

CITY COUNCIL PROCEEDINGS

April 13, 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 557 N. 4th Street, David City, Nebraska. The Public had been advised of the meeting by publication of notice in The Banner Press on April 7, 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 members Pat Meysenburg, Tom Kobus, Bruce Meysenburg, Jessica Miller, John Vandenberg, Kevin Woita, City Attorney Joanna Uden, and Interim City Administrator/City Clerk-Treasurer Tami Comte.

Also present for the meeting were: Water Supervisor/Interim Wastewater Supervisor Aaron Gustin, Building Inspector Gary Meister, Special Projects Coordinator Dana Trowbridge, Deputy Clerk Lori Matchett, Bryon Forney, Bob and Laura Kobza, Keith Marvin, Bob Hilger, Banner-Press Correspondent Hannah Schrod 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 east 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 Tom Kobus made a motion to approve the minutes of the March 23rd City Council meeting 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: Yea, Kevin Woita: Yea
Yea: 6, Nay: 0

Council member Tom Kobus made a motion to approve the claims 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: Yea, Kevin Woita: Yea
Yea: 6, Nay: 0

Water Supervisor/Interim Wastewater Supervisor Aaron Gustin said, "I just wanted to inform the Council and the Mayor that the valve that was purchased on executive action has arrived, and we will begin installing that probably the first part of next week. We need to hydro excavate around the basins and deal with some electrical which we'll talk about later on the agenda. I spoke with Seth Draper of the EPA, and he was excited to hear that Bob Veenstra

will be making a presentation and be holding three meetings with the Council members towards the end of the month just preeminently and urge them to vote on something that he presents. As everyone on the Council is aware, we are addressing staffing issues on all of our projects, our meter projects, the 3rd Street water main project, and the Akrs water main extension. The Akrs water main project will not be able to take place by us, in house, unless we address some staffing. I wanted to just bring that to everyone's attention. I do apologize, normally I detail the overtime, but I was grooming a dog before I came here, and I didn't have time to write it down. If you have questions, I'm more than happy to get that to you tomorrow."

Mayor Alan Zavodny said, "I have a couple of things unless other people have something. I just wanted to let the Council know that we are waiting on a few of the departments with their job descriptions that they were going to put together for us and some ideas on the salary schedule. What I had thought about doing and I just wanted to let you guys know and if you have any problems with it, now is a great time to tell us. I'd like to have Mat, Mick, and Bill work with me and Jessica on putting together what our compensation package could look like and then bring it to you because, obviously, you're the ones that have to approve it. So, we'll do some small group work to get a form that you can look at and pick at. I think we have some issues that we need to address because I think there's some compensation areas that not all of our employees have the same considerations in. So, we're going to look at those things and figure out what the fairest thing to do is. That is a good mixture of people who are topped out and have some other nuances in our compensation package. Also, there's a lot of stuff going on and I know that I've been in meetings with some of you with the new developments and the department of roads and stuff. If there are any questions, please just ask. There's a lot going on and sometimes it changes hourly. The final thing, just to plan ahead, I will be, providing that Canada doesn't close its borders again, gone from July 1st through the 10th and so someone else would have to be available if something comes up, the emergency things that come up that the mayor has to do, that are an emergency that can't wait until a meeting, we'll have to be prepared for that and September 12th through 19th I will be gone also. Just wanted to give you a 'heads up'."

Council member Kevin Woita said, "I'd like to address Aaron's staffing issues. He's got a couple of candidates that I sat in on the interviews and they could potentially help us. The one question that I had and talking with Aaron was I don't know what a good starting wage would be. I don't want to offend the other departments by setting it too high, but we've got to be able to hire them at a decent wage. Do we have any advice to give Aaron so we can get these two people on the payroll?"

Mayor Alan Zavodny said, "Well, we've been working on those things and we're not ready to do anything by Ordinance which would change the pay scale but what we've done in the past that has worked fairly well is and it especially happens with electrical, depending on experience and skills, we've been able to advance people on the salary schedule and that's probably what we can do. The only time that I remember us doing something different and it made perfect sense and it worked out really well is when John came to work for the City based on his years of experience and skill level and the things that he is able to do, he's certainly more than ten times paid for what we pay him. So, those things can be considered, and we can work on those. I'll look at the needs and the skill level. If someone has experience operating a backhoe and things for the job, then they are worth more to us. We've done that in the past and that's probably what we need to do until we get this thing overhauled."

Council member Kevin Woita said, "Is that Aaron's decision or our decision?"

Mayor Alan Zavodny said, "Usually, I will listen to the arguments for and the different skill levels that would put them above the starting. We've had to do it in the electrical department a lot."

Council member Kevin Woita said, "So, between you and Aaron, you'll set the starting wage?"

Mayor Alan Zavodny said, "We'll get it figured out, yeah."

Water Supervisor/Interim Wastewater Supervisor Aaron Gustin said, "That was going to be my question because we have a gentleman that Kevin and I said that we would have a decision by this Friday."

Council member Kevin Woita said, "He wants to give his two-weeks' notice."

Mayor Alan Zavodny said, "We can set it and it will be adjusted down the road when we get to setting a new salary schedule. I'm going to put one caveat down. We will work on a salary schedule, and we will bring it to you, but if there's any concern by the Union then the thing dies because we have an agreement in place. We're not going to negotiate a new agreement. We'll put something out and they will either say yes or if they want to start questioning it then I'm telling you that process ends. Does that make sense to everyone?"

The Council members agreed that it did.

Council member Bruce Meysenburg made a motion to approve the Committee and Officers reports 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: Yea, Kevin Woita: Yea

Yea: 6, Nay: 0

Interim City Administrator/City Clerk Tami Comte said, "This is the map for the Wellhead Protection Area that JEO came up with and NDEE approved those boundaries. So, that's what you are approving tonight. You are recognizing the boundaries of the new Wellhead Protection Area."

Mayor Alan Zavodny said, "That takes in all of the current annexations?"

Interim City Administrator/City Clerk Tami Comte said, "Yes."

Mayor Alan Zavodny said, "Does anyone have any questions regarding that?"

Council member Bruce Meysenburg introduced Ordinance No. 1383 Recognizing the Boundaries of the Wellhead Protection Map. Mayor Alan Zavodny read Ordinance No. 1383 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 Tom Kobus seconded the motion. The motion carried. Tom Kobus: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Jessica Miller: Yea, John Vandenberg: Yea, Kevin Woita: Yea
Yea: 6, Nay: 0

Council member Bruce Meysenburg made a motion to pass and adopt Ordinance No. 1383 Recognizing the Boundaries of the Wellhead Protection Map on third and 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: Yea, Kevin Woita: Yea
Yea: 6, Nay: 0

ORDINANCE NO. 1383

AN ORDINANCE TO THE CITY OF DAVID CITY, NEBRASKA TO AMEND SECTION 7-234 OF THE DAVID CITY MUNICPAL CODE DESIGNATING A WELLHEAD PROTECTION AREA, AS APPROVED BY THE NEBRASKA DEPARTMENT OF ENVIRONMENT AND ENERGY, WELLHEAD PROTECTION PROGRAM, DATED JANUARY 2022, TO PROVIDE FOR THE REPEAL OF ORDINANCES INCONSISTENT HEREWITH; TO PROVIDE WHEN THIS ORDINANCE SHALL BE IN FULL FORCE AND EFFECT; AND TO PROVIDE FOR THE PUBLICATION OF THIS ORDINANCE IN PAMPHLET FORM.

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

Section 1. Definitions. Wellhead Protection Area means the surface and subsurface area surrounding a public water supply well or wellfield, supplying a public water supply system, through which contaminants are reasonably likely to move toward and reach such water well or well field.

Section 2. The City Council designates a Wellhead Protection Area for the purpose of protecting the public water supply system. The boundaries of the Wellhead Protection Area are based upon the delineation map published by the Nebraska Department of Environment and Energy January 2022. The boundaries of the Wellhead Protection Area are:

A PARCEL OF LAND LOCATED IN BUTLER COUNTY, NEBRASKA BEING DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHWEST CORNER OF THE SOUTH HALF OF SECTION 12-T15N-R2E; THENCE EAST ON THE NORTH LINE OF SAID SOUTH HALF, A DISTANCE OF 5280 FEET, MORE OR LESS, TO THE NORTHEAST CORNER OF SAID SOUTH HALF; THENCE EAST ON THE NORTH LINE OF THE SOUTH HALF OF SECTION 7-T15N-R3E, A DISTANCE OF 5280 FEET, MORE OR LESS, TO THE NORTHEAST CORNER OF SAID SOUTH HALF; THENCE EAST ON THE NORTH LINE OF THE WEST HALF OF THE SOUTHWEST QUARTER OF SECTION 8-T15N-R3E, A DISTANCE OF 1320 FEET, MORE OR LESS, TO THE NORTHEAST CORNER OF SAID WEST HALF OF THE SOUTHWEST QUARTER; THENCE SOUTH ON THE EAST LINE OF SAID WEST HALF OF THE SOUTHWEST QUARTER, A DISTANCE OF 2640 FEET, MORE OR LESS, TO THE SOUTHEAST CORNER OF SAID WEST HALF OF THE SOUTHWEST QUARTER; THENCE EAST ON THE NORTH LINE OF THE NORTHWEST QUARTER OF SECTION 17-T15N-R3E, A DISTANCE OF 1320 FEET, MORE OR LESS, TO THE NORTHEAST CORNER OF SAID NORTHWEST QUARTER; THENCE SOUTH ON THE EAST LINE OF SAID NORTHWEST QUARTER, A DISTANCE OF 2640 FEET, MORE OR LESS, TO THE SOUTHEAST CORNER OF SAID NORTHWEST QUARTER; THENCE EAST ON THE NORTH LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 17, A DISTANCE OF 2640 FEET, MORE OR LESS, TO THE NORTHEAST CORNER OF SAID SOUTHEAST QUARTER; THENCE SOUTH ON THE EAST LINE OF SAID SOUTHEAST QUARTER, A DISTANCE OF 2640 FEET, MORE

