistance agreements with the Department of Transportation.

The **City of David City** has disseminated this policy statement to the **City of David City’s governing officials** and all of the components of our organization. This statement has been distributed to DBE and non-DBE business communities that may perform work on **City of David City** U.S. DOT-assisted contracts. The distribution was accomplished by **inclusion in bid specifications**.

Mayor: _____

Date: _____

GENERAL REQUIREMENTS

Section 26.1 Objectives

The objectives are elaborated in the policy statement on the first page of this program.

Section 26.3 Applicability

The **City of David City** is the recipient of Federal airport funds authorized by 49 U.S.C. 47101, *et seq.*

Section 26.5 Definitions

The **City of David City** will use terms in this program that have their meanings defined in Part 26, §26.5.

Section 26.7 Non-discrimination Requirements

The **City of David City** will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR Part 26 on the basis of race, color, sex, or national origin.

In administering its DBE program, the **City of David City** will not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE program with respect to individuals of a particular race, color, sex, or national origin.

Section 26.11 Record Keeping Requirements

Reporting to NDOT

The **City of David City** will provide data about its DBE Program to the Department as directed by U.S. DOT operating administrations.

DBE participation will be reported to Nebraska Department of Transportation - Division of Aeronautics (NDOT-A) as follows:

The **City of David City** will transmit to **NDOT-A** annually, by or before December 1, the information required for the "Uniform Report of DBE Awards or Commitments and Payments", as described in Appendix B to Part 26. The **City of David City** will similarly report the required information about participating DBE firms. All reporting will be done through the **NDOT-A** official reporting system, or another format acceptable to **NDOT-A** as instructed thereby.

Bidders List

The **Nebraska Department of Transportation – Division of Aeronautics (NDOT-A)**, acting as agent for the **City of David City**, will create a bidders list, consisting of information about all DBE and non-DBE firms that bid or quote on U.S. DOT-assisted contracts. The purpose of this requirement may allow use of the bidder's list approach to calculate overall goals. The bidders list will include the name, address, DBE/non-DBE status, age, and annual gross receipts of firms.

We will collect this information by requesting that prime bidders report the names and addresses of all firms who quote to them on subcontracts. We will collect this information using forms included in **Attachment 3**.

Records retention and reporting:

The **City of David City** will maintain records documenting a firm's compliance with the requirements of this part. At a minimum, the **City of David City** will keep a complete application package for each certified firm and all affidavits of no-change, change notices, and on-site reviews. These records will be retained in accordance with all applicable record retention requirements of the **City of David City** financial assistance agreement. Other certification or compliance related records will be retained for a minimum of three (3) years unless otherwise provided by applicable record retention requirements for the financial assistance agreement, whichever is longer.

Section 26.13 Federal Financial Assistance Agreement

The **City of David City** has signed the following assurances, applicable to all U.S. DOT-assisted contracts and their administration:

Assurance: - Each financial assistance agreement the **City of David City** signs with a NDOT operating administration (or a primary recipient) will include the following assurance:

The **City of David City** shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any U.S. DOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The **City of David City** shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of U.S. DOT-assisted contracts. The **City of David City's** DBE program, as required by 49 CFR Part 26 and as approved by U.S. DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the **City of David City** of its failure to carry out its approved program, the Department may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 *et seq.*).

Contract Assurance: The **City of David City** will ensure that the following clause is included in each U.S. DOT-funded contract it signs with a contractor (and each subcontract the prime contractor signs with a subcontractor):

The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of U.S. DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

- 1) Withholding monthly progress payments;
- 2) Assessing sanctions;
- 3) Liquidated damages; and/or
- 4) Disqualifying the contractor from future bidding as non-responsible.

ADMINISTRATIVE REQUIREMENTS

Section 26.21 DBE Program Updates

The **City of David City** is required to have a DBE program meeting the requirements of this part as it will receive grants for airport planning or development and will award prime contracts, cumulative total value of which exceeds \$250,000 in FAA funds in a federal fiscal year. The **City of David City** is not eligible to receive U.S. DOT financial assistance unless U.S. DOT has approved this DBE program and the **City of David City** is in compliance with it and Part 26. The **City of David City** will continue to carry out this program until all funds from U.S. DOT financial assistance have been expended. The **City of David City** does not have to submit regular updates of the DBE program document, as long as it remains in compliance. However, significant changes in the program, including those required by regulatory updates, will be submitted for U.S. DOT approval.

Section 26.23 Policy Statement

The Policy Statement is elaborated on the first page of this DBE Program.

Section 26.25 DBE Liaison Officer (DBELO)

The following individual has been designated as the DBE Liaison Officer for the **City of David City**:

Name:	Tami Comte, City Administrator
Address:	P.O. Box 191
City:	David City, Nebraska 68632-0191
Telephone:	402-367-3135
Email:	tcomte@davidcityne.com

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that the **City of David City** complies with all provision of 49 CFR Part 26. The DBELO has direct, independent access to the **Mayor of the City of David City** concerning DBE program

matters. An organizational chart displaying the DBELO's position in the organization is included in **Attachment 2** to this program.

The DBELO is responsible for developing, implementing, and monitoring the DBE program, in coordination with other appropriate officials. However, the **City of David City** does not have a dedicated civil rights department. The **City of David City** uses staff from NDOT-A and the **Nebraska Department of Transportation (NDOT)** Civil Rights Office for guidance on matters concerning the DBE program and to assist in the administration of the program. The duties and responsibilities include the following:

1. Gathers and reports statistical data and other information as required by U.S. DOT.
2. Reviews third party contracts and purchase requisitions for compliance with this program.
3. Works with all departments to set overall annual goals.
4. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
5. Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals) and monitors results.
6. Analyzes the **City of David City's** progress toward attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Advises the CEO/governing body on DBE matters and achievement.
9. Chairs the DBE Advisory Committee.
10. Determine contractor compliance with good faith efforts.
11. Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
12. Plans and participates in DBE training seminars.
13. Acts as liaison to the Uniform Certification Process.
14. Provides outreach to DBEs and community organizations to advise them of opportunities.
15. Maintains the agency's updated directory on certified DBEs.

NOTES*

Item 9: Given the very small size of the Sponsor organization, there is no defined DBE Advisory Committee. The DBELO does, however, advise the entire organization on DBE matters and achievements, per Item 8.

Item 12: Given the very small size of the Sponsor organization, the organization does not have the resources to plan and participate in DBE training seminars. For this duty or responsibility, the organization relies on the resources of the NDOT and their Civil Rights Office to provide appropriate training opportunities.

Item 13: Per Section 26.31 below, the Sponsor is a non-certifying member of the Nebraska Unified Certification Program (UCP). As a non-certifying, or Signatory, member, the Sponsor agrees to designate the NDOT Highway Civil Rights Office (HCRO) as the sole certifying agency of the NUCP.

Item 15: Per Sections 26.31, the **City of David City** is a non-certifying member of the Nebraska Unified Certification Program (UCP). The UCP maintains a directory identifying all firms eligible to participate as DBEs, which contains all the elements required by §26.31. This is the directory used by the Sponsor.

Section 26.27 DBE Financial Institutions

It is the policy of the **City of David City** to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to use these institutions, and to encourage prime contractors on U.S. DOT-assisted contracts to make use of these institutions.

Utilizing a list of Nebraska banks provided by the Nebraska Department of Banking and Finance, we determined that there are four (4) banks in David City as of June 21, 2021: Bank of the Valley, First National Bank of Omaha, U.S. Bank National Association, Union Bank and Trust Company. Following the process used by the Nebraska Department of Transportation, the **City of David City** investigated the availability of socially and economically disadvantaged financial institutions in Nebraska, including the 4 institutions noted above, using the following reports/lists:

- Federal Deposit Insurance Corporation 2019 report to Congress “Preservation and Promotion of Minority Depository Institutions”
(<https://www.fdic.gov/regulations/resources/minority/congress/report-2019/2-summary-profile.pdf>)
- Federal Deposit Insurance Corporation Minority Depository Institutions List (<https://www.fdic.gov/regulations/resources/minority/mdi.html>)
- Federal Deposit Insurance Corporation Minority Depository Institutions MDI and CDFI Ban Locator (https://fdic-gis.maps.arcgis.com/apps/webappviewer/index.html?id=76c05acdf50f4e3db35cd0421_03e998e)
- Office of the Comptroller of the Currency Minority and Women-Owned Depository List (<https://www.occ.treas.gov/topics/consumers-and-communities/minority-outreach/locations-list-view-minority.html?category=ho&type=people>)

From this review, only one depository institution in the state, The First National Bank of Gordon, is noted on the Office of the Comptroller of the Currency’s Minority and Women-Owned Depository list, as a Women Owned business. No other lists included the First National Bank of Gordon, or

any other socially or economically disadvantaged financial institutions. None of the 4 local institutions noted above were listed on any minority list.

According to Part 26.27, the **City of David City** is required to “thoroughly investigate ... financial institutions ... in your community.” David City is a city with a population of less than 3,000. It is located in an area with no suburbs. The **City of David City** constitutes the **City of David City’s** community. The **City of David City** has investigated all financial institutions within their community and thus met the requirements of Part 26.27.

The **City of David City’s** community under 26.27 and the **City of David City’s** market area under 26.45 are not the same areas. Due to the area’s low population density, contractors typically travel hundreds of miles to participate on U.S. DOT-assisted contracts. Therefore, the **City of David City’s** market area that was used to establish their overall DBE goal is discussed in **Attachment 5**. It would be impractical, infeasible, and unreasonable for the **City of David City** to use a financial institution outside of their community.

Section 26.29 Prompt Payment Mechanisms

The **City of David City** requires that all subcontractors performing work on U.S. DOT-assisted contracts shall be promptly paid for work performed pursuant to their agreements, in accordance with all relevant federal, state, and local law.

In accordance with 49 CFR §26.29, the **City of David City** established a contract clause implementing this requirement and requires prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 30 days from the prime contractor’s receipt of each payment from the **City of David City**.

The **City of David City** ensures prompt and full payment of retainage from the prime contractor to the subcontractor within no later than 30 days after the subcontractor’s work is satisfactorily completed. Pursuant to §26.29, the **City of David City** has selected the following method to comply with this requirement:

(1) We will hold retainage from prime contractors and provide for prompt and regular incremental acceptances of portions of the prime contract, pay retainage to prime contractors based on these acceptances, and require a contract clause obligating the prime contractor to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within 30 days after your payment to the prime contractor.

To implement this measure, the **City of David City** includes the following clause from FAA Advisory Circular 150/5370-10 in each U.S. DOT-assisted prime construction contract:

- (a) The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance no later than 30 days from receipt of payment from the **City of David City**. The prime contractor agrees further to return retainage payments to each subcontractor within 30 days after the subcontractor’s work is satisfactorily completed. Any

delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the **City of David City**. This clause applies to both DBE and non-DBE subcontractors.

- (b) In the event of noncompliance with this provision, the **City of David City** may impose appropriate penalties in accordance with terms and conditions of this contract.
- (c) The prime contractor will not be reimbursed for work performed by subcontractors unless and until the prime contractor has paid for work performed by such subcontractors in accordance with this provision and contract terms.

Section 26.31 Directory

The **City of David City** is a non-certifying member of the Nebraska Unified Certification Program (UCP). The UCP maintains a directory identifying all firms eligible to participate as DBEs, which contains all the elements required by §26.31. The directory is available from:

Minority Business Coordinator Nebraska
Department of Transportation
P.O. Box 94759
Lincoln, NE 68509
402-479-3728
<https://dot.nebraska.gov/business-center/civil-rights/>

The directory lists firms that have passed NDOT's certification process. The listing includes the firm's name, address, phone number and the type of work the firm has been certified to perform as a DBE. NDOT updates the directory at least quarterly.

Section 26.33 Over-concentration

The **City of David City** has not identified that over-concentration exists the types of work that DBEs perform and has not implemented a Business Development Program

Section 26.35 Business Development Programs

The **City of David City** has not established a Business Development Program.

Section 26.37 Monitoring Responsibilities

The **City of David City** implements and carries out appropriate mechanisms to ensure compliance with 49 CFR Part 26 program requirements by all program participants, including prompt payment, and describes and set forth these mechanisms in the **City of David City's** DBE program.

The **City of David City** actively monitors participation by maintaining a running tally of actual DBE attainments (e.g., payments actually made to DBE firms), including a means of comparing these attainments to commitments.

Monitoring Payments to DBEs and Non-DBEs

The **City of David City** undertakes ongoing monitoring of prime payments to subcontractors over the course of any covered contract. Such monitoring activities will be accomplished through the following method(s):

- Entering into an agreement for construction observation services, which will include reviewing compliance with Labor and Civil Rights provisions in accordance with FAA AIP Sponsor Guide No. 1070.
- Keeping a running tally of actual payments to DBE firms for work committed to them at the time of contract award.

The **City of David City** requires prime contractors to maintain records and documents of payments to subcontractors, including DBEs, for a minimum of three (3) years unless otherwise provided by applicable record retention requirements for the **City of David City's** financial assistance agreement, whichever is longer. These records will be made available for inspection upon request by any authorized representative of the **City of David City** or U.S. DOT. This reporting requirement extends to all subcontractors, both DBE and non-DBE.

- The **City of David City** proactively reviews contract payments every quarter to subcontractors including DBEs. Payment reviews will evaluate whether the actual amount paid to DBE subcontractors is equivalent to the amounts reported to the **City of David City** by the prime contractor.

Prompt Payment Dispute Resolution

The **City of David City** will take the following steps to resolve disputes as to whether work has been satisfactorily completed for purposes of §26.29.

In the event of a dispute as to whether work has been satisfactorily completed or not, the DBELO shall schedule and attend a meeting between the **City of David City, Engineering Consultant, the project prime contractor and the DBE subcontractor**. Attendees for the prime contractor and DBE subcontractor shall have an appropriate authority to enter into decisions obligating their respective company.

The **City of David City** has established, as part of its DBE program, the following mechanism(s) to ensure prompt payment and return of retainage:

- (1) A contract clause providing that the prime contractor will not be reimbursed for work performed by subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have performed:

- (a) The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance no later than 30 days from receipt of payment from the Sponsor. The prime contractor agrees further to return retainage payments to each subcontractor within 30 days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the Sponsor. This clause applies to both DBE and non-DBE subcontractors.
- (b) In the event of noncompliance with this provision, the Sponsor may impose appropriate penalties in accordance with terms and conditions of this contract.
- (c) Subject to the approval of the Sponsor, the prime contractor shall use appropriate alternative dispute resolution mechanisms to resolve any payment disputes that may arise.
- (d) The prime contractor will not be reimbursed for work performed by subcontractors unless and until the prime contractor has paid for work performed by such subcontractors in accordance with this provision and contract terms.