OR LESS, TO THE SOUTHEAST CORNER OF SAID SOUTHEAST QUARTER; THENCE SOUTH ON THE EAST LINE OF SECTION 20-T15N-R3E, A DISTANCE OF 3500 FEET, MORE OR LESS, TO THE SOUTH RIGHT OF WAY LINE OF THE UNION PACIFIC RAILROAD; THENCE EAST ON SAID SOUTH RIGHT OF WAY LINE, A DISTANCE OF 2640 FEET, MORE OR LESS, TO THE EAST LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 21; THENCE SOUTH ON SAID EAST LINE, A DISTANCE OF 1780 FEET, MORE OR LESS, TO THE SOUTHEAST CORNER OF SAID SOUTHWEST QUARTER; THENCE WEST ON THE SOUTH LINE OF SAID SOUTHWEST QUARTER, A DISTANCE OF 1320 FEET, MORE OR LESS, TO THE NORTHEAST CORNER OF A TRACT OF LAND DESCRIBED IN INST. NO. 17-01168; THENCE SOUTHERLY ON THE EASTERLY LINE OF SAID TRACT, A DISTANCE OF 2640 FEET, MORE OR LESS; THENCE WEST ON THE SOUTH LINE OF SAID TRACT, A DISTANCE OF 1500 FEET, MORE OR LESS TO THE NORTHEAST CORNER OF THE SOUTHEAST QUARTER OF SECTION 29-T15N-R3E; THENCE SOUTH ON THE EAST LINE OF SAID SOUTHEAST QUARTER, A DISTANCE OF 2640 FEET, MORE OR LESS, TO THE SOUTHEAST CORNER OF SAID SOUTHEAST QUARTER; THENCE SOUTH ON THE EAST LINE OF THE NORTHEAST QUARTER OF SECTION 32-T15N-R3E, A DISTANCE OF 2640 FEET, MORE OR LESS, TO THE SOUTHEAST CORNER OF SAID NORTHEAST QUARTER; THENCE WEST ON THE SOUTH LINE OF SAID NORTHEAST QUARTER, A DISTANCE OF 2640 FEET, MORE OR LESS, TO THE SOUTHWEST CORNER OF SAID NORTHEAST QUARTER; THENCE SOUTH ON THE EAST LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 32, A DISTANCE OF 2640 FEET, MORE OR LESS, TO THE SOUTHEAST CORNER OF SAID SOUTHWEST QUARTER; THENCE WEST ON THE SOUTH LINE OF SAID SOUTHWEST QUARTER, A DISTANCE OF 2640 FEET, MORE OR LESS, TO THE SOUTHWEST CORNER OF SAID SOUTHWEST QUARTER; THENCE WEST ON THE SOUTH LINE OF SECTION 31-T15N-R3E, A DISTANCE OF 5280 FEET, MORE OR LESS, TO THE SOUTHWEST CORNER OF SAID SECTION 31; THENCE WEST, ON THE SOUTH LINE OF SECTION 36-T15N-R2E, A DISTANCE OF 3960 FEET, MORE OR LESS, TO THE SOUTHEAST CORNER OF THE WEST HALF OF THE SOUTHWEST QUARTER OF SAID SECTION 36; THENCE NORTH ON THE EAST LINE OF SAID WEST HALF OF THE SOUTHWEST QUARTER, A DISTANCE OF 2640 FEET, MORE OR LESS, TO THE NORTHEAST CORNER OF SAID WEST HALF OF THE SOUTHWEST QUARTER; THENCE WEST ON THE NORTH LINE OF SAID WEST HALF OF THE SOUTHWEST QUARTER, A DISTANCE OF 1320 FEET, MORE OR LESS, TO THE SOUTHWEST CORNER OF THE NORTHWEST QUARTER OF SAID SECTION 36; THENCE NORTH ON THE WEST LINE OF SAID NORTHWEST QUARTER, A DISTANCE OF 2640 FEET, MORE OR LESS, TO THE SOUTHWEST CORNER OF SECTION 25-T15N-R2E; THENCE NORTH ON THE WEST LINE OF SAID SECTION 25, A DISTANCE OF 5280 FEET, MORE OR LESS, TO THE NORTHWEST CORNER OF SAID SECTION 25; THENCE NORTH ON THE WEST LINE OF SECTION 24-T15N-R2E, A DISTANCE OF 5280 FEET, MORE OR LESS, TO THE NORTHWEST CORNER OF SAID SECTION 24; THENCE NORTH ON THE WEST LINE OF SECTION 13-T15N-R2E, A DISTANCE OF 5280 FEET, MORE OR LESS, TO THE NORTHWEST CORNER OF SAID SECTION 13; THENCE NORTH ON THE WEST LINE OF THE SOUTH HALF OF SECTION 12-T15N-R2E, A DISTANCE OF 2640 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

Section 3. That a copy of the official Nebraska Department of Environment and Energy map of the Wellhead Protection Area for the City of David City, Nebraska is on file and shall be kept in the office of the City Clerk for the City of David City, Nebraska.

Section 4. That all Ordinances previously adopted by the City of David City, Nebraska that recognize the Wellhead Protection Area which are inconsistent and in conflict herewith this Ordinance are hereby repealed and without further force of effect.

Section 5. That this ordinance shall be in full force and take effect from and after its passage, approval, and publication as required by law.

PASSED AND APPROVED THIS 13th DAY OF April, 2022.

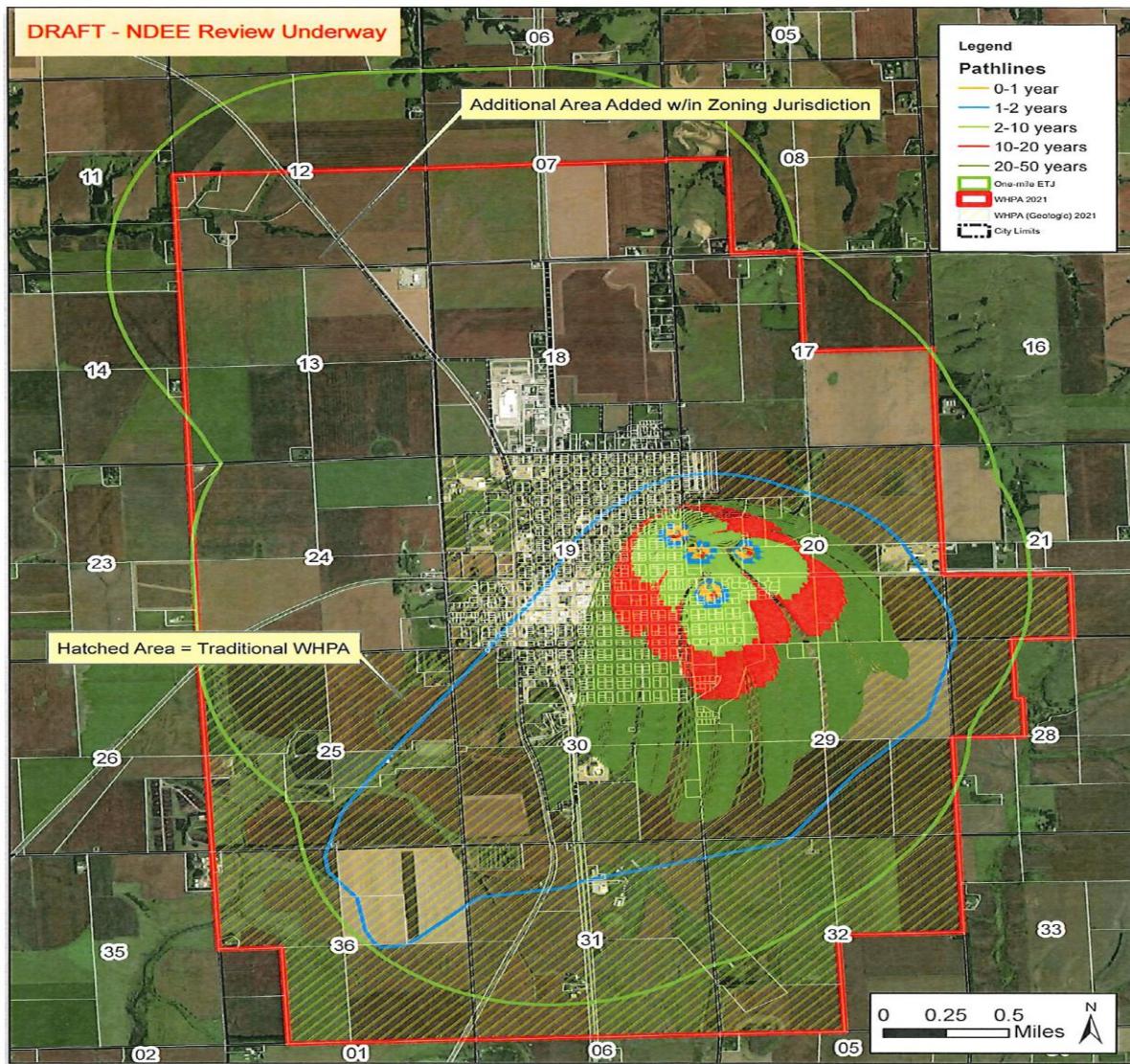
Alan Zavodny, Mayor

ATTEST:

Tami Comte, City Clerk

(S E A L)

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Created By: JDM
Date: 11/12/2021
Software: ArcGIS 10.8

This map was prepared using information from several databases supplied by the State of Nebraska, U.S. Census Bureau, Federal, or public domain entities. JEO does not guarantee the accuracy of this map or the information.

WHPA 2021 (Draft)

David City, Nebraska



Mayor Zavodny stated that the next item on the agenda was consideration of a contract modification for MSA Professional Services in the amount of \$8,000 to complete a study of potential annexation areas.

Keith Marvin introduced himself and said, "I don't know if there was an official committee established but Tami and I, along with David Levy have been looking at areas in regard to future annexations along with what is going to be coming in voluntarily in the future. The thought process is that it would probably be a good time to take a look at everything and also, one of the things that the mayor and I have talked about for a long time is getting to the airport which would be one of the areas. In my practice when we've worked for areas like David City what we'll do, the Statute dictates that cities of the Second Class have to have a study done within a year of annexation in order to talk about how they're going to supply utilities. What I've done with those clients that I have worked with is that we do that study up front and also identify each of the parcels and do an analysis on the validity of actually annexing that property in. If you get challenged, it typically lends a basis by which you can start that challenge process. We ran this through David Levy, and he is all for this. He thinks that it would help us out in the long run. MSA is doing this in conjunction with the Comprehensive Plan and they are anticipating getting this to us by early to mid-summer for both of them."

Mayor Alan Zavodny said, "Alright, let me summarize why this is important. If we have any desire to bring AGP into the city limits which would help us as far as increasing our tax base a little and increase our ability to have them be customers of our water, sewer and some electrical, hopefully, as we move forward in that process. We need to have this. We're making sure that we've dotted our i's and crossed our t's in case someone says, because you hear it all the time, 'how do you blight a bean field?' and 'how do you annex ag ground?' so this is being proactive and trying to avoid problems down the road."

Keith Marvin said, "As we go through this, for Joanna's sake too, a lot of this is what came out of the Gretna and the case out of Bellevue this last summer."

Council member Bruce Meysenburg made a motion to approve a contract modification for MSA Professional Services in the amount of \$8,000 to complete a study of potential annexation areas. Council Member Tom Kobus seconded the motion. The motion carried.
Tom Kobus: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Jessica Miller: Yea, John Vandenberg: Yea, Kevin Woita: Yea
Yea: 6, Nay: 0

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**Professional
Services Agreement**
MSA Project Number:

This AGREEMENT (Agreement) is made today _____, 2022 by and between CITY OF DAVID CITY (OWNER) and MSA PROFESSIONAL SERVICES, INC. (MSA), which agree as follows:

Project Name: 2022 David City Annexation Study

The scope of the work authorized is: See Attached

The lump sum fee for the work is: \$8,000

All services shall be performed in accordance with the General Terms and Conditions of MSA, which is attached and made part of this Agreement. Any attachments or exhibits referenced in this Agreement are made part of this Agreement. Payment for these services will be on a lump sum basis.

Approval: Authorization to proceed is acknowledged by signatures of the parties to this Agreement.

CITY OF DAVID CITY

MSA PROFESSIONAL SERVICES, INC.

A handwritten signature in black ink, appearing to read "Christopher Janson".

Christopher Janson, AICP
Team Leader

Alan Zavodny
Mayor of David City

Date: _____

Date: 04.18.2022

557 N. 4th Street
David City, Nebraska 68632
Phone: 402.367.3135

1555 SE Delaware Avenue, Suite F
Ankeny, Iowa 50021
Phone: 515.635.3401

SCOPE OF SERVICES

2022 DAVID CITY ANNEXATION STUDY

PHASE 1: PROJECT KICK-OFF AND ORGANIZATION

PROCESS:

- A. Meet with City staff and officials to finalize the areas to be studied.
- B. Develop a proposed project timeline for study.
- C. Develop the base maps needed for the Annexation Study.

OUTCOMES:

- A. One meeting with City staff and officials to review annexation area, map formats, and develop timeline for study.

PHASE 2: STUDY

PROCESS:

- A. Development of legal descriptions for various properties/areas.
- B. Develop base map of all areas to be studies during this project.
- C. Conduct analysis of annexation potential based upon Nebraska State Statues and Nebraska State Case Law.
- D. Examine existing services and new services to be provided by the City if annexed.
- E. Work with City staff and officials to develop specific annexation policies for extension of services/utilities
- F. Prepare report of all the above findings for the area and make a recommendation on each property/area to the City.

OUTCOMES:

- A. Three meetings with City staff and officials.
- B. Established base map of study areas.
- C. Final report with findings of the analysis.
- D. One meeting with Planning Commission.
- E. One meeting with City Council.

PHASE 3: ANNEXATION PLATS (SEPARATE CONTRACT)

PROCESS:

- A. Develop plats of areas identified by City staff and elected officials to annex.
- B. Review plats with City

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MSA PROFESSIONAL SERVICES, INC. (MSA) – GENERAL TERMS AND CONDITIONS OF SERVICES

1. The quoted fees and scope of services constitute the best estimate of the fees and tasks required to perform the services as defined. This agreement upon execution by both parties hereto, can be amended only by written instrument signed by both parties. For those projects involving conceptual or process development service, activities often cannot be fully defined during initial planning. As the project progresses, facts uncovered may reveal a change in direction which may alter the scope. MSA will promptly inform the OWNER in writing of such situations so that changes in this agreement can be made as required.
2. MSA will bill the OWNER monthly with net payment due upon receipt. Past due balances shall be subject to an interest charge at a rate of 12% per year from said thirtieth day. In addition, MSA may, after giving seven days written notice, suspend service under any agreement until the OWNER has paid in full all amounts due for services rendered and expenses incurred, including the interest charge on past due invoices.
3. Costs and schedule commitments shall be subject to change for delays caused by the OWNER's failure to provide specified facilities or information or for delays caused by unpredictable occurrences including, without limitation, fires, floods, riots, strikes, unavailability of labor or materials, delays or defaults, by suppliers of materials or services, process shutdowns, acts of God or the public enemy, or acts of regulations of any governmental agency. Temporary delays of services caused by any of the above which result in additional costs beyond those outlined may require renegotiation of this agreement.
4. MSA intends to serve as the OWNER's professional representative for those services as defined in this agreement, and to provide advice and consultation to the OWNER as a professional. Any opinions of probable project costs, reviews and observations, and other decisions made by MSA for the OWNER are rendered on the basis of experience and qualifications and represents the professional judgment of MSA. However, MSA cannot and does not guarantee that proposals, bid or actual project or construction costs will not vary from the opinion of probable cost prepared by it.
5. This agreement shall not be construed as giving MSA, the responsibility or authority to direct or supervise construction means, methods, techniques, sequence, or procedures of construction selected by the contractors or subcontractors or the safety precautions and programs incident to the work of the contractors or subcontractors.
6. In conducting the services, MSA will apply present professional, engineering and/or scientific judgment, and use a level of effort consistent with current professional standards in the same or similar locality under similar circumstances in performing the Services. The OWNER acknowledges that "current professional standards" shall mean the standard for professional services, measured as of the time those services are rendered, and not according to later standards, if such later standards purport to impose a higher degree of care upon MSA.

MSA does not make any warranty or guarantee, expressed or implied, nor have any agreement or contract for services subject to the provisions of any uniform commercial code. Similarly, MSA will not accept those terms and conditions offered by the OWNER in its purchase order, requisition, or notice of authorization to proceed, except as set forth herein or expressly agreed to in writing. Written acknowledgement of receipt, or the actual performance of services subsequent to receipt of such purchase order, requisition, or notice of authorization to proceed is specifically deemed not to constitute acceptance of any terms or conditions contrary to those set forth herein.

7. This Agreement shall commence upon execution and shall remain in effect until terminated by either party, at such party's discretion, on not less than thirty (30) days' advance written notice. The effective date of the termination is the thirtieth day after the non-terminating party's receipt of the notice of termination. If MSA terminates the Agreement, the OWNER may, at its option, extend the terms of this Agreement to the extent necessary for MSA to complete any services that were ordered prior to the effective date of termination. If OWNER terminates this Agreement, OWNER shall pay MSA for all services performed prior to MSA's receipt of the notice of termination and for all work performed and/or expenses incurred by MSA in terminating Services begun after MSA's receipt of the termination notice. Termination hereunder shall operate to discharge only those obligations which are executory by either party on and after the effective date of termination. These General Terms and Conditions shall survive the completion of the services performed hereunder or the Termination of this Agreement for any cause.

This agreement cannot be changed or terminated orally. No waiver of compliance with any provision or condition hereof should be effective unless agreed in writing and duly executed by the parties hereto.

8. The OWNER agrees to clarify and define project requirements and to provide such legal, accounting and insurance counseling services as may be required for the project.
9. MSA will maintain insurance coverage for: Worker's Compensation, General Liability, and Professional Liability. MSA will provide information as to specific limits upon written request. If the OWNER requires coverages or limits in addition to those in effect as of the date of the agreement, premiums for additional insurance shall be paid by the OWNER. The liability of MSA to the OWNER for any indemnity commitments, or for any damages arising in any way out of performance of this contract is limited to such insurance coverages and amount which MSA has in effect.
10. Reuse of any documents and/or services pertaining to this project by the OWNER or extensions of this project or on any other project shall be at the OWNER's sole risk. The OWNER agrees to defend, indemnify, and hold harmless MSA for all claims, damages, and expenses including attorneys' fees and costs arising out of such reuse of the documents and/or services by the OWNER or by others acting through the OWNER.
11. To the fullest extent permitted by law, MSA shall indemnify and hold harmless, OWNER, and OWNER's officers, directors, members, partners, agents, consultants, and employees (hereinafter "OWNER") from reasonable claims, costs, losses,

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and damages arising out of or relating to the PROJECT, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself) including the loss of use resulting therefrom but only to the extent caused by any negligent act or omission of MSA or MSA's officers, directors, members, partners, agents, employees, or Consultants (hereinafter "MSA"). In no event shall this indemnity agreement apply to claims between the OWNER and MSA. This indemnity agreement applies solely to claims of third parties. Furthermore, in no event shall this indemnity agreement apply to claims that MSA is responsible for attorneys' fees. This agreement does not give rise to any duty on the part of MSA to defend the OWNER on any claim arising under this agreement.

To the fullest extent permitted by law, OWNER shall indemnify and hold harmless, MSA, and MSA's officers, directors, members, partners, agents, consultants, and employees (hereinafter "MSA") from reasonable claims, costs, losses, and damages arising out of or relating to the PROJECT, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself) including the loss of use resulting therefrom but only to the extent caused by any negligent act or omission of the OWNER or the OWNER's officers, directors, members, partners, agents, employees, or Consultants (hereinafter "OWNER"). In no event shall this indemnity agreement apply to claims between MSA and the OWNER. This indemnity agreement applies solely to claims of third parties. Furthermore, in no event shall this indemnity agreement apply to claims that the OWNER is responsible for attorneys' fees. This agreement does not give rise to any duty on the part of the OWNER to defend MSA on any claim arising under this agreement.

To the fullest extent permitted by law, MSA's total liability to OWNER and anyone claiming by, through, or under OWNER for any cost, loss or damages caused in part or by the negligence of MSA and in part by the negligence of OWNER or any other negligent entity or individual, shall not exceed the percentage share that MSA's negligence bears to the total negligence of OWNER, MSA, and all other negligent entities and individuals.

12. OWNER and MSA desire to resolve any disputes or areas of disagreement involving the subject matter of this Agreement by a mechanism that facilitates resolution of disputes by negotiation rather than by litigation. OWNER and MSA also acknowledge that issues and problems may arise after execution of this Agreement which were not anticipated or are not resolved by specific provisions in this Agreement. Accordingly, both OWNER and MSA will endeavor to settle all controversies, claims, counterclaims, disputes, and other matters in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect, unless OWNER and MSA mutually agree otherwise. Demand for mediation shall be filed in writing with the other party to this Agreement. A demand for mediation shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for mediation be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations. Neither demand for mediation nor any term of this Dispute Resolution clause shall prevent the filing of a legal action where failing to do so may bar the action because of the applicable statute of limitations. If despite the good faith efforts of OWNER and MSA any controversy, claim, counterclaim, dispute, or other matter is not resolved through negotiation or mediation, OWNER and MSA agree and consent that such matter may be resolved through legal action in any state or federal court having jurisdiction.
13. This agreement shall be construed and interpreted in accordance with the laws of the State of Iowa.
14. OWNER hereby irrevocably submits to the jurisdiction of the state courts of the State of Iowa for the purpose of any suit, action or other proceeding arising out of or based upon this Agreement. OWNER further consents that the venue for any legal proceedings related to this Agreement shall be, at MSA's option, Polk County, Iowa, or any county in which MSA has an office.
15. This agreement contains the entire understanding between the parties on the subject matter hereof and no representations, inducements, promises or agreements not embodied herein (unless agreed in writing duly executed) shall be of any force or effect, and this agreement supersedes any other prior understanding entered into between the parties on the subject matter hereto.

Mayor Zavodny stated that the next item on the agenda was consideration of a purchase agreement for the municipal owned property at 593 5th Street.

Laura Kobza introduced herself and said, "We have a purchase agreement for \$50,000. They would put \$1,000 down and we would close on April 30th. They understand that it can't be used for a bank. I don't know what they want to use it for. They've walked the property and they know the property and they are very aware of what it is. It needs to be accepted by tomorrow at noon and close on April 30th if you choose to do so."

Mayor Alan Zavodny said, "So, the ball in your court now is, are you willing to accept \$50,000, which I would encourage you to do so that we can use that money toward a continuing to be very expensive purchase but still a good value for the square footage of the building that we bought."

City Attorney Joanna Uden said, "Did we ever do a resolution directing how the building is going to be sold? That is required when we dispose of property."

Mayor Alan Zavodny said, "We did bids."

Interim City Administrator/City Clerk Tami Comte said, "I think normally accept the bid and then we do the Resolution at the following meeting and then we have to do the thirty-day right of remonstrance. Is that right?"

City Attorney Joanna Uden said, "Yes, that's fine. I just wanted to make sure that you were on alert to get a Resolution."

Council member Bruce Meysenburg made a motion to approve a purchase agreement for the municipal owned property at 593 5th 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: Yea, Kevin Woita: Yea
Yea: 6, Nay: 0

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THIS IS A LEGALLY BINDING AGREEMENT. IF NOT UNDERSTOOD, SEEK LEGAL ADVICE.
The REALTOR® negotiating this Agreement is a member of the Nebraska REALTORS® Association
and as such is governed by its Code of Ethics and Rules and Regulations.



**COMMERCIAL
PURCHASE AGREEMENT**

Agency Confirmation: The following agency relationship(s) are hereby confirmed for this transaction.