Prompt Payment Complaints

Complaints by subcontractors regarding the prompt payment requirements are handled according to the following procedure.

- If affected subcontractor is not comfortable contracting prime directly regarding payment or unable to resolve payment discrepancies with prime, subcontractor should contact DBELO to initiate complaint.
- If filing a prompt payment complaint with the DBELO does not result in timely and meaningful action by the **City of David City** to resolve prompt payment disputes, affected subcontractor may contact the responsible NDOT-A contact.
- Pursuant to Sec. 157 of the FAA Reauthorization Act of 2018, all complaints related to prompt payment will be reported in a format acceptable to the FAA, including the nature and origin of the complaint and its resolution.

Enforcement Actions for Noncompliance of Participants

The **City of David City** will provide appropriate means to enforce the requirements of §26.29. These means include:

In the event of non-compliance with the DBE regulation by a participant in our procurement activities, the **City of David City** has available several remedies to enforce the DBE requirements contained in its contract, including, but not limited to, the following:

- Breach of contract action, pursuant to the terms of the contract.
- Breach of contract action, pursuant to Nebraska Statute

- 3-504 City Airport Authority
- 3-116, 3-120, 3-125 NDA
- Other sections of Nebraska Statutes that may be applicable and could be used to enforce DBE requirements include unemployment compensation fund contributors and interest due under the provisions of Nebraska Statute 48-601 to 48-669 on wages paid to individuals employed. Conditions regarding fair employment practices as contained in Nebraska Statutes 48-1101 through 48-225 and to comply with minimum wage scale and nondiscrimination as defined in Nebraska Statutes 48-1201 through 48-1277.

In addition, the federal government has available several enforcement mechanisms that it may apply to firms participating in the DBE program, including, but not limited to, the following:

- Suspension or debarment proceedings pursuant to 49 CFR Part 26.
- Enforcement action pursuant to 49 CFR Part 31.
- Prosecution pursuant to 18 USC 1001.

The **City of David City** will actively implement the enforcement actions detailed above. Monitoring

Contracts and Work Sites

The **City of David City** reviews contracting records and has engaged with a professional consultant to assist in actively monitoring work sites to ensure that work committed to DBEs at contract award or subsequently (e.g., as the result of modification to the contract) is actually performed by the DBEs to which the work was committed. Work site monitoring is performed by the professional consultant. Contracting records are maintained by the professional consultant and reviewed by Tami Comte, City Administrator. The **City of David City** will maintain written certification that contracting records have been reviewed and work sites have been monitored for this purpose.

Section 26.39 Fostering small business participation

The **City of David City** has created a Small Business element to structure contracting requirements to facilitate competition by small business concerns, taking all reasonable steps to eliminate obstacles to their participation, including unnecessary and unjustified bundling of contract requirements that may preclude small business participation in procurements as prime contractors or subcontractors.

The small business element is incorporated as **Attachment 10** to this DBE Program. The program elements will be actively implemented to foster small business participation. **Implementation of the small business element is required in order for the City of David City to be considered by U.S. DOT as implementing this DBE program in good faith.**

SUBPART C – GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 26.43 Set-asides or Quotas

The **City of David City** does not use quotas in any way in the administration of this DBE program.

Section 26.45 Overall Goals

The **City of David City** will establish an overall DBE goal covering a three-year federal fiscal year period if it anticipates awarding U.S. DOT -funded prime contracts the cumulative total value of which exceeds \$250,000 in U.S. DOT funds during any one or more of the reporting fiscal years within the three-year goal period. In accordance with §26.45(f), the **City of David City** will submit its Overall Three-year DBE Goal to the FAA by August 1st of the year in which the goal is due, as required by the schedule established by and posted to the website of NDOT.

NDOT:

<https://dot.nebraska.gov/business-center/civil-rights/>

FAA:

https://www.faa.gov/about/office_org/headquarters_offices/acr/bus_ent_program/media/Schedule_of_DBE_and_ACDBE_Reporting_Requirements_Dec_2017_Issue.pdf

The DBE goals will be established in accordance with the 2-step process as specified in 49 CFR Part 26.45. If the **City of David City** does not anticipate awarding prime contracts the cumulative total value of which exceeds \$250,000 in DOT funds during any of the years within the three-year reporting period, an overall goal will not be developed. However, this DBE Program will remain in effect and the **City of David City** will seek to fulfill the objectives outlined in 49 CFR Part 26.1.

Method: The following is a summary of the method we used to calculate this goal:

We consulted with NDOT-A to establish the geographical area from which we could reasonably expect ready, willing, and able prime contractors and subcontractors to be obtained. After identifying the geographical area, we search the US Census Bureau's data base to obtain the total number of businesses that correspond to the NAICS code related to the prime scope of work for the project. We review the NDOT data base to identify the number of certified DBE's in the geographical area with work codes similar to the NAICS codes.

Step 1: The first step is to determine a base figure for the relative availability of DBEs in the market area. The **City of David City** will use a Bidders List, the goal of another NDOT recipient, DBE Directory information and Census Bureau Data, or other alternative method that complies with §26.45 as a method to determine the base figure. The base figure was determined by dividing the number of DBE firms on this list by the total number of firms. See **Attachment 5**: "Step 1: Goal Setting Process for details". The **City of David City** understands that the exclusive use of a list of prequalified contractors or plan holders, or a bidders list that does not comply with the requirements of 49 CFR Part 26.45(c)(2), is not an acceptable alternative means of determining the availability of DBEs.

Step 2: The second step is to adjust, if necessary, the “base figure” percentage from Step 1 so that it reflects as accurately as possible the DBE participation the recipient would expect in the absence of discrimination. Adjustments may be made based on past participation, and/or information about barriers to entry to past competitiveness of DBEs on contracts. The **City of David City** will examine all of the evidence available in its jurisdiction to determine what adjustment, if any, is needed. If the evidence does not suggest an adjustment is necessary, then no adjustment shall be made.

We have been unable to find evidence of past discrimination and have not identified any barriers in our local market area research. In addition, NDOT-A is not aware of past discrimination and has not identified any barriers in our local market area research to adjust their base figure for over utilization or under-utilization to warrant adjustments to their base figure. Therefore, we have not adjusted our base figure due to discrimination.

Any methodology selected will be based on demonstrable evidence of local market conditions and be designed to ultimately attain a goal that is rationally related to the relative availability of DBEs in the **City of David City’s** market.

Process: Before establishing the overall goal each year, the **City of David City** will consult with NDOT-A to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the **City of David City’s** efforts to establish a level playing field for the participation of DBEs. The **City of David City** may also consult with United Minority Contractors Association of Nebraska and the Urban League of Nebraska to obtain information concerning the availability of disadvantaged and non- disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the **City of David City’s** efforts to establish a level playing field for the participation of DBEs.

Following this consultation, NDOT-A, as agent for the **City of David City**, will post the airport DBE program and its overall goal on the NDOT website and notify agencies and organizations, indicating that the **City of David City** is interested in obtaining relevant information regarding goal setting and goal methodology. The link to the airport’s program and its overall goal online and the list of agencies and organizations selected are available in **Attachment 5**, under Public Participation. Each notice will contain an explicit invitation to meet with the NDOT-A face-to-face or via conference call (i.e., a “scheduled, direct, interactive exchange”) to discuss any questions or comments on DBE participation goal setting.

In establishing the overall goal, the **City of David City** will provide for consultation and publication. This includes consultation with minority, women’s and general contractor groups, community organizations, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the efforts by the **City of David City** to establish a level playing field for the participation of DBEs. The consultation will include a scheduled, direct, interactive exchange (e.g., a face-to-face meeting, video conference, teleconference) with as many interested stakeholders as possible focused on obtaining information relevant to the goal setting process, and it will occur before the **City of David City** is required to submit the goal methodology to the operating administration for review pursuant to §26.45(f). The goal submission will document

the consultation process in which the **City of David City** engaged. Notwithstanding paragraph (f)(4) of §26.45, the proposed goal will not be implemented until this requirement is met.

In addition to the consultation described above, the **City of David City** will publish a notice announcing the proposed overall goal before submission to the FAA. The notice will be published in the local newspaper, posted on NDOT's official internet web site, and may be directly mailed to other local interested agencies. The list of potential agencies interested can be found in **Attachment 5**, under "Public Participation". If the proposed goal changes following review by FAA, the revised goal will be posted on the official internet web site.

The public will also be informed that the proposed overall goal and its rationale are available for inspection during normal business hours at the **City of David City**. The link to the proposed goal is found below:

<https://dot.nebraska.gov/business-center/civil-rights/airport-dbe/>

This notice will provide that the **City of David City** and U.S. DOT will accept comments on the goals for 30 days from the date of the notice. Notice of the comment period will include the addresses to which comments may be sent (including offices and websites) where the proposal may be reviewed.

The Overall Three-Year DBE Goal submission to U.S. DOT will include a summary of information and comments received, if any, during this public participation process and the **City of David City's** responses.

The **City of David City** will establish its overall goal based on one or more projects. Our overall goal will be submitted to FAA at least 30 days prior to the first solicitation for a U.S. DOT-assisted contract for a project that contains a goal, including professional services, construction, or other contracts. Unless we have received other instructions from U.S. DOT, we will establish a goal on a project basis and begin using our overall goal by the time of the first solicitation for a contract that contains a goal.

The **City of David City** will begin using the overall goal on October 1 of the relevant period, unless other instructions from U.S. DOT have been received.

Project Goals

If permitted or required by the U.S. DOT Administrator, an overall goal may be expressed as a percentage of funds for a particular grant or project or group of grants and/or projects, including entire projects. Like other overall goals, a project goal may be adjusted to reflect changed circumstances, with the concurrence of the appropriate operating administration. A project goal is an overall goal and must meet all the substantive and procedural requirements of this section pertaining to overall goals. A project goal covers the entire length of the project to which it applies. The project goal will include a projection of the DBE participation anticipated to be obtained during each fiscal year covered by the project goal. The funds for the project to which the project goal

pertains are separated from the base from which the regular overall goal, applicable to contracts not part of the project covered by a project goal, is calculated.

If a goal is established on a project basis, the goal will be used by the time of the first solicitation for a U.S. DOT-assisted contract for the project.

Prior Operating Administration Concurrence

The **City of David City** understands that prior U.S. DOT concurrence with the overall goal is not required. However, if the U.S. DOT review suggests that the overall goal has not been correctly calculated or that the method employed by the **City of David City** for calculating goals is inadequate, U.S. DOT may, after consulting with the **City of David City**, adjust the overall goal or require that the goal be adjusted by the **City of David City**. The adjusted overall goal is binding. In evaluating the adequacy or soundness of the methodology used to derive the overall goal, the U.S. DOT operating administration will be guided by the goal setting principles and best practices identified by the Department in guidance issued pursuant to §26.9.

A description of the methodology to calculate the overall goal and the goal calculations can be found in **Attachment 5** to this program.

Section 26.47 Failure to meet overall goals

The **City of David City** cannot be penalized or treated by the Department as being in noncompliance with Part 26, because DBE participation falls short of an overall goal, unless the **City of David City** fails to administer its DBE program in good faith.

The **City of David City** understands that to be considered to be in compliance with this part, an approved DBE Program and overall DBE goal, if applicable, must be maintained, and this DBE Program must be administered in good faith.

The **City of David City** understands that if the awards and commitments shown on the Uniform Report of Awards or Commitments and Payments at the end of any fiscal year are less than the overall goal applicable to that fiscal year, the following actions must be taken in order to be regarded by the Department as implementing this DBE Program in good faith:

- (1) Analyze in detail the reasons for the difference between the overall goal and the awards and commitments in that fiscal year.
- (2) Establish specific steps and milestones to correct the problems identified in the analysis to enable the goal for the new fiscal year to be fully met.
- (3) The **City of David City** will prepare, within 90 days of the end of the fiscal year, the analysis and corrective actions developed under paragraph (c)(1) and (2) of this section. We will retain copy of analysis and corrective actions in records for a minimum of three years and will make it available to FAA upon request.

Section 26.49 How are overall goals established for transit vehicle manufacturers?

The **City of David City** will require transit vehicle manufacturers (TVM), as a condition of being authorized to bid or propose on any FTA-assisted transit vehicle procurements, to certify that they have complied with the requirements of §26.49.

- (1) The **City of David City** affirms that only those transit vehicle manufacturers listed on FTA's certified list of Transit Vehicle Manufacturers, or that have submitted a goal methodology to FTA that has been approved or has not been disapproved, at the time of solicitation are eligible to bid.
- (2) A TVM's failure to implement the DBE Program in the manner as prescribed in this section and throughout Part 26 will be deemed as non-compliance, which will result in removal from FTA's certified TVMs list, resulting in that manufacturer becoming ineligible to bid.
- (3) The **City of David City** is aware that failure to comply with the requirements set forth in Part 26, §26.49(a) may result in formal enforcement action or appropriate sanction as determined by FTA (e.g., FTA declining to participate in the vehicle procurement).
- (4) The **City of David City** will submit, within 30 days of making an award, the name of the successful bidder and the total dollar value of the contract in the manner prescribed in the grant agreement.

Section 26.51 Means Recipients Use to Meet Overall Goals

Breakout of Estimated Race-Neutral & Race-Conscious Participation

The **City of David City** will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating race-neutral DBE participation. Race-neutral DBE participation includes any time a DBE wins a prime contract through customary competitive procurement procedures or is awarded a subcontract on a prime contract that does not carry a DBE contract goal.

Race-neutral means include, but are not limited to the following:

- (1) Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate participation by DBEs and other small businesses and by making contracts more accessible to small businesses, by means such as those provided under §26.39.
- (2) Providing assistance in overcoming limitations such as inability to obtain bonding or financing (e.g., by such means as simplifying the bonding process, reducing bonding requirements, eliminating the impact of surety costs from bids, and providing services to help DBEs, and other small businesses, obtain bonding and financing).
- (3) Providing technical assistance and other services.
- (4) Carrying out information and communications programs on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs, and other small businesses, on recipient mailing lists for bidders; ensuring the dissemination to bidders on

prime contracts of lists of potential subcontractors; provision of information in languages other than English, where appropriate);

- (5) Implementing a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBEs and other small businesses;
- (6) Providing services to help DBEs, and other small businesses, improve long-term development, increase opportunities to participate in a variety of kinds of work, handle increasingly significant projects, and achieve eventual self-sufficiency;
- (7) Establishing a program to assist new, start-up firms, particularly in fields in which DBE participation has historically been low;
- (8) Ensuring distribution of the DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors; and
- (9) Assisting DBEs, and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media.

The breakout of estimated race-neutral and race-conscious participation can be found in **Attachment 5** to this program.

The **City of David City** will arrange solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate participation by DBEs and other small businesses and by making contracts more accessible to small businesses, by means such as those provided under §26.39.

Contract Goals

If the approved projection under paragraph (c) of §26.51 estimates that the entire overall goal for a given year can be met through race-neutral means, contract goals will not be set during that year, unless the use of contract goals becomes necessary in order to meet the overall goal.

Contract goals will be established only on those U.S. DOT-assisted contracts that have subcontracting possibilities. A contract goal need not be established on every such contract, and the size of contract goals will be adapted to the circumstances of each such contract (e.g., type and location of work, availability of DBEs to perform the particular type of work).

Contract goals will be expressed as a percentage of the Federal share of a U.S. DOT-assisted contract.

Section 26.53 Good Faith Efforts Procedures in Situations where there are Contract Goals

Demonstration of good faith efforts (pre-award)

In cases where a contract goal has been established, the contract in question will only be awarded to a bidder/offeror that has made good faith efforts to meet the contract goal. The bidder/offeror

can demonstrate that it has made good faith efforts by either meeting the contract goal or documenting that it has made adequate good faith efforts to do so. Examples of good faith efforts are found in Appendix A to Part 26.

The DBE Liaison Officer is responsible for determining whether a bidder/offeror who has not met the contract goal has documented sufficient good faith efforts to be regarded as responsive.

The **City of David City** will ensure that all information is complete and accurate and adequately documents the bidder/offeror's good faith efforts before committing to the performance of the contract by the bidder/offeror.

In all solicitations for U.S. DOT-assisted contracts for which a contract goal has been established, the following information will be required of every bidder/offeror:

- (1) Award of the contract will be conditioned on meeting the requirements of this section.
- (2) All bidders or offerors will be required to submit the following information to the recipient, at the time provided in paragraph (3) of this section:
 - (i) The names and addresses of DBE firms that will participate in the contract.
 - (ii) A description of the work that each DBE will perform. To count toward meeting a goal, each DBE firm must be certified in a NAICS code applicable to the kind of work the firm would perform on the contract.
 - (iii) The dollar amount of the participation of each DBE firm participating.
- (iv) Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet a contract goal; and
- (v) Written confirmation from each listed DBE firm that it is participating in the contract in the kind and amount of work provided in the prime contractor's commitment.
- (vi) If the contract goal is not met, evidence of good faith efforts (as elaborated in Appendix A of Part 26). The documentation of good faith efforts must include copies of each DBE and non-DBE subcontractor quote submitted to the bidder when a non-DBE subcontractor was selected over a DBE for work on the contract; and
- (3) The bidder/offeror will be required to present the information stipulated in paragraph (2) of this section:
- (4) Under sealed bid procedures, as a matter of **responsiveness**, or with initial proposals, under contract negotiation procedures;

Provided that, in a negotiated procurement, including a design-build procurement, the bidder/offeror may make a contractually binding commitment to meet the goal at the time of bid submission or the presentation of initial proposals but provide the information required by paragraph (2) of this section before the final selection for the contract is made by the recipient.

Administrative reconsideration

Within three days of being informed by the **City of David City** that it is not responsive because it has not documented adequate good faith efforts, a bidder/offeror may request administrative

reconsideration. Bidder/offerors should make this request in writing to the following reconsideration official:

Lindsay Lundholm, Attorney
Baird Holm LLP
1700 Farnam Street
Omaha, Nebraska 68102-2068

The reconsideration official will not have played any role in the original determination that the bidder/offeror did not document sufficient good faith efforts.

As part of this reconsideration, the bidder/offeror will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The bidder/offeror will have the opportunity to meet in person with the reconsideration official to discuss the issue of whether the goal was met, or the bidder/offeror made adequate good faith efforts to do so. The bidder/offeror will be sent a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the Department of Transportation.

Good Faith Efforts procedural requirements (post-solicitation)

The awarded contractor will be required to make available upon request a copy of all DBE subcontracts. The contractor shall ensure that all subcontracts or agreements with DBEs to supply labor or materials include all required contract provisions and mandate that the subcontractor and all lower tier subcontractors perform in accordance with the provisions of Part 26.

Prime contractors will be prohibited from terminating a DBE subcontractor listed in response to a covered solicitation (or an approved substitute DBE firm) without the prior written consent of the **City of David City**. This includes, but is not limited to, instances in which a prime contractor seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or another DBE firm.

Such written consent will be provided only if the **City of David City** agrees, for reasons stated in the concurrence document, that the prime contractor has good cause to terminate the DBE firm. For purposes of this paragraph, good cause includes the following circumstances:

- (1) The listed DBE subcontractor fails or refuses to execute a written contract;
- (2) The listed DBE subcontractor fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided however, that good cause does not exist if the failure or refusal of the DBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the prime contractor;
- (3) The listed DBE subcontractor fails or refuses to meet the prime contractor's reasonable, non-discriminatory bond requirements.

- (4) The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness;
- (5) The listed DBE subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant to 2 CFR Parts 180, 215 and 1,200 or applicable state law;
- (6) The **City of David City** determined that the listed DBE subcontractor is not a responsible contractor;
- (7) The listed DBE subcontractor voluntarily withdraws from the project and provides the **City of David City** written notice of its withdrawal;
- (8) The listed DBE is ineligible to receive DBE credit for the type of work required;
- (9) A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract;
- (10) Other documented good cause that the **City of David City** has determined compels the termination of the DBE subcontractor. Provided, that good cause does not exist if the prime contractor seeks to terminate a DBE it relied upon to obtain the contract so that the prime contractor can self-perform the work for which the DBE contractor was engaged or so that the prime contractor can substitute another DBE or non-DBE contractor after contract award.

Before transmitting to the **City of David City**, a request to terminate and/or substitute a DBE subcontractor, the prime contractor must give notice in writing to the DBE subcontractor, with a copy to the **City of David City**, of its intent to request to terminate and/or substitute the DBE, and the reason(s) for the request.

The prime contractor must give the DBE five days to respond to the prime contractor's notice and advise the **City of David City** and the prime contractor of the reasons, if any, why the DBE objects to the proposed termination of its subcontract and why the prime contractor's action should not be approved. If required in a particular case as a matter of public necessity (e.g., safety), a response period shorter than five days may be provided.

In addition to post-award terminations, the provisions of this section apply to pre-award deletions of or substitutions for DBE firms put forward by offerors in negotiated procurements.

Each prime contract will include a provision stating:

The contractor shall utilize the specific DBEs listed in the contractor's bid response to perform the work and supply the materials for which each is listed unless the contractor obtains prior written consent of the **City of David City** as provided in 49 CFR Part 26, §26.53(f). Unless such consent is provided, the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.

The **City of David City** will require a contractor to make good faith efforts to replace a DBE that is terminated or has otherwise failed to complete its work on a contract with another certified DBE.

These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal that was established for the procurement. The good faith efforts shall be documented by the contractor. If the **City of David City** requests documentation from the contractor under this provision, the contractor shall submit the documentation within 7 days, which may be extended for an additional 7 days if necessary, at the request of the contractor. The **City of David City** shall provide a written determination to the contractor stating whether or not good faith efforts have been demonstrated.

If the contractor fails or refuses to comply in the time specified, the contracting office/representative of the **City of David City** may issue an order stopping all or part of payment/work until satisfactory action has been taken. If the contractor still fails to comply, the contracting officer may issue a termination for default proceeding.

Section 26.55 Counting DBE Participation

DBE participation will be counted toward overall and contract goals as provided in §26.55. The participation of a DBE subcontractor will not be counted toward a contractor's final compliance with its DBE obligations on a contract until the amount being counted has actually been paid to the DBE.

In the case of post-award substitutions or additions, if a firm is not currently certified as a DBE in accordance with the standards of subpart D of this part at the time of the execution of the contract, the firm's participation will not be counted toward any DBE goals, except as provided for in §26.87(j).

Pursuant to Sec. 150 of the FAA Reauthorization Act of 2018, firms that exceed the business size standard in § 26.65(b) will remain eligible for DBE certification and credit on FAA-funded projects as long as they do not exceed the small business size standard, as adjusted by the United States Small Business Administration, for the NAICS code(s) in which they are certified.

SUBPART D – CERTIFICATION STANDARDS

Section 26.61 – 26.73 Certification Process

The **City of David City** is a non-certifying member of the Nebraska Unified Certification Program (UCP). Nebraska UCP will use the certification standards of Subpart D of Part 26 to determine the eligibility of firms to participate as DBEs in NDOT-assisted contracts. To be certified as a DBE, a firm must meet all certification eligibility standards. Certifying Nebraska UCP members make all certification decisions based on the facts as a whole.

For information about the certification process or to apply for certification, firms should contact: Nebraska

Department of Transportation
Minority Business Coordinator
P.O. Box 94759
Lincoln, NE 68509-4759.

The Uniform Certification Application form and documentation requirements are found in **Attachment 8** to this program.

SUBPART E – CERTIFICATION PROCEDURES

Section 26.81 Unified Certification Programs

The **City of David City** accepts the certification procedures adopted by the NUCP for DBE contractors. The NUCP uses the certification standards of Subpart D of Part 26 and the certification procedures of Subpart E of Part 26 to determine the eligibility of firms to participate as DBEs in NDOT-assisted contracts. If a contractor is certified on NUCP's current list, that contractor will be acceptable to the **City of David City**.

SUBPART F – COMPLIANCE AND ENFORCEMENT

Section 26.101 Compliance Procedures Applicable to the City of David City

The **City of David City** understands that if it fails to comply with any requirement of this part, the **City of David City** may be subject to formal enforcement action under §26.103 or §26.105 or appropriate program sanctions by the concerned operating administration, such as the suspension or termination of Federal funds, or refusal to approve projects, grants or contracts until deficiencies are remedied. Program sanctions may include, in the case of the FHWA program, actions provided for under 23 CFR 1.36; in the case of the FAA program, actions consistent with 49 U.S.C. 47106(d), 47111(d), and 47122; and in the case of the FTA program, any actions permitted under 49 U.S.C. chapter 53 or applicable FTA program requirements.

Section 26.109 Information, Confidentiality, Cooperation and intimidation or retaliation

Information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local law will be safeguarded from disclosure to third parties.

Notwithstanding any provision of Federal or state law, information that may reasonably be construed as confidential business information will not be released to any third party without the written consent of the firm that submitted the information, including applications for DBE certification and supporting information. However, this information will be transmitted to U.S. DOT in any certification appeal proceeding under §26.89 or to any other state to which the individual's firm has applied for certification under §26.85.

All participants in the Department's DBE program (including, but not limited to, recipients, DBE firms and applicants for DBE certification, complainants and appellants, and contractors using DBE firms to meet contract goals) are required to cooperate fully and promptly with U.S. DOT and recipient compliance reviews, certification reviews, investigations, and other requests for information. Failure to do so shall be a ground for appropriate action against the party involved

(e.g., with respect to recipients, a finding of noncompliance; with respect to DBE firms, denial of certification or removal of eligibility and/or suspension and debarment; with respect to a complainant or appellant, dismissal of the complaint or appeal; with respect to a contractor which uses DBE firms to meet goals, findings of non-responsibility for future contracts and/or suspension and debarment).

The **City of David City**, contractor, or any other participant in the program will not intimidate, threaten, coerce, or discriminate against any individual or firm for the purpose of interfering with any right or privilege secured by this part or because the individual or firm has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. The **City of David City** understands that it is in noncompliance with Part 26 if it violates this prohibition.

ATTACHMENTS

Attachment 1	Regulations: 49 CFR Part 26 or website link
Attachment 2	Organizational Chart
Attachment 3	Bidder's List Collection Form Attachment
4	DBE Directory or link to DBE Directory
Attachment 5	Overall Goal Calculations
Attachment 6	Demonstration of Good Faith Efforts or Good Faith Effort Plan - Forms 1 & 2
Attachment 7	DBE Monitoring and Enforcement Mechanisms
Attachment 8	DBE Certification Application Form
Attachment 9	State's UCP Agreement Attachment
10	Small Business Element Program

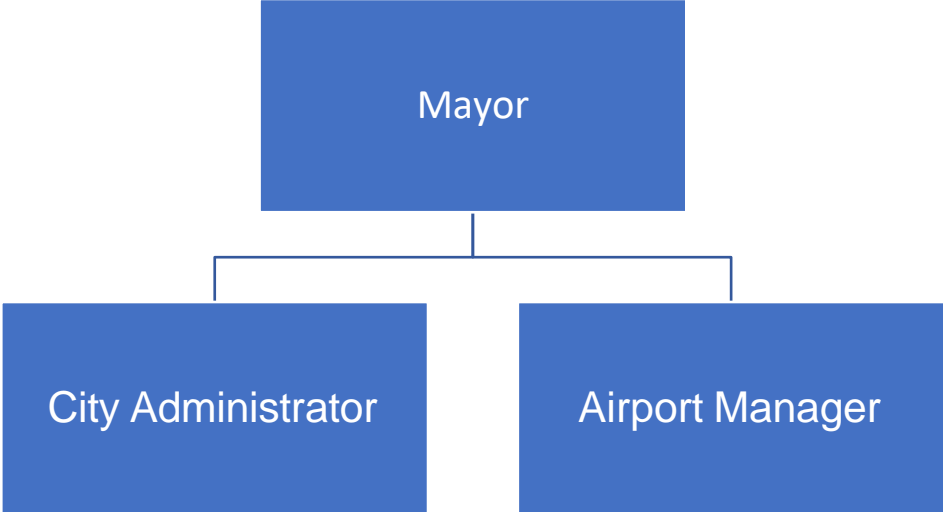
Regulations: 49 CFR Part 26

Regulations: 49 CFR Part 26,

The U.S. DOT published 49 CFR Part 26 is available at the following website:

<https://www.govinfo.gov/content/pkg/CFR-2010-title49-vol1/pdf/CFR-2010-title49-vol1-part26.pdf>

Organizational Chart



Ms. Tami Comte, City Administrator, City of David City, is the designated Liaison Officer. Thus, Ms. Comte, has frequent contact, and direct, independent access to with the Mayor and Airport Manager.

Bidder's List Collection Form

The following form is to be completed with the Bid Proposal.

AIP Project: _____

Airport: _____

Location: _____

The Airport Sponsor is required to submit subcontract information about DBE and non-DBE subcontractors who perform work on their federally-assisted contracts. Therefore, the Airport Sponsor requires that the prime contractor submit the following information related to this project. The DBE rules described in the Information to Bidders and Special Provisions must be followed in regard to the firms listed on the DBE Participation Statement.