Agent:Laura Kobza
of _____ Kobza Ag and Home (company)
(402) 641-6472 (agent's cell)

Seller exclusively Buyer exclusively both the Buyer and Seller (Limited Dual Agent)

Agent: Robert Kobza
of Kobza Ag and Home (company)
(402) 641-1314 (agent's cell)

Is the agent of: Seller exclusively Buyer exclusively both the Buyer and Seller (Limited Dual Agent)

The undersigned, as Buyer, agrees to purchase the following property on the following terms:

I. Address: 593 N 5th St, David City, NE 68632

2. Legal Description: 19 15 3 David City Lots 23,24 & Pt of Lot 22 & E 1/2 of Vac Alley Adj Lots 23 & 24 & Pt of Lot 22 Block 18 Orig Town (Property)

3. Personal Property. If checked, the purchase price includes all furniture and furnishings and any other personal property owned by Seller and used in the operation of the property per attached signed inventory, receipt of which is hereby acknowledged. The inventory is hereby made an integral part of this Agreement upon its execution by both parties. Said personal property is to be transferred by Bill of Sale in favor of Buyer at closing.

Including all fixtures and equipment permanently attached to Property owned by Seller provided Seller has a marketable title in fee simple. The only personal property included is as follows: _____

4. Price. Buyer agrees to pay \$ 50,000.00, allocated \$ 50,000.00 for land and buildings and \$ _____ for the personal property, on the following terms: an earnest money deposit of \$ 1,000.00 at this time as shown by the receipt herein. If paid by check, it will be cashed. If the selling broker is other than the listing broker the earnest money will be transferred to the listing broker upon acceptance. All monies shall be deposited in a trust account, to be held until the time of closing or until transferred to an escrow agent by Agreement of Buyer and Seller. Balance to be paid as shown in the following Paragraph(s) # 4A:

A. Cash at Closing – No Financing Being Required: Balance of \$ 49,000.00 shall be paid in cash, or by certified or cashier's check at time of closing. Buyer to provide Seller a letter from a government regulated depository showing evidence of said funds within 10 calendar days of acceptance of this offer or this offer shall be null and void with the earnest money forfeited to the Seller.

B. Conditional Upon Loan: Balance of \$ _____ shall be paid in cash, or certified or cashier's check at time of delivery of deed, contingent upon Buyer's ability to obtain a loan, to be secured by first mortgage or deed of trust, on above described Property in the amount of \$ _____ on the following terms: initial interest not exceeding _____ % per annum; amortized over not less than _____ years; points not to exceed _____. Loan origination and all service fees shall be

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Seller: 12 / 1 Buyer: 14 / 14
Date: 4-14-22 Date: 3/26/2022

Kohza Ag and Home, 4170 M Road Bellwood NE 68624
Phone: 4026416472 Fax: 4023673866 Lauren Kohza 593 N 5th St

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paid by Buyer. Buyer agrees to make application for the loan within _____ days of acceptance of this offer, sign all papers, pay all costs, except as provided herein, and to establish escrow reserves for taxes and insurance if required by Lender. If processing of the application has not been completed by the lending agency by the closing date stated elsewhere in this Agreement, such time limit shall be automatically extended until the lending agency has, in the normal course of its business, advised either approval or rejection. Seller may cancel this Agreement any time after _____ unless Buyer shall have previously provided to Seller a copy of Buyer's written, non-contingent loan approval from a government regulated lender.

5. **Title.** Seller agrees to convey marketable title to Buyer by warranty deed or Equivelant free and clear of all liens, encumbrances, special assessments levied or assessed and subject to all easements and restrictions or covenants now of record. Buyer shall be furnished a current title insurance commitment before closing and a title insurance policy insuring good and marketable title. The cost of the title insurance shall be paid as follows:

- Title Insurance policy paid by: (select one) Seller Buyer Divided equally
 Lenders Policy paid by: (select one) Seller Buyer Divided equally
 Endorsements paid by: (select one) Seller Buyer Divided equally

6. **Real Estate Taxes/Prorations.** Seller shall pay all taxes to and including closing date (date). Taxes for the calendar year 2022, together with interest, rents, prepaid services, and other expenses of the property, if any, shall be prorated to the date of possession/closing. Taxes shall be prorated on the basis of the county assessor's valuation at the date of closing and the most recently certified mill levy.

7. **Compliance with Law.** Seller shall comply with all federal, state and local laws applicable to the sale or transfer of the property, including but not limited to installing smoke detectors or providing inspections.

8. **Maintenance/Repairs/Replacements, Cost to Seller.** Seller agrees to maintain the property in its condition on the date hereof until initial delivery of possession which maintenance shall include, but not be limited to, the building, lawn, parking lot, heating, air conditioning, water heater, sewer, plumbing, electrical system, and any appliances.

9. **Due Diligence.** This agreement is contingent upon Buyers satisfaction of the property after the opportunity for inspections. Buyer, or any designee, at Buyer's expense (or as otherwise agreed), shall have the right to any inspections desired of the real estate and personal property to be sold hereunder on or before _____ (date) (the "inspection deadline"). Buyer shall give written notice to the Seller of any unsatisfactory conditions of the property or rescission of this agreement on or before _____ days after the inspection deadline (the "rescission deadline"). If the Buyer fails to notify the Seller of any unsatisfactory conditions or rescission by such deadline, Buyer agrees to accept the property in its condition on the inspection deadline. If such a notice of unsatisfactory condition is received by the Seller as set forth above, this Agreement shall terminate _____ days after the rescission deadline (the "settlement deadline") unless Seller and Buyer have agreed to a settlement in writing or Buyer has waived such condition in writing.

If checked, Buyer requests a termite and wood destroying insect inspection of the property and all buildings thereon at Buyer's expense. Should evidence of termites or wood destroying insects be found, the property shall be treated at Seller's expense by a commercially licensed applicator who has met the certification requirement of the Nebraska Pesticide Act for treatment of termites and wood destroying insects. Buyer agrees to accept the treated property. If visible evidence of previously treated infestation, which is now inactive, is found, treatment shall not be required. Should damage from such insects be found, the damage shall be corrected at Seller's expense. However, if the cost required for repairs exceeds 1% of the purchase price, either Seller or Buyer may rescind this Agreement.

10. **Utilities.** Seller agrees to have the following utilities turned on, if not currently on, for inspections and/or appraisal.

- Electric Gas Water Other _____

11. **Access to Property.** Seller shall provide reasonable access to Buyer, Buyer's inspectors or agents to timely fulfill this Agreement and to representatives of Buyer's Lender to accommodate financing.

12. **Condition of Property.** Seller represents (1) that to the best of Seller's knowledge, there are no defects in the property that are not readily ascertainable and which significantly affect the desirability or value of the property, or which the Seller has not disclosed to Buyer in writing dated _____ and (2) that Seller has no notice of violations of any local state or federal laws, rules and regulations relating to the property.

If checked, a disclosure is attached.

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13. Risk of Loss. Risk of loss or damage to Property, prior to closing date, shall be the responsibility of Seller. If, prior to closing, the Property is materially damaged by fire, explosion or any other cause, Buyer shall have the right: i) to require the premises to be restored to the condition at execution hereof; ii) to adjust the price to the value subject to the damage; or iii) to rescind this Agreement.

14. Possession and Closing. Closing of the sale shall be on April 30, 2022 (date) or within _____ days after loan approval, whichever shall last occur. Possession of Property shall be given on final closing (date) but not before closing. This Agreement shall in no manner be construed to convey Property or to give any right of possession. Buyer shall have the right to make a final inspection of Property prior to closing to ascertain that all conditions of this Agreement have been met. Time is of the essence in this Agreement.

15. Escrow Closing. Buyer and Seller agree that the closing of the sale may be handled by an escrow agent. If so, the listing broker is authorized to transfer to the escrow agent the earnest money, other trust funds received by the listing broker and all documents and other items received by the listing broker in connection with the sale. After the transfer, the listing broker shall have no further responsibility or liability to Buyer or Seller to account for funds or preparation of documents in connection with the closing of the sale. Escrow agent will not be required to disburse funds or deliver or record any documents until it has received certified funds or other good, sufficient and collected funds, and all conditions, terms and provisions of this Agreement have been satisfied, performed and met. Escrow Agent shall be Nebraska Title Company (Title Company) and escrow closing charges shall be paid as follows: 50% paid by the Seller, and 50% paid by the Buyer.

16. Rescission, Termination or Default. If Buyer fails to consummate this purchase according to the terms of this Agreement, Seller may, at Seller's option, retain the earnest money as liquidated damages for such failure, or utilize such other legal remedies as are available to Seller by reason of such failure. If this Agreement is rescinded or terminated by either party without fault as allowed hereby, each party shall bear his or her costs and the earnest money shall be refunded.

17. Foreign Investment and Real Property Tax Act (FIRPTA). The Foreign Investment and Real Property Tax Act requires a Buyer of real property to withhold ten percent (10%) of the sale price and to deposit that amount with the Internal Revenue Service upon closing, if the Seller is a foreign person, foreign corporation or partnership, or non-resident alien, unless the property qualifies for an exemption under the Act. Unless it is established that the transaction is exempt because the purchase price is \$300,000 or less and the Buyer intends to use the property as his primary residence, Seller agrees to: (a) Provide Broker with a Non-Foreign Seller Affidavit (PPC Form 101-V) stating under penalty of perjury that Seller is not a foreign person; or (b) Provide Broker with a Certificate from the Internal Revenue Service establishing that no federal income tax withholding is required; or (c) Subparagraphs (a) or (b) to be provided to Buyer within _____ days of acceptance or Seller consents to withholding ten percent (10%) from the sale proceeds, to be deposited with the Internal Revenue Service.

18. Tax Deferred Exchange. In the event the Seller wishes to enter into a tax deferred exchange for the real property described herein, or if Buyer wishes to enter into a tax deferred exchange with respect to property owned by him in connection with this transaction, each of the parties agrees to cooperate with the other party in connection with such exchange, including the execution of such documents as may be reasonably necessary to effectuate the same. Provided that: (a) The other party shall not be obligated to delay the closing, (b) All additional costs in connection with the exchange should be borne by the party requesting the exchange, and (c) The other party shall not be obligated to execute any note, contract, deed, or other document providing for any personal liability which would survive the exchange, nor shall the other party be obligated to take title to any property other than the property described in this Agreement. The other party shall be indemnified and held harmless against any liability which arises or is claimed to have arisen on account of the acquisition of the exchange property.

19. Rights of Persons in Possession. If checked, this property is sold subject to the rights of persons in possession. Rents shall be prorated to date of closing. Security deposits, advance rentals or considerations involving future lease credits shall be credited to Buyer. Buyer acknowledges that trade fixtures located in the premises may belong to tenants and may be removed upon the conclusion of the tenancy.

If checked, purchase is subject to Buyer's inspection and approval of the leases which shall be treated as an inspection above. Promptly after execution hereof, Seller shall provide Buyer with copies of all leases and rental Agreements, notices to or from tenants, claims made to or by tenants, a statement of rents owing and damage or security deposits held and a summary of all oral agreements with tenants which affect the operation or ownership of the premises. Seller shall warrant the foregoing disclosures as true and correct.

Seller agrees that no changes in the existing leases or rental Agreements shall be made nor new leases or rental Agreements entered into nor shall any substantial repairs or alterations be commenced without the express written consent of the Buyer. Buyers' obligations hereunder are conditioned upon receipt at closing of an estoppel certificate from each tenant acknowledging that the lease or rental Agreement is in effect, that no lessor default exists, and stating the amount of any prepaid rent or deposits.