PROPOSED SUBCONTRACTORS

SUBCONTRACTOR	WORK TO BE PERFORMED	ADDRESS (City, State)
1. _____	_____	_____
2. _____	_____	_____
3. _____	_____	_____
4. _____	_____	_____
5. _____	_____	_____
6. _____	_____	_____
7. _____	_____	_____
8. _____	_____	_____
9. _____	_____	_____
10. _____	_____	_____

SIGNED _____ **COMPANY** _____

BY _____ **DATE** _____
(Printed name)

State of Nebraska DBE Directory.

State of Nebraska DBE Directory,

A directory of Nebraska DBE's is available at the following website:

<https://dot.nebraska.gov/business-center/civil-rights/>

Attachment 5

Overall DBE Three-Year Goal Methodology
For FY 2022, 2023, 2024

DBE Goal Summary

Airport: David City Municipal Airport, David City, Nebraska

Sponsor: City of David City

Goal Period: Fiscal Years 2022, 2023, 2024; October 1, 2021, through September 30, 2024

Anticipated DOT-Assisted Contracts:

Contract	Contract Amount	Project Name	Type of Work
FY 2022:	\$0	No Project	No Project
Subtotal FY 2022	\$0		
FY 2023:	\$472,500	Land Acquisition	Engineering Services
Subtotal FY 2023	\$472,500		
FY 2024:	\$200,000	Runway 14/32 Rehab (design phase)	Engineering Services
Subtotal FY 2024	\$200,000		
Total:	\$672,500		

Total amount to be expended on DBE's: \$0

The following is a summary of our DBE expenditures for each fiscal year by contract:

Fiscal Year	Contract Type	Contract Amount	DBE Amount	Total DBE Participation	Race Neutral	Race Conscious
2022	No Project	\$0	\$0	0%	0%	0%
2023	Consultant/Engineering Services – Land Acquisition	\$472,500	\$0	0%	0%	0%
2024	Consultant/Engineering Services – Runway Rehab (design phase)	\$200,000	\$0	0%	0%	0%
FY 22, 23 & 24 TOTALS		\$672,500	\$0	0%	0%	0%

Step 1: Goal Setting Process (26.45 c)

The goal was calculated using the method described in our DBE program. We selected the following geographical areas (counties) that will be used to seek contractors for the projects during the various years. The specific geographical areas were selected based on information from Nebraska Department of Transportation - Division of Aeronautics. Specifically, we selected those contractors within the following Counties for the projects for the various years:

FY2022	FY2023	FY2024
No Project (No contractors needed)	Adams, Antelope, Boone, Buffalo, Burt, Butler, Cass, Cedar, Clay, Colfax, Cumming, Custer, Dakota, Dawson, Dixon, Dodge, Douglas, Fillmore, Franklin, Gage, Garfield, Greeley, Hall, Hamilton, Harlan, Holt, Howard, Jefferson, Kearney, Knox, Lancaster, Loup, Madison, Merrick, Nance, Nemaha, Nuckolls, Otoe, Pawnee, Phelps, Pierce, Platte, Polk, Richardson, Rock, Saline, Sarpy, Saunders, Seward, Sherman, Stanton, Thayer, Thurston, Valley, Washington, Wayne, Webster, Wheeler, York	Adams, Antelope, Boone, Buffalo, Burt, Butler, Cass, Cedar, Clay, Colfax, Cumming, Custer, Dakota, Dawson, Dixon, Dodge, Douglas, Fillmore, Franklin, Gage, Garfield, Greeley, Hall, Hamilton, Harlan, Holt, Howard, Jefferson, Kearney, Knox, Lancaster, Loup, Madison, Merrick, Nance, Nemaha, Nuckolls, Otoe, Pawnee, Phelps, Pierce, Platte, Polk, Richardson, Rock, Saline, Sarpy, Saunders, Seward, Sherman, Stanton, Thayer, Thurston, Valley, Washington, Wayne, Webster, Wheeler, York

In addition to construction contracts, we anticipate contracts for consulting/engineering services. In establishing DBE participation by DBE consulting/engineering firms, we were unable to locate certified DBE's that provide consulting/engineering services. Based on our past experience and information from the Nebraska Department of Transportation - Division of Aeronautics, we anticipate 4 to 6 consulting/engineering firms submitting statements of qualification for providing services at our airport. It should be noted that our engineering selection will be a qualification-based selection and we do not anticipate DBE consulting/engineering firms submitting qualifications during the selection process. Therefore, during this 3-year period, we anticipate no DBE participation on consulting/engineering services contracts. We will continually review/evaluate DBE participation by consulting/engineering firms and update as necessary.

FY2022

We are anticipating no projects or federal grants during FY2022; therefore, our DBE participation is zero (0).

FY2022 No Projects

(0 DBE Firms/ 0 total firms) = 0%
 DBE Participation 0% x \$0 Contract
 Amount = \$0 DBE Participation

FY2022 Overall DBE Goal

\$0 Total DBE Participation / \$0 Total Contract Amount = 0% DBE Participation for FY2022

FY2023

We anticipate one contract for consulting/engineering services in the total amount of \$472,500 for the land acquisition and we anticipate no DBE participation on consulting/engineering services contracts, as previously discussed. The DBE participation for consulting/engineering service contracts is calculated as follows:

FY2023 Engineering Services Goal – Land Acquisition
(0 DBE Firms/ 6 total firms) = 0% DBE Participation for
Consulting/Engineering Services 0% x \$472,500 Contract Amount =
\$0 DBE Participation for Consulting/Engineering Services

We anticipate no DBE participation for construction services contract for the land acquisition project. The DBE participation for this contract is calculated as follows:

FY2023 Construction Contract Goal - Land Acquisition
(0 DBE Firms/ 0 total firms) = 0% DBE Participation for
Construction Contract 0% x \$0 Contract Amount = \$0
DBE Participation for Construction Contract

Based on the above discussions, our overall FY2023 DBE goal is as follows:

FY2023 Overall DBE Goal
\$0 Total DBE Participation / \$472,500 Total Contract Amount = 0% DBE Participation for FY2023

FY2024

We anticipate one contract for consulting/engineering services in the total amount of \$200,000 for the runway rehabilitation design phase and we anticipate no DBE participation on consulting/engineering services contracts, as previously discussed. The DBE participation for consulting/engineering service contracts is calculated as follows:

FY2024 Engineering Services Goal – Runway Rehab (design phase)
 (0 DBE Firms/ 6 total firms) = 0% DBE Participation for
 Consulting/Engineering Services 0% x \$200,000 Contract Amount =
 \$0 DBE Participation for Consulting/Engineering Services

We anticipate no DBE participation for construction services contract for the land acquisition project. The DBE participation for this contract is calculated as follows:

FY2023 Construction Contract Goal - Runway Rehab (design phase) (0 DBE Firms/ 0 total firms) =
 0% DBE Participation for Construction Contract 0% x \$0
 Contract Amount = \$0 DBE Participation for
 Construction Contract

Based on the above discussions, our overall FY2024 DBE goal is as follows:

FY2024 Overall DBE Goal
 \$0 Total DBE Participation / \$0 Total Contract Amount = 0% DBE Participation for FY2024

The following is summary of our anticipated work with DBE participation by fiscal year:

Summary of FY2022, 2023 and 2024 DBE Participation

The following is a summary of our anticipated work with DBE participation by fiscal year:

Fiscal Year	Contract Type	Contract Amount	DBE Amount
2022	No Project	\$0	\$0
2023	Consultant/Engineering Services – Land Acquisition	\$472,500	\$0
2024	Consultant/Engineering Services – Runway Rehab (design phase)	\$200,000	\$0
FY22, 23 & 24 TOTALS		\$672,500	\$0

The calculation for our 3-year base figure is as follows:

$$(\$0 \text{ Total DBE Contract Amount}) / (\$672,500 \text{ Total Contract Amount}) = 0\%$$

Step 2: Adjustments to Base Figure (26.45(d))

Our historical data is summarized as follows:

FY	Proj ect	Description of Work	CONTRACT GOAL		CONTRACT ACHIEVE		GOAL		ACHIEVE Over/Under Achievement
			Race Neu tral	Race Con sc	Race Neu tral	Race Con sc	Over all Go al	Over all Ach ieve	
03	01	Airport Layout Plan	***	***	0%	0%	***	0%	0%
03	02	Land Reimbursement	0%	0%	0%	0%	0%	0%	0%
07	03	Land Reimbursement	0%	0%	0%	0%	0%	0%	0%

City Council Proceedings

November 9, 2022

Page 44

08	04	Pavement Renab - design	0%	0%	0%	0%	0%	0%	0%
08	05	Land Reimbursement	0%	0%	0%	0%	0%	0%	0%
09	06	Pavement Renab - construction	0%	5,800%	0%	5,800%	5.800%	5,008%	0.75%
10	07	PAPI, Beacon, Wind Cone	0%	0%	0%	0%	0%	0%	0%
11	08	SRE Building	0%	3,900%	0%	3,400%	3.900%	3,400%	0.50%
11	09	Snow Removal Equipment	---	---	---	---	*	---	---
15	10	Pavement Renab	0%	4,500%	88%	4,540%	3.41%	81.7%	+18.36%
17	11	Seal Coat	0%	5,400%	0%	1,006%	5.41%	1,000%	+5.19%
20	12	NO Project (CAKES)	▲	▲	▲	▲	▲	▲	▲
21	13	TUU LL Fuel System	0%	2,000%	0%	2,450%	2.00%	2,450%	+0.45%
21	14	ALP Update	0%	0%	0%	0%	0%	0%	0%
21	15	NO Project (CRSSA)	▲	▲	▲	▲	▲	▲	▲
21	16	NO Project (AKPA)	▲	▲	▲	▲	▲	▲	▲

* Project costs < \$250,000; therefore, no goal

** DBE not applicable

*** No data available

▲ COVID Relief Grant

Using the data from the above table for completed years, the Step 1 figure was adjusted. An average of the Step 1 figure (0%) and the median of past participation (0%) was calculated. This defined our Step 1 base figure, adjusted for past participation, as **0%**.

Taking 0% as the final goal value, adjusted for past participation, and applying it to the original dollar amount of the contracted work (\$672,500), yields a final DBE participation goal of **\$0**.

Step 3: Breakout of Estimated Race-Neutral and Race-Conscious Participation (26.51 a-c)

Referring again to the table above, the median “Over/Under Achievement” is **0.00%**. This is the amount of participation we would expect in a race-neutral goal.

Ultimately, our Step 2 adjustments have left us with a **0.0%** adjusted goal, with a **0.0%** race-neutral component.

PUBLIC PARTICIPATION

Consultation:

In establishing the overall goal, the Sponsor, and the Nebraska Department of Transportation – Division of Aeronautics (NDOT-A), as agent for the Sponsor, will provide consultation/outreach services and publication. The consultation/outreach services included posting the airport’s DBE program and its overall goal on the NDOT website at:

<https://dot.nebraska.gov/business-center/civil-rights/airport-dbe/>

Besides that, NDOT-A would notify the following agencies and organizations indicating that the Sponsor is interested in obtaining relevant information regarding goal setting and goal methodology. These organizations include minority, women’s, and general contractor groups, community organizations, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the Sponsor efforts to establish a level playing field for the participation of DBEs.

South Omaha Business Association
Associated General Contractors of America, Nebraska
Chapter Nebraska Center for Rural Affairs
Nebraska Hispanic Chamber of Commerce
Greater Omaha Economic Development Partnership
Nebraska Business Development Center
Nebraska Concrete Paving Association
City of Omaha – Department of Human Rights and
Relations City of Lincoln – Commission on Human
Rights
Urban League of Nebraska
Metro Omaha Women's Business Center
Omaha Opportunities Industrialization
Center

These agencies and organizations were selected because of the likelihood that they could provide information concerning the availability of disadvantaged and non-disadvantaged businesses; the effects of discrimination on opportunities for DBEs; and efforts to establish a level playing field for the participation of DBEs. Each notification will contain an explicit invitation to meet with the NDOT-A face-to-face or via conference call (i.e., a “scheduled, direct, interactive exchange”) to discuss any questions or comments on DBE participation goal-setting.

If the proposed goal changes following review by FAA Civil Rights, the revised goal will be updated, and a revised Public Notice will be issued.

Notwithstanding paragraph (f)(4) of §26.45, Sponsor’s proposed goals will not be implemented

until this requirement has been met.

PUBLIC NOTICE

Below is the public notice which the City of David City will publish in the local newspapers and will be posted on the Nebraska Department of Transportation (NDOT) webpage:

**Public Notice
DBE Program**

The City of David City hereby announces its proposed Disadvantaged Business Enterprise (DBE) participation goal of **0.0%** for Federal Aviation Administration (FAA) funded contracts/agreements. The proposed goal pertains to federal fiscal years 2022 through 2024.

The DBE goal and methodology is available for inspection until 30 days following the date of the notice. These items may be seen at the City of David City, 557 N. 4th Street, David City, Nebraska 68632, during regular office hours.

A meeting could be arranged with the Nebraska Department of Transportation - Division of Aeronautics (NDOT-A) office for the purpose of obtaining information relevant to the goal-setting process through the phone number (402-471-2371). Comments will be accepted until 30 days following the date of the notice and can be sent to the followings:

City of David City

P.O. Box 191

David City, Nebraska 68632-0191 OR

**Compliance Specialist Disadvantaged
Business Enterprise Program**

FAA Office of Civil Rights

777 S. Aviation Blvd, Suite #150 El
Segundo, CA 90245

Attachment 6

Demonstration of Good Faith Efforts - Forms 1 & 2

FORM 1: Disadvantaged Business Enterprise (DBE) Utilization

UTILIZATION STATEMENT
Disadvantaged Business Enterprise

The undersigned bidder/offeror has satisfied the requirements of the bid specification in the following manner. *(Please mark the appropriate box)*

- The bidder/offeror is committed to a minimum of ___% DBE utilization on this contract.
- The bidder/offeror, while unable to meet the DBE goal of _%, hereby commits to a minimum of _____% DBE utilization on this contract and also submits documentation, as an attachment demonstrating good faith efforts (GFE).

The undersigned hereby further assures that the information included herein is true and correct, and that the DBE firm(s) listed herein have agreed to perform a commercially useful function in the work items noted for each firm. The undersigned further understands that no changes to this statement may be made without prior approval from the Civil Right Staff of the Federal Aviation Administration.

 Bidder's/Offeror's Firm Name

 Signature

 Date

DBE UTILIZATION SUMMARY

Percentage	Contract Amount	DBE Amount	Contract
DBE Prime Contractor	\$ _____ x 1.00 =	\$ _____	_____ %
DBE Subcontractor	\$ _____ x 1.00 =	\$ _____	_____ %
DBE Supplier	\$ _____ x 0.60 =	\$ _____	_____ %
DBE Manufacturer	\$ _____ x 1.00 =	\$ _____	_____ %
Total Amount DBE		\$ _____	_____ %
DBE Goal		\$ _____	_____ %

If the total proposed DBE participation is less than the established DBE goal, Bidder must provide written documentation of the good faith efforts as required by 49 CFR Part 26.

END FORM 1

FORM 2: Disadvantaged Business Enterprise (DBE) Letter of Intent

LETTER OF INTENT
Disadvantaged Business Enterprise

Bidder/Offer

Name of Firm: _____
 Firm Address: _____
 Contact person: Name: _____ Phone: (____) _____

DBE Firm

Name of DBE Firm: _____
 DBE Firm Address: _____
 DBE contact person: Name: _____ Phone: (____) _____
 DBE certification Agency: _____ Expiration Date: _____

Each DBE Firm shall submit evidence (such as a photocopy) of their certification status.

- Classification: Prime Contractor Subcontractor Joint Venture
 Manufacturer Supplier
- Category of DBE: Native American Hispanic Asian Pacific
 Black Non-Minority Woman Other

Work items to be performed by DBE	Description	Quantity	Total

The bidder/offer is committed to utilizing the above-named firm for the work described above. The estimated participation is as follows:

DBE contract amount: \$ _____ Percent of total contract: _____%

AFFIRMATION

The above-named firm affirms that it will perform that portion of the contract for the estimated dollar value as stated herein above.

BY: _____

(Signature)

(Title)

In the event the bidder/offer does not receive the award of the prime contract, any and all representations in this Letter of Intent and Affirmation shall be null and void.

ATTACHMENT 7

DBE Monitoring and Enforcement Mechanisms

The City of David City has the following remedies to enforce the DBE requirements contained in its contracts, including, but not limited to, the following:

- Breach of contract action, pursuant to the terms of the contract.
- Breach of contract action, pursuant to Nebraska Statute
- 3-504 City Airport Authority
- 3-116, 3-120, 3-125 NDA
- Other sections of Nebraska Statutes that may be applicable and could be used to enforce DBE requirements include unemployment compensation fund contributors and interest due under the provisions of Nebraska Statute 48-601 to 48-669 on wages paid to individuals employed. Conditions regarding fair employment practices as contained in Nebraska Statutes 48-1101 through 48-225 and to comply with minimum wage scale and nondiscrimination as defined in Nebraska Statutes 48-1201 through 48-1277.

In addition, the Federal government has available several enforcement mechanisms that it may apply to firms participating in the DBE problem, including, but not limited to, the following:

- Suspension or debarment proceedings pursuant to 49 CFR Part 26
- Enforcement action pursuant to 49 CFR Part 31
- Prosecution pursuant to 18 USC 101.

DBE Certification Application Form

State of Nebraska DBE Certification Application

The DBE Certification Application is available at the following website.

<https://dot.nebraska.gov/media/5821/c-users-royleach-desktop-it-umbraco-docs-dbe-cert-application.pdf>

Attachment 9
State's UCP Agreement

State of Nebraska DBE Unified Certification Program

The DBE Unified Certification Program is available at the following website:

https://dot.nebraska.gov/media/113234/nebraska_ucp.pdf

ATTACHMENT 10
Small Business Element

A. Objective (49 CFR Part 26.39)

Recognizing that the DBE Program goals are met through a mixture of race conscious and race neutral methods and, that by definition, DBE firms are small businesses; the Airport Sponsor seeks to implement a small business element into its current DBE policy. The Airport Sponsor is including this element to facilitate competition by and expand opportunities for small businesses. The City of David City is committed to taking all reasonable steps to eliminate obstacles to small businesses that may preclude their participation in procurements as prime contractors or subcontractors. If necessary, the City of David City will meet its objectives using a combination of the following methods and strategies:

1. Set asides: Where feasible, the City of David City will establish a percentage of the total value of all prime contract and subcontract awards to be set aside for participation by small businesses on FAA-assisted contracts. A “set-aside” is the reserving of a contract or a portion of a contract exclusively for participation by small businesses. This requires that the City of David City and its prime contractors/ consultants set aside a portion of the value of each contract for participation by small businesses. A small business set-aside is open to all small businesses regardless of the owner’s gender, race, or geographic location. The project manager and DBELO will review FAA- assisted purchases and contracts to assess the small business opportunities, giving consideration to the size and scope of each purchase or contract to establish the set aside percentage. This set aside is in addition to the DBE contract goals which may be required pursuant to applicable law or policy. In the event that a set-aside is not established on an FAA-assisted contract, the project manager and small business officer will document why a small business set-aside is inappropriate.
2. Unbundling: The City of David City, where feasible, may “unbundle” projects or separate large contracts into smaller contracts which may be more suitable for small business participation. The City of David City will conduct contract reviews on each FAA-assisted contract to determine whether portions of the project could be “unbundled” or bid separately. Similarly, the City of David City will encourage its prime contractors or prime consultants to unbundle contracts to facilitate participation by small businesses.

However, based on data from the Nebraska Department of Transportation (NDOT), current procedures utilized to structure contracting requirements not only facilitate competition by small business concerns, but have enabled small business concerns to be very successful in securing work both as prime contractors and subcontractors. Because of the high level of success small businesses have had in competing for and performing prime contracts, the sponsor does not feel it is necessary at this time to alter or restructure its contracting requirements in order to foster small business participation.

It has been determined that contractors (primes and sub) doing airport projects in Nebraska are included in NDOT contractor lists. The Nebraska Department of Transportation – Division of Aeronautics (NDOT-A) and airport sponsors will continue to monitor DBE and small business

participation.

The City of David City, NDOT and NDOT-A will continue to ensure that prime contracts are available for small businesses. The assessment will be conducted by personnel from the NDOT-A. If an assessment shows that the level of participation by small businesses has decreased significantly, the City of David City and NDOT-A will promptly take all reasonable steps to increase the level of participation.

NDOT currently requires all firms (prime and subcontractors) that participate on NDOT projects to provide average annual gross receipts information. The NDOT requires firms to indicate if their average annual gross receipts exceed \$22.41 million to better verify that only eligible firms are identified as small businesses.

The City of David City will continue to actively conduct outreach with organizations in accordance with procedures of the DBE program.

B. Definitions

1. Small Business:

A small business is a business that is independently owned and operated, is organized for profit, and is not dominant in its field. Depending on the industry, size standard eligibility is based on the average number of employees for the preceding twelve months or on sales volume averaged over a three-year period. Small businesses must meet the definitions specified in Section 3 of the Small Business Act and the Small Business Administration regulations implementing it (13 CFR Part 121).

C. Implementation Schedule

The small business element was last reviewed on July 15, 2021, and will be reviewed concurrently to regular program updates.

D. Assurances

The City of David City makes the following assurances:

1. The DBE Program, including its small business element is not prohibited by state law;
2. Certified DBEs that meet the size criteria established under the DBE Program are presumptively eligible to participate in the small business element of the DBE Program;
3. There are no geographic or local preferences or limitations imposed on FAA-assisted contracts and the DBE Program is open to small businesses regardless of their location;
4. There are no limits on the number of contracts awarded to firms participating in the DBE Program, and;
5. Outreach to those minority and women owned firms participating in the small business element of the DBE Program that are eligible for DBE certification to become certified.

Mayor Zavodny declared the public hearing open at 7:42 p.m. to consider amending the Zoning Ordinance Article 5 Zoning Districts by amending Section 5.17 AH Airport Hazard (Overlay District).

Interim City Administrator/City Clerk Tami Comte stated that this section is being amended because of changes in State Statute.

Mayor Zavodny declared the public hearing closed at 7:43 p.m.

Council member Bruce Meysenburg introduced Ordinance No. 1407 amending the Zoning Ordinance Article 5 Zoning Districts by amending Section 5.17 AH Airport Hazard (Overlay District).

Mayor Zavodny read Ordinance No. 1407 by title.

Council member Bruce Meysenburg made a motion to suspend the statutory rule requiring that an Ordinance be read on three separate days. Council Member Pat Meysenburg seconded the motion. The motion carried.

Tom Kobus: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Jessica Miller: Yea, John Vandenberg: Absent, Kevin Woita: Yea

Yea: 5, Nay: 0, Absent: 1

Council member Bruce Meysenburg made a motion to Pass and Adopt Ordinance No.1407 amending the Zoning Ordinance Article 5 Zoning Districts by amending Section 5.17 AH Airport Hazard (Overlay District) on 3rd & Final reading. Council Member Pat Meysenburg seconded the motion. The motion carried.

Tom Kobus: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Jessica Miller: Yea, John Vandenberg: Absent, Kevin Woita: Yea

Yea: 5, Nay: 0, Absent: 1

ORDINANCE NO. 1407

AN ORDINANCE AMENDING ORDINANCE NO. 1060 BY AMENDING SECTION 5.17: AH AIRPORT HAZARD (OVERLAY DISTRICT); REPEALING ALL ORDINANCES OR PORTIONS OF ORDINANCES IN CONFLICT THEREWITH; PROVIDING FOR PUBLICATION OF THIS ORDINANCE IN PAMPHLET FORM; AND PROVIDING FOR A TIME WHEN THIS ORDINANCE SHALL TAKE EFFECT.

RECITALS

- A. WHEREAS, the City of David City (the "City") passed Ordinance No. 1060 (the "Zoning Ordinance") on November 14, 2007.
- B. WHEREAS, the City has amended the Ordinance numerous times since adopting it.
- C. WHEREAS, Nebraska Revised Statutes section 19-901 authorizes the City to adopt and amend a zoning ordinance.
- D. WHEREAS, the City deems it in the best interest of the City to amend the Zoning Ordinance as set forth herein.

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

Section 1. That the City shall amend ARTICLE 5: ZONING DISTRICTS of the Zoning Ordinance such that SECTION 5.17.02(3) shall read as follows:

3. Height Restrictions.

Unless the applicant has obtained a permit specific to the proposed construction pursuant to Section 5.17.04, no building, transmission line, communication line, pole, tree, smoke-stack, chimney, wires, tower or other structure or appurtenance thereto of any kind or character shall hereafter be erected, constructed, repaired or established, nor shall any tree or other object of natural growth be allowed to grow:

- a. In Inner Areas of Approach Zones to a height above the elevation of the nearest point on the end or proposed end of said instrument runway or landing strip in excess of 1/50, and all other runways or landing strips in excess of 1/40 of the distance from the end of the approach zone (the end nearest the runway or landing strip) to said structure or object;
- b. In the Outer Area of Approach Zones and in Turning Zones to a height in excess of 150 feet above the elevation at the end or proposed end of the nearest runway or landing strip;
- c. In the Transition Zones to a height above the planes forming the transition slopes; and
- d. In the existing or proposed Operation Zones to a height above the existing or proposed finished grade of said runways or landing strips or surface of the ground.

Section 2. Any and all ordinances, or sections thereof, passed and approved prior to the passage, approval and publication or posting of this ordinance, and in conflict with its provisions, are hereby repealed.

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

PASSED AND APPROVED this 9th day of November, 2022.

Mayor Alan Zavodny

City Clerk Tami Comte

Council member Kevin Woita made a motion to pass and adopt Resolution No. 27-2022 authorizing the sale of 557 N. 4th Street. Council Member Pat Meysenburg seconded the motion. The motion carried.

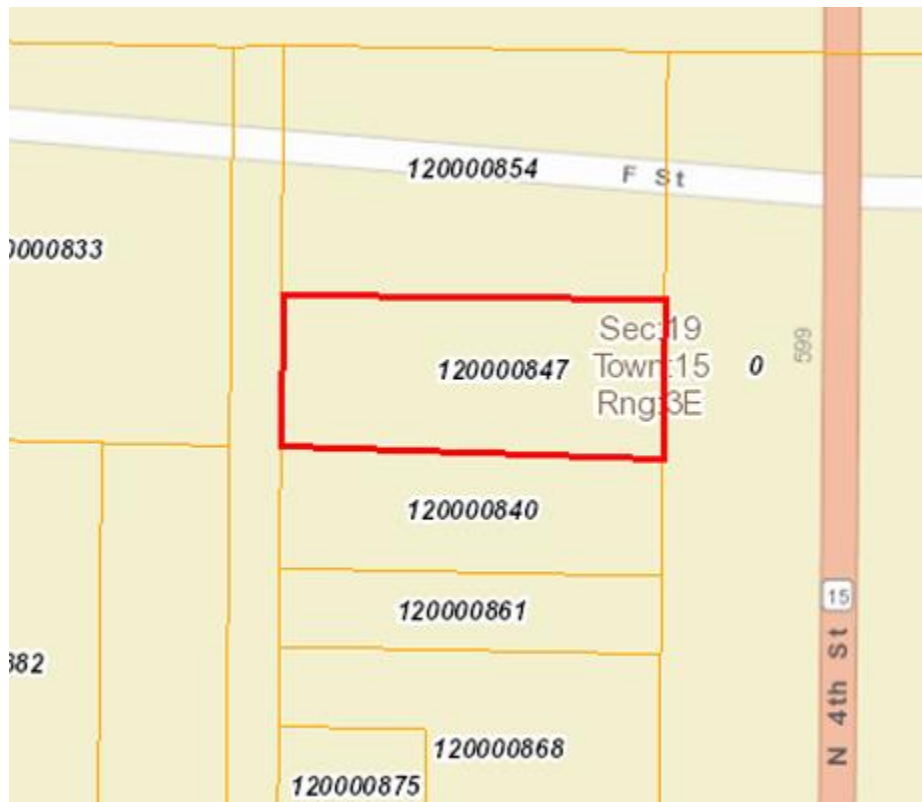
Tom Kobus: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Jessica Miller: Yea, John Vandenberg: Absent, Kevin Woita: Yea
Yea: 5, Nay: 0, Absent: 1

RESOLUTION NO. 27-2022

A RESOLUTION OF THE MAYOR AND CITY COUNCIL FOR THE CITY OF DAVID CITY, BUTLER COUNTY, NEBRASKA, AUTHORIZING THE MAYOR TO SIGN A PURCHASE AGREEMENT AND TAKE ALL OTHER ACTIONS NECESSARY TO EFFECTUATE THE SALE OF REAL ESTATE OWNED BY THE CITY OF DAVID CITY; TO PROVIDE FOR THE REPEAL OF CONFLICTING RESOLUTIONS; TO PROVIDE FOR AN EFFECTIVE DATE.