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20. **Income/Expense.** If checked, the purchase is subject to Buyer's inspection and approval of the operating statement of the premises. Promptly after execution hereof Seller shall provide a statement of rental income and expenses for the premises which Seller shall warrant as true and correct. Such inspection shall be treated as an inspection above. Buyer agrees to keep such statement confidential. Buyer agrees to use such statement only for the purpose of analysis of a purchase of the premises.

21. **Service Contracts.** Seller agrees to provide to Buyer a copy of any service and/or equipment contracts with respect to the property which extend beyond closing. Buyer agrees to assume such contracts.

22. **Environmental.** If checked, the purchase is contingent upon the satisfactory environmental quality of the Property. On or before the inspection deadline, Buyer may request a Phase I environmental review at Buyer's expense which shall be promptly ordered by Buyer or Buyer's Agent. If the results raise a question of environmental quality, Buyer may request further study and delay closing as necessary, accept the property as is or rescind the Agreement. If further study is requested, Buyer shall have ten days after receipt of the study results to accept the property as is or rescind this Agreement. Copies of all requests for environmental investigation and the results thereof shall be provided to both Buyer and Seller. If the environmental investigation is not completed by _____ (date), either party may rescind this Agreement.

23. **Use.** If checked, Buyer intends to use the premises for a specific purpose. Buyer may rescind this Agreement on or before the rescission deadline if Buyer determines that zoning or land use restriction prohibits such intended use. The purpose is as follows:

24. **Acceptance Date.** This offer is null and void if not accepted by Seller on or before April 14, 2022 (date) at 12:00 o'clock PM.

25. **Counterparts, E-Mail and Fax Transmission:** This Agreement may be executed in one or more counterparts, each of which is deemed to be an original hereof, and all of which shall together constitute one and the same instrument. The facsimile or e-mail transmission of a signed copy hereof or any counter offer to the other party or their agent with confirmation of transmission shall constitute delivery. The parties agree to confirm delivery by mail or personal delivery of a signed copy to the other party or their agent.

26. **Other Provisions.** Buyer acknowledges easements, covenants, & restrictions of record, including but not limited to the prohibiting of the building from being used as a bank for 3 years

27. **Addenda.** The attached addenda shall be made a part of the Purchase Agreement. (List Addenda) _____

(Seller _____ / _____) (Buyer _____ / _____)

28. **Mediation and Arbitration.** [If checked]

(a) **Disputes.** The term "Dispute" shall include, without limitation, any controversy, complaint, dispute, claim or disagreement relating to or arising out of the brokerage relationship or the construction, interpretation, enforcement, or breach of the terms of this Agreement or any actions of the parties or their agents in the sale and purchase of the described property including claims of misrepresentation and claims under §21-2120 (Seller Property Condition Disclosure) of the Nebraska Revised Statutes.

(b) **Mediation.** In the event of any Dispute, any party to the Dispute may seek non-binding mediation in an attempt to resolve the Dispute by giving 15 days written notice of a request for such mediation to all other parties to the Dispute. The request for mediation must be made within 360 days after the party making the request knew, or exercising reasonable diligence and care, should have known, of the Dispute. In no case shall such request be made after the statute of limitations on a civil suit based on the Dispute would have run. Such mediation shall be held in Nebraska. Such mediation may be administered by the American Arbitration Association and shall be conducted according to the American Arbitration Association's Commercial Rules-Real Estate Industry Arbitration Rules (Including a Mediation Alternative) or such other mediation service versed in real estate practices of the locality.

(c) **Arbitration.** Any Dispute that is not resolved by informal settlement or mediation shall be resolved exclusively by binding arbitration. Such arbitration shall be held in Nebraska. Such arbitration may be administered by the American Arbitration Association or such other arbitration provider agreed to by the parties. It shall be conducted according to the American Arbitration Association's Commercial Rules-Real Estate Industry Arbitration Rules (Including a Mediation Alternative). The arbiter(s) shall apply Nebraska substantive and procedural law to the arbitration proceeding. Arbitration shall be commenced by written demand made by any one or more of the parties to the Dispute given to all other parties to the Dispute. The demand for arbitration must be in

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writing and must be given by personal delivery or certified mail, return receipt requested, within 360 days after the party making the demand knew, or exercising reasonable diligence and care, should have known, of the Dispute. Notwithstanding the previous sentence, in the case that the parties unsuccessfully attempt mediation to resolve a Dispute, the demand for arbitration shall be made within 60 days of the final mediation session. However, in no case shall such demand be made after the statute of limitations on a civil suit based on the Dispute would have run. The prevailing party shall be entitled to costs and fees of the arbitration and, in the discretion of the arbitrator who shall take into account the relative merits of the opponent's case, the arbiter may award attorney's fees to the prevailing party. In determining prevailing party, prevailing party shall be that party for whom the result most closely, in the arbiter's opinion, resembles that party's last offer for settlement of the controversy.

(d) **Provisional Remedies.** The filing of a judicial action to enable the reporting of a notice of pending action, for order of attachment, receivership, injunction, or other like provisional remedies, shall not constitute a waiver of mediation or arbitration under this provision, nor shall it constitute a breach of the duty to arbitrate.

(e) **Exclusions.** The terms of paragraph 28 shall not apply to:

- (1) Any complaint of violation of the Code of Ethics of the National Association of REALTORS®;
- (2) Foreclosure or other action or proceeding to enforce a deed of trust, mortgage or land contract; or
- (3) The filing or enforcement of a construction or similar lien including a commercial broker's lien;
- (4) An action filed and held in "Small Claims Court" as defined in Neb. Rev. Stat. 25-2801 to 25-2804, provided, however, any attempt to transfer a matter filed in small claims court to county court shall be subject to paragraph 28.

(f) **Waiver.** BY SIGNING THIS PURCHASE AGREEMENT, THE PARTIES AGREE THAT EVERY DISPUTE DESCRIBED ABOVE THAT IS NOT RESOLVED BY INFORMAL SETTLEMENT OR MEDIATION WILL BE DECIDED EXCLUSIVELY BY ARBITRATION AND THAT ANY ARBITRATION DECISION WILL BE FINAL AND BINDING. THE PARTIES AGREE THAT THEY WILL RECEIVE ALL THE RIGHTS AND BENEFITS OF ARBITRATION, BUT ARE GIVING UP RIGHTS THEY MIGHT HAVE TO LITIGATE THOSE CLAIMS AND DISPUTES IN A COURT OR JURY TRIAL, OR TO PARTICIPATE AS A REPRESENTATIVE OR MEMBER OF ANY CLASS OF CLAIMANTS IN CONNECTION WITH ANY SUCH DISPUTES. NO PARTY TO THIS AGREEMENT SHALL BE ENTITLED TO JOIN OR CONSOLIDATE DISPUTES BY OR AGAINST OTHERS IN ANY ARBITRATION, OR TO INCLUDE IN ANY ARBITRATION ANY DISPUTE AS A REPRESENTATIVE OR MEMBER OF A CLASS, OR TO ACT IN ANY ARBITRATION IN THE INTEREST OF THE GENERAL PUBLIC OR IN ANY PRIVATE ATTORNEY GENERAL CAPACITY.

29. **Entire Agreement.** This document contains the entire Agreement of the parties and supersedes all prior Agreements or representations oral or written with respect to the Property which are not expressly set forth herein or incorporated herein by reference. This Agreement may be modified only by a writing signed and dated by both parties. All express representations and warranties shall survive closing. Both parties acknowledge that they have not relied on any statements of the real estate agent or broker which are not herein expressed except none

30. **Authority to Sign.** The undersigned Seller(s) and Buyer(s) each represent and warrant that they are duly empowered and/or authorized, whether individually, on behalf of any entity or as a fiduciary, to enter into this Purchase Agreement and create a valid and binding contract. Seller represents all parties required to transfer title to the Property are parties to this contract.

IF PARAGRAPH 28 IS CHECKED, THIS CONTRACT CONTAINS AN ARBITRATION PROVISION WHICH MAY BE ENFORCED BY THE PARTIES

BUYER Date Signed By: Michael Hansen 3/26/2022 DATE 03/26/2022

BUYER Date Signed By: Colette Hansen 3/26/2022 DATE 03/26/2022

ADDRESS 3670 Regency PL Columbus, NE ZIP 68601 PHONE (402) 747-7922

NAMES FOR DEED: _____

Check one: JT WROS Tenants in common Other _____

Check one: Husband and Wife Single Person Other _____

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RECEIPT FOR EARNEST MONEY

RECEIVED FROM: _____ the sum of \$1,000.00 by
 check cash other _____ to apply to the purchase price of the
Property on terms and conditions as stated. In the event this offer is not accepted by the Seller of the Property within the time specified
the earnest money shall be refunded.

Kobza Aq and Home REALTOR® By: LAURA KOBZA

Complete only one of A, B or C below:

A: Acceptance of All Terms: Seller accepts all of the terms of the above Agreement and agrees to perform all of its terms.

IF PARAGRAPH 28 IS CHECKED, THIS CONTRACT CONTAINS AN ARBITRATION PROVISION WHICH MAY BE ENFORCED BY THE PARTIES

Seller De Zavodny Date 4-14-22

Seller _____ Date _____

B. **Counter Offer #1 By Seller:** In response to the above Purchase Agreement dated _____ for the sale of the Property, all of the terms and conditions of the Purchase Agreement are accepted and shall remain the same with the exception of the following:

This Counter Offer shall expire _____ (date), at _____ o'clock _____ (hour in the time zone of the office of the Seller's agent) and be automatically null and void unless, prior to the time of expiration, Buyer's written acceptance is delivered to the Seller's Limited Agent or their Broker's office or the Seller.

If this Counter Offer is accepted, the Purchase Agreement as amended by this Counter Offer shall become a contract between the parties.

Seller reserves the right to withdraw this Counter Offer prior to acceptance. Withdrawal shall be complete if verbal notification of withdrawal is made to the Buyer's Agent or Broker of the Buyer's Agent or Buyer before the delivery of Buyer's written acceptance.

Seller _____ Date _____ Buyer _____ Date _____

accent reject this Counter Offer

Buyer _____ **Date** _____ **Buyer** _____ **Date** _____

C. Rejection: The foregoing offer is rejected.

Seller _____ Date _____ Seller _____ Date _____

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RECEIPT FOR EARNEST MONEY

RECEIVED FROM: _____ the sum of \$1,000.00 by
 check cash other _____ to apply to the purchase price of the
Property on terms and conditions as stated. In the event this offer is not accepted by the Seller of the Property within the time specified
the earnest money shall be refunded.

Kobza Aq and Home REALTOR® By: LAURA KOBZA

Complete *only one* of A, B or C below:

A: Acceptance of All Terms: Seller accepts all of the terms of the above Agreement and agrees to perform all of its terms.

IF PARAGRAPH 28 IS CHECKED, THIS CONTRACT CONTAINS AN ARBITRATION PROVISION WHICH MAY BE ENFORCED BY THE PARTIES

Seller De Favodux Date 4-14-22

Seller _____ Date _____

B. **Counter Offer #1 By Seller:** In response to the above Purchase Agreement dated _____ for the sale of the Property, all of the terms and conditions of the Purchase Agreement are accepted and shall remain the same with the exception of the following:

This Counter Offer shall expire _____ (date), at _____ o'clock _____ (hour in the time zone of the office of the Seller's agent) and be automatically null and void unless, prior to the time of expiration, Buyer's written acceptance is delivered to the Seller's Limited Agent or their Broker's office or the Seller.