WHEREAS, the City of David City, Butler County, Nebraska owns the following-described real estate:

19 15 3 DAVID CITY LOTS 5 & 6 BLK 19 ORIG TOWN (CITY OFFICE) 557 N. 4th STREET, DAVID CITY, NE



WHEREAS, the City of David City, Butler County, Nebraska desires to sell the above-described real estate.

1. Whereas, a bidding process was held where sealed bids were taken on August 10, 2022; and
2. Whereas, the reserve was not met and the Council voted against selling the property for the bid offer;
3. Whereas, subsequently a purchaser offered \$100,000 for the real estate.

NOW, THEREFORE, BE IT RESOLVED:

4. The City Council desires to accept \$100,000 for the real estate subject to coming to acceptable terms with the purchaser.
5. Following passage of this Resolution, publishing the terms of such sale once each week for three consecutive weeks in a legal newspaper in or of general circulation in such city, and passing of the 30-days after the third publication of the notice (right-of-remonstrance period), the property shall then be sold by the passage of an ordinance (January 11, 2023) stating the name of the purchaser and terms of the sale.
6. The Purchase Agreement for Sale of Real Estate is hereby approved, ratified, and accepted, and the Mayor is hereby authorized, directed, and empowered to execute the same upon receipt of the executed Purchase Agreement by the buyer and to take all other actions reasonably necessary to complete the sale and conveyance of the real estate.

Passed and approved this 9th day of November, 2022.

Mayor Alan Zavodny

City Clerk Tami Comte

Council member Bruce Meysenburg made a motion to pass and adopt Resolution No. 28-2022 to authorize the reimbursement of certain expenditures by way of tax-exempt bond anticipation notes or bonds by the City as related to the paving, sewer, and water extension projects north of the City (aka; the Northwest Redevelopment Area). Council Member Pat Meysenburg seconded the motion. The motion carried.

Tom Kobus: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Jessica Miller: Yea, John Vandenberg: Absent, Kevin Woita: Yea
Yea: 5, Nay: 0, Absent: 1

RESOLUTION NO. 28-2022

BE IT RESOLVED by the Mayor and Council of the City of David City, Nebraska, as follows:

Section 1. The Mayor and Council hereby find and determine that it is necessary and appropriate to declare an official intent to issue tax-exempt bond anticipation notes or bonds by the City and, in addition, the City's reasonable expectations to reimburse certain expenditures with the proceeds of such notes or bonds as proposed to be issued by the City in connection with the construction of paving, sewer, and water extension projects north of the City (the Northwest Redevelopment Area, Phase 1), (Akrs Water/Sewer Extension, Paving Industrial Parkway and Trowbridge Lane), now being or to be constructed in and for the City of David City, Nebraska; together with engineering, legal, financing and other related project costs.

Section 2. This resolution shall stand as a statement of the official intent of the City under Regulation Section 1.150-2 and for such purpose the following information is hereby given:

- (a) A general functional description of the project for which expenditures may be made and reimbursement from tax-exempt bond anticipation notes or bond proceeds provided is the construction of paving, sewer and water extension projects north of the City (the Northwest Redevelopment Area, Phase 1), (Akrs Water/Sewer Extension, Paving Industrial Parkway and Trowbridge Lane) now being or to be constructed in the City of David City, Nebraska, all as set out in Section 1 herein.
- (b) The principal amount of notes or bonds expected to be issued by the City for that portion of improvements pertaining to this reimbursement resolution is estimated to be an amount not to exceed \$2,000,000.

PASSED AND APPROVED this 9th day of November, 2022.

ATTEST:

Mayor

City Clerk

[SEAL]

City Council Proceedings

November 9, 2022

Page #64

Council member Kevin Woita made a motion to approve a Letter Agreement for Professional Services with JEO concerning the Class "A" Street Superintendent for 2023. Council Member Pat Meysenburg seconded the motion. The motion carried.

Tom Kobus: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Jessica Miller: Yea, John Vandenberg: Absent, Kevin Woita: Yea

Yea: 5, Nay: 0, Absent: 1

(This space left intentionally blank)



November 7, 2022

City of David City
Mayor and City Council
PO Box 191
David City, Nebraska 68632

RE: David City 2023 Street Superintendent Appointment Request

Dear Mayor and City Council:

I am requesting to be appointed as the Street Superintendent for 2023. Attached is the scope of services for the street superintendent appointment. If you decide to appoint me, please ensure the motion is worded in your minutes: "We appoint Andrew A Wilshusen from JEO Consulting Group, Inc. as our Street Superintendent." I appreciate the opportunity to work on your behalf.

I would appreciate you notifying me of your action on this request, so my records are up-to-date. Please take a few minutes to complete the form below. Then, please return the form in the enclosed envelope, or email it to Lori Kitt at lkitt@jeo.com.

Please include a copy of your meeting minutes that states the approved appointment and the completed contact update form for our records.

If you have any questions about this letter or the attached information, or if you want further information, don't hesitate to contact me. I appreciate your consideration.

Sincerely,

A handwritten signature in blue ink, appearing to read 'A Wilshusen'.

Andrew A Wilshusen
License Number: S-1696 | Class A
JEO Consulting Group, Inc.

Office: 402.435.3080 | **Mobile:** 402.768.1120 | **Email:** awilshusen@jeo.com

2023 STREET SUPERINTENDENT APPOINTMENT REQUEST

The City of David City has appointed Andrew A Wilshusen as the Street Superintendent:
 Yes No

Notes:

Form Completed By (please print name)

Date

**Please include a copy of your meeting minutes.*

JEO CONSULTING GROUP, INC.
JEO ARCHITECTURE, INC.

p: 308.381.7428
f: 308.381.2635

308 West 3rd Street, Suite 1
Grand Island, Nebraska 68801

jeo.com



Listed below are the services that Andrew Wilshusen would perform annually as the appointed Street Superintendent for the City of David City:

One and Six Year Plan

- Receive input on the One and Six Year plan.
- Prepare a cost opinion for One Year projects.
- Prepare One and Six Year plan documents (location map and project summary).
- Furnish One and Six Year plan documents.
- Assist with questions.

Lane Mile Report

- Update Lane Mile Report.
- The City of David City to furnish annexation documents (description and plat) of new annexation areas.

Fee

- The compensation to JEO for providing these services would be the incentive payment (\$4,000) that the City of David City receives for appointing a Class A Street Superintendent.

JEO will invoice annually in December for the year the JEO employee is appointed the street superintendent. Payment is due upon receipt. Invoices unpaid after 30 days will accrue interest at 12% per annum. Payments will be credited first to interest, then principal.



Council member Pat Meysenburg made a motion to Motion to appoint Andrew Wilshusen, Class A, License S-1696, as the street superintendent for 2023, effective January 1, 2023 , for the purpose of the 2023 calendar year Highway Incentive Payment, to be issued to

the City by the Nebraska Department of Transportation, in February 2023. Council Member Kevin Woita seconded the motion. The motion carried.

Tom Kobus: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Jessica Miller: Yea, John Vandenberg: Absent, Kevin Woita: Yea
Yea: 5, Nay: 0, Absent: 1

Council member Jessica Miller made a motion to table repairs to number six engine at the Power Plant. Council Member Bruce Meysenburg seconded the motion. The motion carried. Tom Kobus: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Jessica Miller: Yea, John Vandenberg: Absent, Kevin Woita: Yea
Yea: 5, Nay: 0, Absent: 1

Mayor Zavodny stated that designation of ARPA funds to a project was the next item on the agenda.

Interim City Administrator/City Clerk Tami Comte stated that the City has approximately \$507,000 and that the Village of Octavia wanted to give David City the balance of their funds that they can't spend which is approximately \$11,200. That gives David City approximately \$518,000 towards a project.

Mayor Alan Zavodny stated that there are water and wastewater projects and some street work where the funds could be used.

Special Projects Coordinator Dana Trowbridge introduced himself said, "My suggestion and recommendation would be to invest this money where we can quadruple the value of it and that might be with Rural Workforce Housing Grant application. I met today with NeighborWorks in Columbus and the David City Development Corporation now qualifies as an applicant for those funds. They only get one application, and they are going to use it for Norfolk. Columbus has its own, so they are going to use that one in Columbus. David City Development Corp would work for David City. NeighborWorks would administer it on a marginal fee basis, and we would do a match. A match under the new program that was just announced this last week was two to one. We had talked about the previous program which was one to one at a six hundred-thousand-dollar match. The Council seemed to be on board with that earlier. If we did a six hundred-thousand-dollar match under the new program and qualified, we would collect one point two million dollars plus have our six hundred-thousand-dollar match for a total of one point eight million dollars to spend on Rural Workforce Housing in the confines of David City, Nebraska, which is a nice bump from the six hundred thousand that we're walking into with ARPA funds."

Mayor Alan Zavodny said, "When we discussed this earlier, I know the Council thought that it did make a lot of sense to leverage and turn that around. The argument is even better now."

Special Projects Coordinator Dana Trowbridge said, "It's way better now. If we don't qualify for the grant, but I think we will, it's a no-brainer. The last round of Rural Workforce Housing in Nebraska was a ten million dollar give. At this point in time, it's almost two years old and they haven't finished the ten million yet. The new amount will be thirty million dollars and so, guess what, they're going to get funded."

Mayor Alan Zavodny said, "Is there any downside to this?"

City Attorney Michael Sands said, "You'll have to wait to spend it. That's the only downside. You have to go through the grant approval process and that takes time."

Mayor Alan Zavodny said, "I don't think that waiting is always a bad idea."

Interim City Administrator/City Clerk Tami Comte said, "I know that I have to designate the money for my report in January but then I think we may have another two years before it has to be spent."

City Attorney Michael Sands said, "That sounds right."

Council member Bruce Meysenburg said, "This money can be used for first-time borrowers? Is it just first-time borrowers or is it anybody?"

Special Projects Coordinator Dana Trowbridge said, "There is a laundry list that is probably twenty numbers long of how it can be used. What you want to do with this, if you want to use it effectively, is you want to recapture the money so you can turn it again. We're not going to be giving it away. You may do some loan buydown. You may do some very creative financing tricks with this to help buyers. You may do some guarantees."

Council member Bruce Meysenburg said, "I think right now with the interest rates the way they are, that would be a great place to start to help with interest rates on the financing. They are talking about seven percent interest rates on housing right now."

Special Projects Coordinator Dana Trowbridge said, "On the reuse side of it, we can use this money to do anything that you could do with it the first time. You could expand that Northland's addition to the east if you could get land bought, you could buy that land with the reuse money."

Mayor Alan Zavodny said, "I think this is very justifiable given the fact that you can't watch the news or read a newspaper that every community is talking about their housing issues. We've had people who have said that the housing market bubble is risky now and maybe that's the time that you are more bold. This makes sense for people who don't have the down payment. We need to get them working here because we need employees. Housing is important but those employees are what we need. They need a house to live in to be able to go to work at Timpte and AGP when they get here."

Council member Tom Kobus made a motion to designate the ARPA funds to Rural Workforce housing. Council Member Pat Meysenburg seconded the motion. The motion carried. Tom Kobus: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Jessica Miller: Yea, John Vandenberg: Absent, Kevin Woita: Yea
Yea: 5, Nay: 0, Absent: 1

Council member Tom Kobus made a motion to approve an engineering agreement with JEO Consulting Group for design and construction of new AGP substation. Council Member Bruce Meysenburg seconded the motion. The motion carried. Tom Kobus: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Jessica Miller: Yea, John Vandenberg: Absent, Kevin Woita: Yea
Yea: 5, Nay: 0, Absent: 1



AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR
PROFESSIONAL SERVICES

THIS IS AN AGREEMENT effective as of date signed by Owner ("Effective Date") between City of David City, Nebraska ("Owner") and JEO Consulting Group, Inc. ("Engineer").

Owner's project, of which Engineer's services under this Agreement are a part, is generally identified as follows:

David City AGP Substation ("Project").

JEO Project Number: 220993.00

Owner and Engineer further agree as follows:

ARTICLE 1 - SERVICES OF ENGINEER

1.01 Scope

- A. Engineer shall provide, or cause to be provided, the services set forth herein and in Exhibit A.

ARTICLE 2 - OWNER'S RESPONSIBILITIES

2.01 Owner Responsibilities

- A. Owner responsibilities are outlined in Section 3 of Exhibit B.

ARTICLE 3 - COMPENSATION

3.01 Compensation

- A. Owner shall pay Engineer as set forth in Exhibit A and per the terms in Exhibit B.
- B. The fee for the Project is: See Exhibit A.
- C. The Standard Hourly Rates Schedule shall be adjusted annually (as of approximately January 1st) to reflect equitable changes in the compensation payable to Engineer. The current hourly rate schedule can be provided upon request.

ARTICLE 4 - EXHIBITS AND SPECIAL PROVISIONS

4.01 Exhibits

Exhibit A – Scope of Services
Exhibit B – General Conditions

4.02 Total Agreement

- A. This Agreement (consisting of pages 1 to 2 inclusive, together with the Exhibits identified as included above) constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

Owner: City of David City, Nebraska

Engineer: JEO Consulting Group, Inc.



By: Alan Zavodny

By: Matt E. Kalin

Title: Mayor

Title: Electrical Project Manager

Date Signed: _____

Date Signed: November 4, 2022

Address for giving notices:

Address for giving notices:

City of David City, Nebraska

JEO Consulting Group, Inc.

490 "E" Street, PO Box 191

11213 Davenport Street, Suite 200

David City, NE 68632-0191

Omaha, NE 68154

Exhibit A

**SCOPE OF SERVICES
DAVID CITY AGP SUBSTATION
CITY OF DAVID CITY, NEBRASKA
JEO PROJECT # 220993.00**

Project Description:

The City of David City, Nebraska (Owner) owns and operates a public electric system that serves the city residents and businesses. A new industry, Ag Processing, Inc (AGP), plans to construct a new facility northwest of the community. The Owner desires to construct a new electrical substation to serve the new industrial site. The proposed substation will be on the south side of 37 Road and west of the existing railroad tracks; also, it is anticipated that it will be located east of the two proposed access roads into the new facility. The Owner desires to own the property with which the substation resides so a subdivision/survey plat and/or permanent easement(s) will be required. It is anticipated that Butler Public Power District (BPPD) will extend one 34.5 kV and one 69 kV sub-transmission line to the deadend structures of the new electrical substation. The design of the substation will require coordination with AGP, BPPD, and Nebraska Public Power District (NPPD).

The work to be performed by the Engineer shall generally encompass and include the development of front-end contract documents, technical specifications and plans detailing the necessary work, services, materials, equipment and supplies necessary to complete the design of the project, as well as, to provide bidding assistance, construction administration, and part-time inspections during the construction of the project.

The improvements will be constructed by a Contractor under a separate construction contract with the Owner, which will be awarded through a formal bidding process. It is anticipated that there will be one Prime Contractor contract to complete the work.

Phase I - Design

Project Management:

Provide project management oversight over all facets and phases of the project. Project management shall include the following services:

1. Coordination of design disciplines including facilitating communication and transfer of documents between disciplines to minimize errors in the plans and specifications as well as ensure a timely project design.
2. Provide timely and coordinated communication to and from the Owner for requests for information, providing progress updates, scheduling meetings, and receiving and providing feedback.
3. Provide oversight, monitor staff, and ensure proper staffing levels are maintained to ensure scope of services and schedule are met.
4. Work with disciplines to identify potential risks and how to mitigate those risks.
5. Review billed hours by design team and prepare invoice statements for Owner.
6. Provide timely and coordinated communication to and from the Contractor for requests for information and to receive and provide feedback.

Exhibit A

Design Services

1. **Conceptual Design.** The Conceptual Design will represent approximately 30% of a completed design.
 - a. Facilitate and attend Initial/Kick-off Meeting with Owner. Meeting will review the scope, schedule, and project requirements. The Engineer will also ask for any specific requirements or concerns from the Owner about the project. (One meeting)
 - b. Coordinate with AGP for design grading and site plan(s).
 - c. Complete engineering field investigation to verify existing data for the proposed substation area. (utilities, topographic survey, etc.) (One meeting)
 - d. Complete initial coordination meeting with BPPD and NPPD to discuss the conceptual alignment(s) of the sub-transmission line, metering requirements, and overall sub-transmission system protection scheme(s). (One meeting)
 - e. Assist the Owner in contracting with a geotechnical investigation firm. Geotechnical investigation will include performing soil bores at several location(s) within the proposed substation boundary to determine existing soil conditions, groundwater levels, resistivity, and develop criteria for soil suitability and properties to be utilized during the design of the concrete foundations and ground grid. Cost of geotechnical services to be paid by the Owner.
 - f. Develop 30% conceptual drawings to depict approx. new equipment location(s) for the substation.
 - g. Develop high level opinion of probable construction cost; accuracy level of 20%.
 - h. Facilitate and attend meeting with Owner to review equipment location(s) and approximate overall footprint of the substation. (One meeting)
2. **Long Lead Time Equipment Procurement Package.** It is the Owner's intention to purchase the long lead time equipment to facilitate AGP's facility start up schedule.
 - a. Prepare a preliminary set of technical specifications for a 69 kV – 34.5 kV substation transformer, 69 kV circuit switcher, 34.5 and 69 kV group operated load break switches, and 34.5 kV three-phase voltage regulator.
 - b. Update opinion of probable construction cost for long lead time items only; accuracy level of 15%.
 - c. Perform an internal quality assurance and quality control (QA/QC) review of the preliminary long lead time item technical specifications and incorporate comments.
 - d. Facilitate a virtual meeting with Owner to review preliminary long lead time item technical specification documents. (One virtual meeting)
 - e. Prepare Division 00 and 01 bidding requirements and contract general conditions specifications for long lead time items.
 - f. Update the opinion of probable construction cost for long lead time items only; accuracy level of 10%.
 - g. Conduct an internal 90% QA/QC review of the long lead time item specifications.
 - h. Prepare forms for Contract Documents including Invitation to Bid used for the advertisement, Bid Form, construction contracts between Owner and Contractor, and necessary payment and performance bonds and insurance requirements.

Exhibit A

- i. Create final specification and sign and seal by an engineer registered in the State of Nebraska.
 - j. Present 100% complete design documents for the long lead time item project (Specifications and Contract Documents) to the Owner electronically along with two hard copies for approval to bid the project. (One meeting)
 3. Preliminary Design. The Preliminary Design will represent approximately 60% of a completed design.
 - a. Prepare a set of preliminary drawings. Drawings will include cover sheet, abbreviation & symbol sheet, location sheet, site plan(s), grading plan(s), power plan(s), one-line diagram, grounding plan(s), conventional construction or pre-engineered metal building plan(s), steel structure plan(s), concrete foundation plan(s), and details as necessary.
 - b. Prepare a preliminary set of technical specifications.
 - c. Update opinion of probable construction cost; accuracy level of 15%.
 - d. Perform an internal quality assurance and quality control (QA/QC) review of the preliminary design and incorporate comments.
 - e. Facilitate and attend meeting with Owner to review 60% complete documents. Meeting will be completed using a virtual platform to allow support staff to participate remotely. (One meeting)
 - f. Facilitate and attend meeting with BPPD and NPPD to review 60% complete documents. (One meeting)
 4. Final 90% Design. The Final Design will be a completed design ready for a final review.
 - a. Revise design plans following receipt of Preliminary Design review comments from Owner or Owner's representatives, BPPD, and NPPD.
 - b. Design a Storm Water Pollution Prevention Plan (SWPPP) to consist of site plans illustrating the locations of Best Management Practices (BMP's), details for the installation of BMP's, and a manual that includes the procedures, documentation, and monitoring of SWPPP.
 - c. Prepare Division 00 and 01 bidding requirements and contract general conditions specifications.
 - d. Update the opinion of probable construction cost; accuracy level of 10%.
 - e. Conduct an internal 90% QA/QC review of the plans and specifications.
 - f. Conduct a 90% review of the project plans and opinion of probable construction cost with Owner, BPPD, and NPPD. Meeting will be completed using a virtual platform. (One meeting)
 5. 100% Design. The 100% Design will be a completed design ready for bidding.
 - a. Prepare forms for Contract Documents including Invitation to Bid used for the advertisement, Bid Form, construction contracts between Owner and Contractor, and necessary payment and performance bonds and insurance requirements.
 - b. Create final plan and specification set and sign and seal by an engineer registered in the State of Nebraska.

Exhibit A

- c. Present 100% complete design documents for the project (Plans, Specifications, and Contract Documents) to the Owner electronically along with two hard copies for approval to bid the project. (One meeting)

Phase II – Bidding and Negotiation

Bidding and Negotiation

1. Provide assistance with authorizing the advertisement for bids and setting the bid date, location, and time. It is expected that there will be two bid openings for the project: one for the long lead time items and one for the construction.
2. Furnish copies of the plans, specifications, and contract documents for two project(s) to prospective bidders, materials suppliers, and other interested parties upon their request and payment of the purchase cost established for the documents.
3. Supply the Invitation to Bidders to the Owner for publication in the official media outlet(s).
4. Respond to inquiries from prospective bidders, prepare any addenda required.
5. Attend two meetings with the Owner to assist ant the Bid Openings. (Two meetings)
6. Assist the Owner with tabulation of bids received, review bids received, and make two formal written recommendations of award to the Owner.
7. Present formal recommendations of award to Owner for approval. (Two meetings)
8. Prepare Contract Documents (Notice of Award, Construction Contract, Notice to Proceed) for execution by the Material Supplier(s) and Prime Contractor and Owner; provide cursory reviews of all insurance and bond submittals and present to Owner’s legal and insurance counsel for approval; then advise the Owner to proceed with execution of all documents.
9. Provide copies of all executed Contract Documents to the Owner and Material Supplier(s) and Prime Contractor.

Phase III - Construction

Construction Phase, Basic Services

1. Review major equipment shop drawings (submittals) and related data supplied by the Material Supplier(s)/Contractor. This will provide the Engineer and Owner the opportunity to review the materials and equipment that will be supplied for the improvements prior to the Owner/Contractor securing and obtaining them; which allows the Engineer the chance to compare the selected materials and equipment against the specifications.
2. Schedule and conduct a Pre-construction Conference prior to construction beginning. Conference (Pre-Con) will review the required timelines set forth in the specifications, lines of communication, key contacts of those involved, review any conflicts with utilities or schedules, review the schedule proposed by the Contractor(s), review any requirements of the Contractor for locates and staking needs, etc. (One meeting)
3. Provide interpretation of Plans and Specifications, when necessary.
4. Provide baseline survey for horizontal and vertical controls for the proposed improvements, to be referenced by both the Engineer and Contractor.
5. Provide construction staking of the centerlines for the concrete work and fence corners. (One site visit)
6. Coordinate materials testing during construction. Materials testing shall be completed by a geotechnical firm. Costs associated for these services to be paid by the Owner.

Exhibit A

7. Consult with and advise the Owner during construction.
8. Develop overcurrent relay protection settings and download into relay(s). (One meeting)
9. Review and process Contractor's monthly payment applications, and process change orders, if necessary, and provide to the Owner electronically for review and approval. (12 included)
10. Facilitate and attend monthly progress meetings with Owner and Contractor (up to six meetings included) including providing the agenda and meeting minute reports. Provide written progress meeting minutes for the review at the City Council meeting. Meetings may be conducted by Resident Project Representative. (Six meetings)
11. Attend up to three City Council meetings during construction to provide City Council Members updates and assistance with pay applications, change orders, etc. It is assumed that the construction progress meetings will be scheduled on the same day as the City Council meeting.
12. Conduct a final inspection of the project with the Contractor and Owner to ensure all components of the project have been completed and are acceptable to all parties prior to final payment. (One meeting)
13. Prepare a final punch-list of outstanding items needing completion prior to finalization of the project based on field observations and review by Resident Project Representative, Owner, and Contractor.
10. Attend one meeting to recommend to the Owner the substantial completion the project and complete the necessary certificate(s). This recommendation(s) will be based on the Engineer's observation of construction utilizing professional judgment and accepted tests to determine that the Contractor(s) have completed their contracts in substantial compliance with the plans, specifications, and contract documents. (One meeting)

Construction Phase, Resident Project Representative (RPR) Services

1. JEO will furnish a part-time Resident Project Representative (RPR) to observe construction progress and quality of the work. (Estimated at 324 hours).
2. The duties and responsibilities of the RPR are described as follows:
 - a. Review of contractors work for general compliance with the plans and specifications.
 - b. Complete Construction Observation Reports when on site.
 - c. Coordinate pay quantities with Contractor and Engineer.
 - d. Review of materials delivered to the site for specification compliance.
 - e. Assist the Engineer in interpretation of the plans and specifications to the Contractor.
 - f. Review and coordinate materials testing by assigned testing firm.
 - g. Attend progress meetings.
 - h. Compile records for use in preparing record drawings.
3. When nearing estimated compensation amounts stated herein and it subsequently becomes apparent to Engineer that a compensation amount estimated will be exceeded, Engineer shall give Owner written notice thereof. Should the Owner determine the estimated amount should not be exceeded, Owner shall notify Engineer and Engineer shall reduce the remaining services to be rendered by Engineer, so that total compensation for such services will not exceed said estimated amount when such services are completed. If Engineer exceeds the estimated amount before Owner notifies the Engineer, the Engineer shall be paid for all services rendered up to being notified.

Exhibit A

Phase IV – Post Construction

Post-Construction Services

1. Prepare post-construction record drawings from data provided by Contractor during the construction process.
2. Prepare 6-month and 11-month warranty letters.
3. Coordinate with Contractor to have warranty items addressed.

Meetings

Meetings included with this scope:

- A. Design Phase:
 1. Project Initiation / Kickoff Meeting (One meeting)
 2. Engineering Field Investigation (One meeting)
 3. BPPD and NPPD Coordination Meeting (One meeting)
 4. 30% Design Review (One meeting)
 5. Preliminary Long Lead Time Item Specification Review (One virtual meeting)
 6. 100% Long Lead Time Item Approval to Bid (One meeting)
 7. 60% Design Review (One meeting)
 8. BPPD and NPPD Design Review (One meeting)
 9. 90% Design Review (One meeting)
 10. 100% Design Approval to Bid (One meeting)
- B. Bidding and Negotiation:
 1. Bid Opening (Two meetings)
 2. Formal Recommendation of Award (Two meetings)
- C. Construction:
 1. Pre-Construction Conference (One meeting)
 2. Download Relay settings (One meeting)
 3. Construction Progress Meeting (Six meetings)
 4. City Council Updates on Construction Progress (Three meetings)
 5. Final Inspection (One meeting)
 6. City Council Recommendation of Substantial Completion (One meeting)

SCHEDULE

DURATION

Phase I – Design Phase Services	120 -150 Calendar Days
Phase II – Bidding and Negotiation Phase Services	45 - 60 Calendar Days
Phase III – Construction Phase Services	9 Calendar Months
Phase IV – Post Construction Phase Services	12 months after Owner accepts project completion

Exhibit A

<u>FEE 'LUMP SUM'</u>	<u>FEE</u>
Phase I – Design Phase Services	\$ 210,000.00
Phase II – Bidding and Negotiation Phase Services	\$ 18,000.00
Phase III – Construction Phase Services, Basic	\$ 79,500.00
Phase III – Construction Phase Services, RPR (hourly estimated)	\$ 62,500.00
Phase VI – Post Construction Phase Services	<u>\$ 5,000.00</u>
Total Fee (Lump Sum)	\$ 375,000.00

Owner Responsibility

1. Provide access to all properties where proposed improvements will be placed.
2. Ensure we have maintenance personnel available to assist in the filed investigation process.
3. Provided a room/location for all meetings throughout the project.

Additional Services, Not Included

1. Topographic survey of land not identified previously within the Scope of Services.
2. Land rights and ownership.
3. Environmental permitting not outlined in the Scope of Services.
4. Preparation of Section 408 permit or any coordination with USACE.
5. Preparation of roadway crossing permit or any coordination with Nebraska Department of Transportation.
6. Geotechnical investigation, report, and testing services.
7. Payment of any permitting fees.
8. Meetings not outlined in the Scope of Services.
9. Cost for publication of notices or other advertisements will be paid by the Owner.
10. Cost of any and all permit fees required by the Owner.
11. Attorney fees related to this project.
12. Cost of any change order for work beyond the original project program shall be negotiated with Owner.
13. Installation or maintenance of BMP's corresponding to the implementation of SWPPP.

JEO CONSULTING GROUP INC ■ JEO ARCHITECTURE INC

1. SCOPE OF SERVICES: JEO Consulting Group, Inc. (JEO) shall perform the services described in Exhibit A. JEO shall invoice the owner for these services at the fee stated in Exhibit A.

2. ADDITIONAL SERVICES: JEO can perform work beyond the scope of services, as additional services, for a negotiated fee or at fee schedule rates.

3. OWNER RESPONSIBILITIES: The owner shall provide all criteria and full information as to the owner's requirements for the project; designate and identify in writing a person to act with authority on the owner's behalf in respect to all aspects of the project; examine and respond promptly to JEO's submissions; and give prompt written notice to JEO whenever the owner observes or otherwise becomes aware of any defect in work.