If this Counter Offer is accepted, the Purchase Agreement as amended by this Counter Offer shall become a contract between the parties.

Seller reserves the right to withdraw this Counter Offer prior to acceptance. Withdrawal shall be complete if verbal notification of withdrawal is made to the Buyer's Agent or Broker of the Buyer's Agent or Buyer before the delivery of Buyer's written acceptance.

Seller Date Seller Date

accept reject this Counter Offer

Buyer: _____ **Date:** _____

C. Rejection: The foregoing offer is rejected.

Seller _____ Date _____ Seller _____ Date _____

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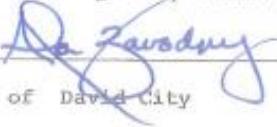
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RECEIPTS FOR FULLY EXECUTED PURCHASE AGREEMENT

Buyer acknowledges receipt of executed copy of this Agreement.

<small>Executed by:</small> <small>Buyer</small> Michael Hansen	3/26/2022	Date	<small>Executed by:</small> <small>Buyer</small> Colette Hansen	3/26/2022	Date
---	-----------	------	---	-----------	------

Seller acknowledges receipt of executed copy of this Agreement.

<small>Seller</small> <small>City of David City</small> 	4-14-2022	Date	<small>Seller</small>		Date
---	-----------	------	-----------------------	--	------

This is a legally binding agreement. If not understood, seek legal advice.



Amendment to Purchase Agreement

The Seller and Buyer named in the Purchase Agreement dated March 26, 2022, for the sale of
593 N 5th St, David City, NE 68632

agree to the following terms in addition to or as modifications of those stated in the Agreement:
June 23
closing to be May 15, 2022.

All other terms and condition to remain the same.

Dated 4-14-22

Dated 4-14-22

~~Seller City of David City~~

Buyer Michael Hansen

Seller

ESTIMATED SELLERS' NET SHEET

Prepared For: City of David City
Property Address: 593 N 5th St
David City, NE 68632
Sales Counselor:
Date:
Selling Price: \$ 50,000.00
Closing Date: April 30, 2022

Title Insurance	1/2 X <u>255.00</u>	\$ <u>127.50</u>
Recording Fees (Release of Mortgage)		\$ _____
Prepayment Penalty/Recapture		\$ _____
Special Assessments		\$ _____
State Documentary Stamps	(<u>\$ 50.00</u> /M\$ <u>2.25</u>)	\$ <u>112.50</u>
Escrow Closing Fee	1/2 X <u>600.00</u>	\$ <u>300.00</u>
Loan Discount Fee (Points)		\$ _____
Rent/Interest Proration	(_____ days @ \$ _____ /day)	\$ _____
Other Inspections or Repairs		\$ _____
*Real Estate Taxes – Prior Year		\$ _____
Real Estate Taxes – Current Year – (Prorated)	(_____ days @ \$ _____ /day)	\$ _____
Termite and Wood Destroying Insect Inspection		\$ _____
Treatment/Repair		\$ _____
Professional Services		\$ <u>2,500.00</u>
Survey		\$ _____
Final Water/Sewer Bill		\$ _____
Homeowners Association Fee		\$ _____
NIFA Warehouse and Tax Service Fee		\$ _____
Home Warranty		\$ _____
Lead-based Paint Abatement		\$ _____
Other		\$ _____
NET TOTAL of Approximate Selling Costs		\$ <u>3,040.00</u>

LOANS

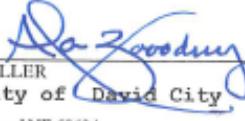
(Indicate where the information was obtained by checking the appropriate source.)

First Mortgage	<u>SELLER</u>	<u>LENDER</u>	\$ _____
Second Mortgage	<u>SELLER</u>	<u>LENDER</u>	\$ _____
TOTAL of Mortgages			\$ _____
TOTAL OF ESTIMATED SELLING COSTS & MORTGAGES			
\$ <u>3,040.00</u>			
APPROXIMATE NET CASH TO SELLER			
\$ <u>46,960.00</u>			

This estimate has been prepared to assist you in computing your costs and net "walkaway cash". Whenever possible, we have used the MAXIMUM charges that are expected. However, unusual circumstances may arise, and lenders, inspectors, and others may vary their charges. Therefore, these figures cannot be guaranteed. Cancellation of any insurance policies relating to this property may result in a credit to you.

*Taxes for estimated Seller's net proceeds may be figured on prior year's valuation.

Acknowledged and Copy Received:


SELLER
City of David City

4-14-2022

DATE SELLER

DATE

Kobza Ag and Home, 4170 M Road Bellwood NE 68624
Phone: 4026416472 Fax: 4023673866

Laura Kobza

593 N 5th St

Produced with ZipForm® by zipLogix 18070 Fifteen Mile Road, Fraser, Michigan 48026 www.ziplogix.com

Mayor Zavodny stated that the next item on the agenda was discussion concerning Chapter 2 – Article 5, Section 2-501c Tree Board Meetings.

Interim Administrator/City Clerk Tami Comte said, “This section says that the Tree Board will meet quarterly. Before the last meeting they hadn’t met for over a year because there’s just nothing to meet on. So, I’m asking what you think about changing that to annually or semiannually. There is generally not much to meet on. They can meet more frequently but that would be the minimum.”

Mayor Alan Zavodny said, “Quarterly seems like overkill to me.”

City Attorney Joanna Uden said, “I would say that I wouldn’t go any longer than annually, though.”

Council member Kevin Woita said, “I was thinking biannually.”

Mayor Alan Zavodny said, “I think that’s a good compromise. Is everyone in agreement to that? If you can put that together and we can formally act on that.”

Mayor Zavodny stated that the next item on the agenda was consideration of wastewater treatment plant conduit and wiring from junction box to control panel.

Water Supervisor/Interim Wastewater Supervisor Aaron Gustin said, “Ultimately, I’m going to ask the Council to table this. I spoke with Cory Vandenberg earlier today after placement of this particular item on the agenda and he will be able to come in with a bid of his own. I have things refigured and working currently out at the wastewater treatment plant for the time being. I do feel like that temporary fix will hold until the meeting in two weeks which will allow Cory time to bid on this as well. Effectively, what it is, for anybody who has seen the basins, we did actuators, junction box and then grounding of the induced voltage last year. The dirt that was packed around the conduit, the conduit was exposed, dirt was added, concrete sidewalk was added but it has settled in some places up to a foot and other places an inch and this was all buried conduit with electrical that leads to the PLC in the office. I cannot control anything with breaking conduit between those two points, the junction box and the PLC. The two options that we are looking at are trenching it ourselves, laying enough conduit in the ground to accommodate the expansion as Bob will detail at the end of the month. He will be recommending possibly two additional basins so we would have the foresight to put enough conduit in the ground that way we could do another electrical run for a whole other control PLC or the other option is to go overhead and have far more possibility for expansion addition, if there’s troubleshooting that needs to be done down the road it’s a lot more difficult to do it when it’s underground but if it’s overhead everything is visible and easier to pull. This bid here is an overhead bid. There are two posts that he would set. Cory is working with Matt Arps, currently about setting a more extremely permanent steel overhead but he’s also going to give us a quote for if we were to trench it underground as well. I want to be as thorough as possible, so I want to ask the Council to table this.”

Mayor Alan Zavodny said, “We’re going to table this. But you reached out to Commonwealth just from prior relationships?”

Water Supervisor/Interim Wastewater Supervisor Aaron Gustin said, “I was extremely happy with the work that they had done and the detail that they had paid attention to. Originally,

I reached out to them last year due to time constraints on what Cory could do for us and then a recommendation from Olsson's."

Council member Tom Kobus made a motion to table wastewater treatment plan conduit and wiring from Junction box to control panel. Council Member Pat Meysenburg seconded the motion. The motion carried.

Tom Kobus: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Jessica Miller: Yea, John Vandenberg: Yea, Kevin Woita: Yea
Yea: 6, Nay: 0

Mayor Zavodny opened the public hearing at 7:28 p.m. to consider amending the Zoning Ordinance No. 1060: By Adding Article 8.16 Short-term Rentals, Section 8.16.1 Performance Standards, Section 8.16.2 Remedies, and Section 8.17 Accessory Dwelling Units. Also, by amending R-1 Single-Family Residential by adding 5.07.02 Permitted Uses #5. Short-term Rentals and adding 5.07.03 Conditional Uses #8. Accessory Dwelling Units, also amending R-2 Two-Family Residential by adding 5.08.02 Permitted Uses #8. Short-term Rentals and adding 5.08.03 Conditional Uses #10. Accessory Dwelling Units, also amending R-3 Multi-Family Residential by adding 5.09.02 Permitted Uses #7. Short-term Rentals and adding 5.09.03 Conditional Uses #13. Accessory Dwelling Units, also amending R-4 High Density Residential by adding 5.10.02 Permitted Uses # 7. Short-term Rentals and adding 5.10.03 Conditional Uses #8. Accessory Dwelling Units.

Planning Commission member Keith Marvin said, "One of the things that is being discussed with me and the City and Tami and, I think, even Clayton is that somebody was wishing to do what is referred to as an accessory dwelling unit. I refer to the show "Happy Days" and this is what Fonzie lived in is an accessory dwelling unit. These are becoming notoriously popular across the U.S. as a way to solve a lot of housing and a lot of assisted living and nursing home problems that we're seeing. A lot of times you'll hear them called a mother-in-law cottage or something like that. We actually have one or two of them in town already, if you think about it. Mike McCracken's son in technically living in an accessory dwelling unit. There's one more that I can't think of at this time."

Mayor Alan Zavodny said, "There's one by the concrete plant which was Montag's old house."

Planning Commission member Keith Marvin said, "Yes. That would almost be considered one. So, with that request we just thought that we would run it through. These are modeled after what I would consider some really well thought out regulations out of Lincoln. They've actually allowed these in their historic districts. The other thing, while we were at it, is also dealing with what is referred to as short-term rentals. These are also known as air bnb's. Statute allows very little control over these, and this would actually provide for that minimal control that we have but the most important thing to do is by allowing these in there and permitting them somehow, we're notifying these people that they are subject to lodging tax of the county. The difference between an apartment and a short-term rental is defined as anybody living there not more than 30 consecutive days. Once you hit thirty-one days you are deemed as an apartment. This is just one of those things that tries to catch us up to speed as far as things that are hitting around the country and Nebraska."

Mayor Alan Zavodny said, "So, is this a preemptive strike? Do we have any air bnb's in town?"

Planning Commission member Keith Marvin said, "I don't know. This is a preemptive strike, as you put it. We're just trying to get ahead of the game. It's a proactive approach."

Special Projects Coordinator Dana Trowbridge said, "Can accessory dwelling units have axels, wheels and hitches on them?"

Planning Commission member Keith Marvin said, "No."

Mayor Alan Zavodny said, "That was a good question."

Planning Commission member Keith Marvin said, "I think we actually say that it has to be part of a permanent structure."

Council member Kevin Woita said, "What about property taxes?"

Planning Commission member Keith Marvin said, "It is subject to property taxes because it is a livable unit. It can be above a garage or a separate unit out in back."