Unless otherwise agreed, the owner shall furnish JEO with right-of-access to the site in order to conduct the scope of services. Unless otherwise agreed, the owner shall also secure all necessary permits, approvals, licenses, consents, and property descriptions necessary to the performance of the services hereunder. While JEO shall take reasonable precautions to minimize damage to the property, it is understood by the owner that in the normal course of work some damage may occur, the restoration of which is not a part of this agreement.

4. TIMES FOR RENDERING SERVICES: JEO's services and compensation under this agreement have been agreed to in anticipation of the orderly and continuous progress of the project through completion. Unless specific periods of time or specific dates for providing services are specified in the scope of services, JEO's obligation to render services hereunder shall be for a period which may reasonably be required for the completion of said services.

If specific periods of time for rendering services are set forth or specific dates by which services are to be completed are provided, and if such periods of time or date are changed through no fault of JEO, the rates and amounts of compensation provided for herein shall be subject to equitable adjustment. If the owner has requested changes in the scope, extent, or character of the project, the time of performance of JEO's services shall be adjusted equitably.

5. INVOICES: JEO shall submit invoices to the owner monthly for services provided to date and a final bill upon completion of services. Invoices are due and payable within 30 days of receipt. Invoices are considered past due after 30 days. Owner agrees to pay a finance charge on past due invoices at the rate of 1.0% per month, or the maximum rate of interest permitted by law.

If the owner fails to make any payment due to JEO for services and expenses within 30 days after receipt of JEO's statement, JEO may, after giving 7 days' written notice to the owner, suspend services to the owner under this agreement until JEO has been paid in full all amounts due for services, expenses, and charges.

6. STANDARD OF CARE: The standard of care for all services performed or furnished by JEO under the agreement shall be the care and skill ordinarily used by members of JEO's profession practicing under similar circumstances at the same time and in the

same locality. JEO makes no warranties, express or implied, under this agreement or otherwise, in connection with JEO's services.

JEO shall be responsible for the technical accuracy of its services and documents resulting therefrom, and the owner shall not be responsible for discovering deficiencies therein. JEO shall correct such deficiencies without additional compensation except to the extent such action is directly attributable to deficiencies in owner furnished information.

7. REUSE OF DOCUMENTS: Reuse of any materials (including in part plans, specifications, drawings, reports, designs, computations, computer programs, data, estimates, surveys, other work items, etc.) by the owner on a future extension of this project, or any other project without JEO's written authorization shall be at the owner's risk and the owner agrees to indemnify and hold harmless JEO from all claims, damages, and expenses including attorney's fees arising out of such unauthorized use.

8. ELECTRONIC FILES: Copies of Documents that may be relied upon by the owner are limited to the printed copies (also known as hard copies) that are signed or sealed by JEO. Files in electronic media format of text, data, graphics, or of other types that are furnished by JEO to the owner are only for convenience of the owner. Any conclusion or information obtained or derived from such electronic files shall be at the user's sole risk.

a. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it shall perform acceptance tests or procedures within 30 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 30 day acceptance period shall be corrected by the party delivering the electronic files. JEO shall not be responsible to maintain documents stored in electronic media format after acceptance by the owner.

b. When transferring documents in electronic media format, JEO makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by JEO at the beginning of the project.

c. The owner may make and retain copies of documents for information and reference in connection with use on the project by the owner.

d. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.

e. Any verification or adaptation of the documents by JEO for extensions of the project or for any other project shall entitle JEO to further compensation at rates to be agreed upon by the owner and JEO.

9. SUBCONSULTANTS: JEO may employ consultants as JEO deems necessary to assist in the performance of the services. JEO shall not be required to employ any consultant unacceptable to JEO.

10. INDEMNIFICATION: To the fullest extent permitted by law, JEO and the owner shall indemnify and hold each other harmless and their respective officers, directors, partners, employees, and consultants from and against any and all claims, losses, damages, and expenses (including but not limited to all fees and charges of

JEO CONSULTING GROUP INC ■ JEO ARCHITECTURE INC

engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) to the extent such claims, losses, damages, or expenses are caused by the indemnifying parties' negligent acts, errors, or omissions. In the event claims, losses, damages, or expenses are caused by the joint or concurrent negligence of JEO and the owner, they shall be borne by each party in proportion to its negligence.

11. INSURANCE: JEO shall procure and maintain the following insurance during the performance of services under this agreement:

- a. Workers' Compensation: Statutory
- b. Employer's Liability
 - i. Each Accident: \$500,000
 - ii. Disease, Policy Limit: \$500,000
 - iii. Disease, Each Employee: \$500,000
- c. General Liability
 - i. Each Occurrence (Bodily Injury and Property Damage): \$1,000,000
 - ii. General Aggregate: \$2,000,000
- d. Auto Liability
 - i. Combined Single: \$1,000,000
- e. Excess or Umbrella Liability
 - i. Each Occurrence: \$1,000,000
 - ii. General Aggregate: \$1,000,000
- f. Professional Liability:
 - i. Each Occurrence: \$1,000,000
 - ii. General Aggregate: \$2,000,000
- g. All policies of property insurance shall contain provisions to the effect that JEO and JEO's consultants' interests are covered and that in the event of payment of any loss or damage the insurers shall have no rights of recovery against any of the insureds or additional insureds thereunder.
- h. The owner shall require the contractor to purchase and maintain general liability and other insurance as specified in the Contract Documents and to cause JEO and JEO's consultants to be listed as additional insured with respect to such liability and other insurance purchased and maintained by the contractor for the project.
- i. The owner shall reimburse JEO for any additional limits or coverages that the owner requires for the project.

12. TERMINATION: This agreement may be terminated by either party upon 7 days prior written notice. In the event of termination, JEO shall be compensated by owner for all services performed up to and including the termination date. The effective date of termination may be set up to thirty (30) days later than otherwise provided to allow JEO to demobilize personnel and equipment from the site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble project materials in orderly files.

13. GOVERNING LAW: This agreement is to be governed by the law of the state in which the project is located.

14. SUCCESSORS, ASSIGNS, AND BENEFICIARIES: The owner and JEO each is hereby bound and the partners, successors, executors, administrators and legal representatives of the owner and JEO are hereby bound to the other party to this agreement and to the partners, successors, executors, administrators and legal representatives (and said assigns) of such other party, with respect to all covenants, agreements and obligations of this agreement.

- a. Neither the owner nor JEO may assign, sublet, or transfer any rights under or interest (including, but without limitation, monies that are due or may become due) in this agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment shall release or discharge the assignor from any duty or responsibility under this agreement.
- b. Unless expressly provided otherwise in this agreement: Nothing in this agreement shall be construed to create, impose, or give rise to any duty owed by the owner or JEO to any contractor, contractor's subcontractor, supplier, other individual or entity, or to any surety for or employee of any of them.
- c. All duties and responsibilities undertaken pursuant to this agreement shall be for the sole and exclusive benefit of the owner and JEO and not for the benefit of any other party.

15. PRECEDENCE: These standards, terms, and conditions shall take precedence over any inconsistent or contradictory language contained in any proposal, contract, purchase order, requisition, notice to proceed, or like document regarding JEO's services.

16. SEVERABILITY: Any provision or part of the agreement held to be void or unenforceable shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon the owner and JEO, who agree that the agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

17. NON-DISCRIMINATION CLAUSE: Pursuant to Neb. Rev. Stat. § 73-102, the parties declare, promise, and warrant that they have and will continue to comply fully with Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C.A § 1985, et seq.) and the Nebraska Fair Employment Practice Act, Neb. Rev. Stat. § 48-1101, et seq., in that there shall be no discrimination against any employee who is employed in the performance of this agreement, or against any applicant for such employment, because of age, color, national origin, race, religion, creed, disability or sex.

18. E-VERIFY: JEO shall register with and use the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee pursuant to the Immigration Reform and Control Act of 1986, to determine the work eligibility status of new employees physically performing services within the state where the work shall be performed. Engineer shall require the same of each consultant.

Council member Jessica Miller made a motion to approve the SRF funding package #1 with up to 45% loan forgiveness. Council Member Bruce Meysenburg seconded the motion. The motion carried.

Tom Kobus: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Jessica Miller: Yea, John Vandenberg: Absent, Kevin Woita: Yea
Yea: 5, Nay: 0, Absent: 1

(This space left intentionally blank)

WATER & WASTEWATER ADVISORY COMMITTEE (WWAC)



Department of Agricultural
Rural Development



Department of
Environment & Energy

November 4, 2022

Tami Comte, City Clerk-Treasurer
 City of David City
 PO Box 191
 David City, NE 68632
tcomte@davidcityne.com

Re: Funding Package Proposals – City of David City
 Bob Veenstra
 Veenstra & Kimm, Inc.

Dear Ms. Comte:

Thank you for your funding request to the WWAC. The committee has chosen me to be your point of contact for this project. The committee has reviewed the documents requested and submitted and have determined that the scope is well defined and not likely to change.

The following is a list of tentative financial packages available to the City of David City for the proposed project. Until financing is secured through a Department's policy, these offers are subject to change. The packages were built using the data in the attached Appendix A. If this data changes as the underwriting proceeds, the loans and grants will also change. Additionally, based on the sewer user rate for the City as listed in the Wastewater Treatment Plant Evaluation Report, the estimated average monthly income for general sewer use (using 5,000 gallons of water per month per user) is \$23.15 per user.

The committee is asking your elected officials to make a decision on the best funding package for your community. Please route this letter to your board to discuss and vote at the next legal open meeting and then notify me of the community's decision.

Funding Package #1

Financing through the Nebraska Department of Environment and Energy – Clean Water State Revolving Fund (CWSRF) Program.

	SRF Financing
Project Cost:	\$13,000,000
Estimated Additional Cost Attributed to Davis-Bacon Act	\$260,000
Loan Term:	Up to 30 Years
Loan Rate:	1.6% (0.8% Interest + 0.8% Admin Fee)
Loan Forgiveness:	\$5,967,000 (45% of total SRF Loan)
Small Town Grant:	\$0
Loan:	\$7,293,000
Total Package:	\$13,260,000
Estimated Annual O&M Cost:	\$550,000
Estimated Annual Debt Service:	\$365,018
Existing Annual Debt Payment:	\$15,726
Total Annual Costs:	\$930,744

PROJECTED ANNUAL REVENUE	
Existing Revenue without Michael Foods:	\$385,000
Michael Foods Debt Annual Payments:	\$77,844
New Industry AGP Projected Revenue:	\$260,000
Projected Industry Rate Increase for 10% coverage on CWSRF debt service:	\$273,764
Projected Residential Sewer Rate Increase \$6.27 for 10% coverage on CWSRF debt service:	\$91,255
Total Projected Revenue:	\$1,087,863
Estimated Average User Rate*:	\$29.42 per user per month

*Rates based off an estimated 1212 Users for City of David City

It is projected that the City of David City would qualify for a loan up to 30 years with an annual interest rate of up to 0.8% and an annual administrative fee of 0.8% on unpaid principal. The City of David City would be eligible for receiving up to 45% in Loan Forgiveness funds for the project. Funding for a full construction loan will likely not be available until October 1, 2023.

Annual O&M costs for the new project is estimated to be \$550,000, which is a \$138,830 decrease to the current annual O&M costs of \$688,830. Based on number of users, and contingent on at least 75% of debt service being borne by Commercial and Industrial Users, the total impact of monthly user rate would then be approximately \$6.27 per user. A final assessment of revenues and costs will need to be analyzed to determine the actual user charge adjustment as necessary.

Use of CWSRF funds would require compliance with additional federal regulations such as application of Davis-Bacon and Other Labor Laws. Unless a public meeting was held regarding the proposed project before May 14, 2022, the project would also need to comply with Build America Buy America regulations and other federal and state requirements.

Funding Package #2

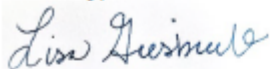
USDA Rural Development (USDA)

USDA Financing	
Project Cost:	\$13,000,000
Loan Term:	Up to 40 Years
Loan Rate:	2.125%
Grant:	\$0
Total Package:	\$13,000,000

USDA funding would be loan only for this project. The loan term would be up to 40 years. The current interest rate of 2.125% effective 10/1/22 to 12/31/22. USDA funding would require the City of David City to secure interim financing during the construction period. The interest and origination costs associated with the interim loan would be eligible project. The City of David City would also need to comply with Build America Buy America regulations with USDA funding if USDA funds are not obligated prior to February 2023. David City would have to successfully demonstrate test of credit for USDA funding by securing commercial credit turn down letters.

These packages are in effect for 30 days. After that, the WWAC reserves the right to recalculate and revise the package. The City of David City would need to request more time if needed. As always, please contact me with any questions or concerns and thank you for choosing to work with the WWAC agencies.

Sincerely,



Lisa Giesbrecht,
Environmental Specialist II
Nebraska Department of Environment & Energy
Phone: (402) 471-3671
Email: lisa.giesbrecht@nebraska.gov

EC: USDA – Marshall Stephens, marshall.stephens@usda.gov, 402-437-5732
Veenstra & Kimm, Inc. – Bob Veenstra, P.E., bveenstra@v-k.net, 515-225-8000

20_WWAC_Finance to Applicant Letter.doc

Council member Jessica Miller made a motion to table Change Order No. 3 in the amount of \$9,100 for M. E. Collins for water line adjustments and re-install fencing. Council Member Tom Kobus seconded the motion. The motion carried.

Tom Kobus: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Jessica Miller: Yea, John Vandenberg: Absent, Kevin Woita: Yea
Yea: 5, Nay: 0, Absent: 1

Council member Tom Kobus made a motion to adjourn. Council Member Pat Meysenburg seconded the motion. The motion carried and Mayor Zavodny declared the meeting adjourned at 8:07 p.m.

Tom Kobus: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Jessica Miller: Yea, John Vandenberg: Absent, Kevin Woita: Yea
Yea: 5, Nay: 0, Absent: 1



CERTIFICATION OF MINUTES
November 9, 2022

I, Tami Comte, duly qualified and acting City Clerk for the City of David City, Nebraska, do hereby certify with regard to all proceedings of November 9, 2022; that all of the subjects included in the foregoing proceedings were contained in the agenda for the meeting, kept continually current and available for public inspection at the office of the City Clerk; that such subjects were contained in said agenda for at least twenty-four hours prior to said meeting; that the minutes of the meeting of the City Council of the City of David City, Nebraska, were in written form and available for public inspection within ten working days and prior to the next convened meeting of said body; that all news media requesting notification concerning meetings of said body were provided with advance notification of the time and place of said meeting and the subjects to be discussed at said meeting.

Tami Comte, City Clerk