Mayor Alan Zavodny said, "Lincoln had an issue with storage units turning into living units."

Planning Commission member Keith Marvin said, "I don't think that this will let that happen, if I remember right."

Mayor Alan Zavodny said, "How does it not? I know that Lincoln struggled with that issue."

Planning Commission member Keith Marvin said, "Lincoln has done a lot of struggling with it and that's why I kind of grabbed some of that stuff. It says that one accessory dwelling unit shall be allowed by conditional use in the R-1, R-2, R-3 and R-4 districts. The accessory dwelling unit shall fit within the allowable development area of the lot. The total square footage of the ADU shall not exceed the lesser of 1,000 square feet or 40% of the square footage of the principal dwelling, excluding the garages, carports, and space and all that. Any other unfinished space in a basement is included in the square footage to allow it to be furnished in the future. No more than two bedrooms are allowed in the ADU Bedroom shall mean any room or space used or intended to be used for sleeping purposes. The owner of the lot is required to live on the property in either the principal dwelling or the ADU. The ADU must share the same access point to the public or private street as the principal dwelling. The ADU must meet the same setback requirement as the principal dwelling of the district. A detached ADU shall be located a distance no greater than 200 feet from the principal dwelling and must not be closer to the street right-of-way than the principal dwelling. The ADU must share utilities with the principal dwelling unless the owner can demonstrate practical problem with sharing due to the topography or other unique site considerations. Tami, how did we define that?"

Mayor Alan Zavodny said, "I haven't heard yet that you can't pour a slab and anchor down a storage container, and you can live in it."

Interim City Administrator/City Clerk Tami Comte said, "But we have storage containers in a different area."

Mayor Alan Zavodny said, "Ok. You're not allowing a storage container but now I have a living quarter."

Interim City Administrator/City Clerk Tami Comte said, "But they have to follow all of the other requirements for a dwelling, a residence. They are also a conditional use which means that if you get a permit that it has to go before the Planning Commission for approval."

Mayor Alan Zavodny said, "All that I'm trying to point out is when is a storage unit not a storage unit? So, I have a lot that I can link two or four of them together. People are doing this and that is why I'm asking. In Lincoln, they stacked them."

Planning Commission member Keith Marvin said, "Well, they made them an apartment building and they were designed by an architect. They were finished as an apartment building and not just a container. That would be a totally different situation."

Mayor Alan Zavodny said, "Would it?"

Council member Kevin Woita said, "They did it in Las Vegas, too."

Mayor Alan Zavodny said, "My point is that it's not a storage container at that point. I got a building permit, and I poured a cement slab and I anchored it to it, and I put four of them together and now it's an apartment. I put a window in it."

Planning Commission member Keith Marvin said, "They key, I think is in that first paragraph which says that it may be allowed by conditional use permit. So, it has to go through the public hearing process, and they tell us how they're going to do it."

Mayor Alan Zavodny said, "I'm assuming that is my fire wall that allows me to not worry about a whole bunch of these going in."

Planning Commission member Keith Marvin said, "I will tell you right now that it is a good fire wall with the members that are on the commission at this point in time and I think it's going to maintain a pretty good standard down the road."

Hearing no further comments, Mayor Zavodny declared the public hearing closed at 7:39 p.m.

Council member Pat Meysenburg introduced Ordinance No. 1384 and Mayor Zavodny read Ordinance No. 1384 by title. Council member Kevin Woita made a motion to suspend the statutory rule that requires an Ordinance to 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: Yea, Kevin Woita: Yea

Yea: 6, Nay: 0

Council member Bruce Meysenburg made a motion to pass and adopt Ordinance No. 1384 on third and final reading amending the Zoning Ordinance No. 1060: By Adding Article 8.16 Short-term Rentals, Section 8.16.1 Performance Standards, Section 8.16.2 Remedies, and Section 8.17 Accessory Dwelling Units. Also, by amending R-1 Single-Family Residential by

adding 5.07.02 Permitted Uses #5. Short-term Rentals and adding 5.07.03 Conditional Uses #8. Accessory Dwelling Units, also amending R-2 Two-Family Residential by adding 5.08.02 Permitted Uses #8. Short-term Rentals and adding 5.08.03 Conditional Uses #10. Accessory Dwelling Units, also amending R-3 Multi-Family Residential by adding 5.09.02 Permitted Uses #7. Short-term Rentals and adding 5.09.03 Conditional Uses #13. Accessory Dwelling Units, also amending R-4 High Density Residential by adding 5.10.02 Permitted Uses #7. Short-term Rentals and adding 5.10.03 Conditional Uses #8. Accessory Dwelling Units. Council Member Jessica Miller seconded the motion. The motion carried.

Tom Kobus: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Jessica Miller: Yea, John Vandenberg: Yea, Kevin Woita: Yea
Yea: 6, Nay: 0

ORDINANCE NO. 1384

AN ORDINANCE TO AMEND ZONING ORDINANCE NO. 1060 BY ADDING ARTICLE 8.16 SHORT-TERM RENTALS, SECTION 8.16.1 PERFORMANCE STANDARDS, SECTION 8.16.2 REMEDIES, AND SECTION 8.17 ACCESSORY DWELLING UNITS. ALSO, TO AMEND R-1 SINGLE-FAMILY RESIDENTIAL BY ADDING 5.07.02 PERMITTED USES #5. SHORT-TERM RENTALS AND ADDING 5.07.03 CONDITIONAL USES #8. ACCESSORY DWELLING UNITS, ALSO AMENDING R-2 TWO-FAMILY RESIDENTIAL BY ADDING 5.08.02 PERMITTED USES #8. SHORT-TERM RENTALS AND ADDING 5.08.03 CONDITIONAL USES #10. ACCESSORY DWELLING UNITS, ALSO AMENDING R-3 MULTI-FAMILY RESIDENTIAL BY ADDING 5.09.02 PERMITTED USES #7. SHORT-TERM RENTALS AND ADDING 5.09.03 CONDITIONAL USES #13. ACCESSORY DWELLING UNITS, ALSO AMENDING R-4 HIGH DENSITY RESIDENTIAL BY ADDING 5.10.02 PERMITTED USES #7. SHORT-TERM RENTALS AND ADDING 5.10.03 CONDITIONAL USES #8. ACCESSORY DWELLING UNITS; TO PROVIDE FOR THE REPEAL OF ANY ORDINANCE OR RESOLUTION IN CONFLICT THEREWITH; TO PROVIDE FOR AN EFFECTIVE DATE THEREOF; AND TO AUTHORIZE PUBLICATION IN PAMPHLET FORM.

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

Section 8.16 Short-Term Rentals

This section is intended to apply strictly to the use of property for short-term rentals within the zoning jurisdiction of the City of David City.

Section 8.16.1 Performance Standards

1. Said short-term rental shall be located in a primary residential structure.
2. Said short-term rental shall not be allowed in any dwelling considered part of a multi-family dwelling including duplexes, single-family attached units or larger.
3. Said short-term rental shall not be located in an accessory dwelling unit.
4. Said short-term rental shall not allow the property to be used for party rentals.
5. Said short-term rental shall not be used for any type of illegal activities as defined by state and federal laws.
6. Said short-term rental shall file the required lodging taxes with the county and state.

7. Said short-term rental shall be properly maintained including structural maintenance and the grounds.
8. Said short-term rentals shall meet all state and federal life safety codes and display said permits in a prominent location.
9. Said short-term rental shall not increase the normal level of traffic in the immediate area.
10. Said short-term rental shall not be used for any of the following:
 - a. Housing sex offenders;
 - b. Operating a structured sober living home or similar enterprise;
 - c. Selling illegal drugs;
 - d. Selling alcohol or another activity that requires a permit or license under the Nebraska Liquor Control Act; or
 - e. Operating a sexually oriented business.

Section 8.16.2 Remedies

Failure to comply with the regulations in Section 8.16.1, may result in any permit for a short-term rental to be revoked.

Section 8.17 Accessory Dwelling Units

One accessory dwelling unit per lot may be allowed by Conditional Use Permit in the R-1 Single-Family Residential, R-2 Two-Family Residential, R-3 Multi-Family Residential and R-4 High Density Residential under the following conditions:

1. The accessory dwelling unit shall fit within the allowable development area of the lot.
2. The total square footage of the ADU shall not exceed the lesser of 1,000 square feet or 40% of the square footage of the principal dwelling, excluding the garages, carports, and space used for mechanical equipment, such as heating, utilities and water heater or pumps. Any other unfinished space in a basement is included in the square footage to allow it to be furnished in the future. The calculation for the principal dwelling shall be based on the floor area as of the date the special permit is filed.
3. No more than two bedrooms are allowed in the ADU. Bedroom shall mean any room or space used or intended to be used for sleeping purposes.
4. The owner of the lot is required to live on the property in either the principal dwelling or the ADU. The owner of the lot shall file with the Register of Deeds, a deed restriction agreement on the property stating the accessory dwelling cannot be sold separately from the principal dwelling. The deed restriction agreement must be to the satisfaction of the County Attorney. The deed restriction agreement shall be filed prior to any zoning permit for the ADU.
5. The ADU must share the same access point to the public or private street as the principal dwelling.
6. The ADU must meet the same setback requirement as the principal dwelling of the district. The height of the ADU must meet the height limit of the district for a dwelling but be no higher than the principal dwelling.
7. A detached ADU shall be located a distance no greater than 200 feet from the principal dwelling and must not be closer to the street right-of-way than the principal dwelling.

8. The ADU must share utilities with the principal dwelling unless the owner can demonstrate practical problem with sharing due to the topography or other unique site considerations.

Section 5.08 R-2 Two-Family Residential

5.08.02 Permitted Uses:

8. Short-term Rentals – See section 8.16

5.08.03 Conditional Uses:

10. Accessory Dwelling Units – see section 8.17

Section 5.09 R-3 Multi-Family Residential

5.09.02 Permitted Uses:

7. Short-term Rental – see section 8.16

5.09.03 Conditional Uses:

13. Accessory Dwelling Units – See Section 8.17

Section 5.10 R-4 High Density Residential

5.10.02 Permitted Uses:

7. Short-term Rental – See Section 8.16

5.10.03 Conditional Uses:

8. Accessory Dwelling Units – See Section 8.17

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

PASSED AND APPROVED THIS 13th day of April, 2022.

Mayor Alan Zavodny

City Clerk Tami Comte

Mayor Zavodny stated that the next item on the agenda was consideration of change order #1 for Novak Construction for the new City Office at 490 E Street.

Council member Bruce Meysenburg said, "This is Fire Marshal stuff?"

Mayor Alan Zavodny said, "This is Fire Marshal stuff. In exploring options, we got a couple different bids for sprinklers so we could avoid drywalling everything that doesn't move and is fire rated but that didn't look like it was going to be an effective option either."

Interim City Administrator/City Clerk Tami Comte said, "The cheapest option for sprinklers was \$75,000 and we would still have to do some of this stuff."

Mayor Alan Zavodny said, "My belief, as one of the people in a governing entity who has dealt with the Fire Marshal, sometimes they make several trips and sometimes they have several recommendations on each trip. That's just the nature of the beast."

Council member Bruce Meysenburg said, "Sometimes they tell you one thing and then they come back and say another thing."

Keith Marvin said, "As Fire Marshal's change they can also change things, too."

Interim City Administrator/City Clerk Tami Comte said, "One thing that I know about it is that you don't want to fight with them because you will not win."

Mayor Alan Zavodny said, "That goes without saying. You'll never get an Occupancy Permit to satisfy the Fire Marshal's final rendering of the situation. That is why this is before you. This has been bothering me a little bit and so I'm going to talk about it. First of all, I trust Tony implicitly so that's not the issue but it's the fact of when it was first suggested that we do this I had a lot of reservations and then I came around to the fact that it's a pretty good price for the square footage that we're getting and it's a long-term commitment to the City. It's an important part of the City by anchoring that corner. We could do some short cuts, but that's a disservice to our citizens, I think to make it look cheap and it doesn't need to be the Taj Mahal, but it does need to be functional and built with quality materials. That's where I've ended up landing on it after I've argued with myself about this. I'm going to grit my teeth and we're going to move forward and get this thing done."

Council member Tom Kobus said, "Are we going to have to redo the roof? That's what I heard."

Mayor Alan Zavodny said, "That's what I'm hearing, too. I don't have anything official on that."

Interim City Administrator/City Clerk Tami Comte said, "Tony is still contacting roofers."

Mayor Alan Zavodny said, "From my understanding, which is pretty limited, we're going to be able to source everything that we need to get fire-rated doors and things. Do you know of anything that is a problem? He's had to find some different dry-wall people and he's had some different people back out of the project, one because it's taking so long with the Fire Marshal and some others are the scope is getting bigger than what it originally was."

Interim City Administrator/City Clerk Tami Comte said, "Glass went up because it took the Fire Marshal so long to approve it and the price of glass has sky-rocketed in the meantime, as has everything."

Council member Bruce Meysenburg said, "Tony said they started with the Fire Marshal in November."

Interim City Administrator/City Clerk Tami Comte said, "I turned the plans in on November 4th and we didn't get them approved until the end of February."

Mayor Alan Zavodny said, "How much did glass go up? Twenty-five percent?"

Interim City Administrator/City Clerk Tami Comte said, "It was an extra five thousand."

Council member Kevin Woita made a motion to approve change order #1 for Novak Construction for the New City Office at 490 E 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: Yea, Kevin Woita: Yea
Yea: 6, Nay: 0

Mayor Zavodny stated that the next item on the agenda was consideration of hiring Olsson to design the water/wastewater building for equipment storage at 6th Street and Nebraska Central Railroad.

Water Supervisor/Interim Wastewater Supervisor Aaron Gustin said, "Critel building systems came out today and Bierman is currently working on a quote. All of these buildings are pre-engineered or looked over and approved by engineers. I think at this point in time, given the discussion at the last meeting maybe a motion to accept and then vote no would be the correct action."

Council member Bruce Meysenburg made a motion to approve hiring Olsson to design the Water/Wastewater building for equipment storage at 6th and Nebraska Central Railroad. Council Member Pat Meysenburg seconded the motion. The motion Failed.

Tom Kobus: Nay, Bruce Meysenburg: Nay, Pat Meysenburg: Nay, Jessica Miller: Nay, John Vandenberg: Nay, Kevin Woita: Nay
Yea: 0, Nay: 6

Mayor Zavodny stated that the next item on the agenda was consideration of Ordinance No. 1385 setting the building inspector pay.

Council member Bruce Meysenburg introduced Ordinance No. 1385. Mayor Zavodny read Ordinance No. 1385 by title. Council member Tom Kobus 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: Yea, Kevin Woita: Yea
Yea: 6, Nay: 0

Council member Bruce Meysenburg made a motion to pass and adopt Ordinance No. 1385 setting the building inspector pay on third and final reading. Council Member Jessica Miller seconded the motion. The motion carried.

Tom Kobus: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Jessica Miller: Yea, John Vandenberg: Yea, Kevin Woita: Yea
Yea: 6, Nay: 0

ORDINANCE NO. 1385

AN ORDINANCE OF THE CITY OF DAVID CITY, NEBRASKA TO SET THE PAY FOR THE BUILDING INSPECTOR; REPEAL ALL ORDINANCES OR PORTIONS OF ANY ORDINANCE IN CONFLICT THEREWITH; PROVIDE AN EFFECTIVE DATE; AND PROVIDE FOR PUBLICATION OF THE ORDINANCE IN PAMPHLET FORM.

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

SECTION 1. The Mayor and City Council of David City, Nebraska, do hereby establish and fix the pay for Building Inspector at **\$55.00 per hour** after the passage of this ordinance.

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, is hereby repealed.

SECTION 3. This ordinance shall be published in pamphlet form and shall be in full force and effect beginning on April 24, 2022.

PASSED AND APPROVED this 13th day of April, 2022.

Mayor Alan Zavodny

City Clerk Tami Comte

Mayor Zavodny stated that the next item on the agenda was consideration of Ordinance No. 1386 creating Street Improvement District No. 2022-1.

Interim Administrator/City Clerk Tami Comte said, "The reason that we are doing this is so that we can assess the property owners along "O" Street. If we did not do this, then we cannot assess those property owners."

Mayor Zavodny said, "Which would be consistent with what we did on the west side of the highway so that's an important thing to do."

Council member Bruce Meysenburg introduced Ordinance No. 1386 creating Street Improvement District No. 2022-1. Mayor Zavodny read Ordinance No. 1386 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 Jessica Miller seconded the motion. The motion carried.

Tom Kobus: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Jessica Miller: Yea, John Vandenberg: Abstain, Kevin Woita: Yea
Yea: 6, Nay: 0, Abstain: 1

Council member Jessica Miller made a motion to pass and adopt Ordinance No. 1386 creating Street Improvement District No. 2022-1 on third and final reading. Council Member Tom Kobus seconded the motion. The motion carried.

Tom Kobus: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Jessica Miller: Yea, John Vandenberg: Abstain, Kevin Woita: Yea
Yea: 6, Nay: 0, Abstain: 1

CITY OF DAVID CITY, NEBRASKA

ORDINANCE NO. 1386

AN ORDINANCE OF THE CITY OF DAVID CITY, NEBRASKA, CREATING A STREET IMPROVEMENT DISTRICT WITHIN THE CITY OF DAVID CITY TO BE KNOWN AS STREET IMPROVEMENT DISTRICT NO. 2022-1; DEFINING THE BOUNDARIES OF SAID DISTRICT AND THE PROPERTY CONTAINED THEREIN; AND, PROVIDING FOR THE CONSTRUCTION OF IMPROVEMENTS THEREIN.

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

Section 1. The Mayor and City Council of the City of David City (the "City"), Butler County, Nebraska, hereby find and determine that it is in the best interests of the City to create a Street Improvement District for the construction of said improvements.

Section 2. There is hereby created within the City, a Street Improvement District to be known and designated as Street Improvement District No. 2022-1 (the "District"), the outer boundaries of which shall contain the following property within the City:

COMMENCING AT A POINT 25 FEET SOUTH OF THE NORTHWEST CORNER OF LOT 12, BLOCK B, LARRY J. SABATA 3RD ADDITION AND ALSO BEING ON THE EAST RIGHT OF WAY LINE OF 12TH STREET; THENCE WEST TO THE SOUTHEAST CORNER OF LOT 2, BLOCK 7, LAND AND LOT COMPANY'S ADDITION; THENCE NORTH ON AN EXTENDED LINE OF THE EAST LINE OF SAID LOT 2, BLOCK 7, LAND AND LOT COMPANY'S ADDITION TO A POINT BEING 80 FEET NORTH OF THE NORTH RIGHT OF WAY LINE OF 'O' STREET; THENCE EAST AND PARALLEL TO SAID NORTH RIGHT OF WAY LINE OF 'O' STREET TO A POINT BEING AN EXTENDED LINE OF SAID EAST RIGHT OF

WAY LINE OF 12TH STREET; THENCE SOUTH ON SAID EXTENDED LINE OF
SAID EAST RIGHT OF WAY LINE OF 12TH STREET TO THE POINT OF
BEGINNING.

All or a portion of the Streets within the District shall be improved by removing existing surfaces, paving, grading, resurfacing or relaying existing pavement, constructing or reconstructing curbs, gutters, sidewalks, lighting systems, signage, and any necessary improvements incidental thereto as authorized by Section 17-509, Reissue Revised Statutes of Nebraska, 2012, as amended.

Section 3. All of said improvements shall be constructed to the established grades as fixed by ordinances of the City of David City, and shall be constructed in accordance with plans and specifications to be prepared by Olsson Associates, Consulting Engineers for the City, which plans shall be approved by the Mayor and City Council.

Section 4. The Mayor and City Council hereby determine that the construction of improvements in the District shall be funded by levy of special assessment as provided in Section 17-509, Reissue Revised Statutes of Nebraska, 2012. Notice of the creation of the District shall be published in the Banner Press, a legal newspaper of general circulation within the City, for three weeks after publication of this ordinance.

Section 5. If any section, paragraph, clause, or provision of this Ordinance shall be held invalid, the invalidity of such section, paragraph, clause, or provision shall not affect any of the other provisions of this Ordinance.

PASSED AND APPROVED 13th day of April, 2022.

ATTEST:

Mayor Alan Zavodny

City Clerk Tami Comte

(SEAL)

Mayor Zavodny stated that the next item on the agenda was consideration of purchasing two bottle fillers for the new office at a cost of \$1,668 each.

Interim Administrator/City Clerk Tami Comte said, "The water fountains that are currently in the new office currently do not work and Tony asked me what we wanted to do with them. The one at the top of the stairs in the lobby is so old that there is no water even to it. There is one in the lobby and then there is one in the back hallway, and we would like to convert those to bottle fillers. The one in the lobby then would be accessible to the public and at meetings and anytime during the day if the employees want to come in and get water, it would be available."

I'm okay with only one, two would be better, but if you only want to have one then I'm okay with that too. It's up to you."

Council member Kevin Woita said, "I see that you got a quote from Culligan for something similar?"

Interim Administrator/City Clerk Tami Comte said, "It would be very similar. It's thirty dollar per month with a seventy-nine dollar install charge. I was talking to Alan about that too and we both said that within five years we would have the bottle fillers paid for."

Council member Tom Kobus said, "Culligan will guarantee it forever. If it breaks in five years, then what?"

Mayor Alan Zavodny said, "With Culligan I think you get the unit and bottles, probably."

Council member Kevin Woita said, "The one that Osborn is quoting is a filtered system?"

Council member Jessica Miller said, "It's a filtered system, like you see in schools now."

Interim Administrator/City Clerk Tami Comte said, "No, I don't think that it is. We're going to have R.O. so we shouldn't need that."

Keith Marvin said, "I mentioned this item on the agenda to somebody today and I said something about Culligan and they said that doesn't send a very good signal that the City Office gets in purified water and makes the rest of us drink what is coming out of the water plant. Food for thought."

Mayor Alan Zavodny said, "I had that same thought."

Keith Marvin said, "The fact that you are putting R.O. in and is going to change the whole dynamic of the water down the road."

Council member Bruce Meysenburg said, "Plus, you are dealing with a local business in town."

Council member Jessica Miller made a motion to approve purchasing two bottle fillers for the new office at a cost of \$1,688 each. Council Member Bruce Meysenburg seconded the motion. The motion carried.

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

Yea: 6, Nay: 0

Council member Bruce Meysenburg made a motion to adjourn. Council Member Pat Meysenburg seconded the motion. The motion carried.

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

Yea: 6, Nay: 0

CERTIFICATION OF MINUTES

April 13, 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 April 13, 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