

## CITY COUNCIL PROCEEDINGS

September 28, 2022

The City Council of the City of David City, Nebraska, met in open public session at 7:53 p.m. in the meeting room of the City Office at 490 "E" Street, David City, Nebraska. The Public had been advised of the meeting by publication of notice in The Banner Press on September 22, 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 David Levy, and Interim City Administrator/City Clerk-Treasurer Tami Comte.

Also present for the meeting were: Special Projects Coordinator Dana Trowbridge, Chris Janson with MSA, Planning Commission Member Keith Marvin, Dan & Jan Sypal, Deputy City Clerk Lori Matchett, Banner-Press Correspondent Hannah Schrodtt and Sheriff Tom Dion.

The meeting opened with the Pledge of Allegiance.

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

Council member Bruce Meysenburg made a motion to approve the minutes of the September 14, 2022 meeting of the Mayor and City Council 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

Mayor Alan Zavodny opened the public hearing at 7:55 p.m. to review and consider the updated Comprehensive Plan.

Chris Janson with MSA introduced himself and presented the 2040 Comprehensive Plan.

Planning Commission member Keith Marvin introduced himself and recommended some changes to the plan. He asked for three areas to be changed from Residential Low Density to Residential Medium/High Density.

Discussion followed.

Mayor Alan Zavodny declared the public hearing closed at 8:18 p.m.

Council member Bruce Meysenburg made a motion to pass and adopt Resolution No. 23-2022 which includes the recommended changes. 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

### **RESOLUTION NO. 23-2022**

Based on the meetings and public hearings that we have had, and

Based on the public input we have received and the presentations from our consultants,

I find that the City of David City should adopt as its comprehensive plan the document as set forth on the agenda website, and

Based on the foregoing, I move that the City Council of the City of David City resolve to adopt the document attached to the September 28, 2022, agenda titled 2040 Comprehensive Plan.

PASSED AND APPROVED this 28th day of September, 2022.

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Mayor Alan Zavodny

ATTEST:

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City Clerk Tami Comte

A copy of the David City, Nebraska 2040 Comprehensive Plan follows the minutes.

Mayor Zavodny stated that the next item on the agenda was Ordinance No. 1405 adopting the Budget Statement to be termed the Annual Appropriation Bill to appropriate the Budget for the 2022-2023 Fiscal Year.

Council member Bruce Meysenburg introduced Ordinance No. 1405: AN ORDINANCE OF THE CITY OF DAVID CITY, NEBRASKA, ADOPTING THE BUDGET STATEMENT TO BE TERMED THE ANNUAL APPROPRIATION BILL.

Council member Bruce Meysenburg made a motion to suspend the statutory rule requiring 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. 1405 on third and final reading adopting the Budget Statement to be termed the Annual Appropriation Bill to appropriate the budget for the 2022-2023 Fiscal Year. 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. 1405**

#### **THE ANNUAL APPROPRIATION BILL**

AN ORDINANCE OF THE CITY OF DAVID CITY, NEBRASKA, ADOPTING THE BUDGET STATEMENT TO BE TERMED THE ANNUAL APPROPRIATION BILL; TO APPROPRIATE SUMS FOR NECESSARY EXPENSES AND LIABILITIES; 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.

WHEREAS, Nebraska Revised Statue 17-706 provides that a city council of the second class shall adopt a budget statement pursuant to the Nebraska Budget Act, to be termed "The Annual Appropriation Bill", in which corporate authorities may appropriate such sums of money as may be deemed necessary to defray all necessary expenses and liabilities of the city.

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF DAVID CITY, BUTLER COUNTY, NEBRASKA, AS FOLLOWS:

SECTION 1. That after complying with all procedures required by law, the budget presented and set forth in the budget statement is hereby approved as the Annual Appropriation Bill for the fiscal year beginning October 1, 2022, through September 30, 2023. All sums of money contained in the budget statement are hereby appropriate for the necessary expenses and liabilities of the City of David City, Nebraska. A copy of all completed State of Nebraska Budget Forms shall be forwarded as provided by law to the Auditor of Public Accounts, State Capital, Lincoln, Nebraska, and to the County Clerk of Butler County, Nebraska, for use by the levying authority.

SECTION 2. That any ordinance or section of any ordinance passed and approved prior to or subsequent to the passage, approval, and publication or posting of this ordinance and in conflict with its provisions, is hereby appealed.

SECTION 3. This ordinance shall be published in pamphlet form and shall take effect and be in full force from and after its passage, approval, and publication or posting as required by law.

PASSED AND APPROVED this 28<sup>th</sup> day of September, 2022.

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Mayor Alan Zavodny

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City Clerk Tami Comte

Council member Pat Meysenburg made a motion to pass and adopt Resolution No. 19-2022 approving an additional one percent (1%) increase in restricted funds. 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

**RESOLUTION NO. 19-2022**

A RESOLUTION OF THE CITY OF DAVID CITY TO APPROVE AN ADDITIONAL ONE PERCENT (1%) INCREASE IN RESTRICTED FUNDS.

WHEREAS, Nebraska Revised Statute 13-519.02 provides that a governmental unit may exceed its restricted funds limit for a fiscal year by up to an additional one percent upon the affirmative vote of at least seventy-five percent of the governing body.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF DAVID CITY, NEBRASKA, that:

1. An additional one percent (1%) increase in restricted funds for the 2022 - 2023 budget is approved.

PASSED AND APPROVED this 28<sup>th</sup> day of September, 2022.

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Mayor Alan Zavodny

ATTEST:

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City Clerk Tami Comte

Council member Pat Meysenburg made a motion to pass and adopt Resolution No. 20-2022 setting the property tax request. 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

**RESOLUTION NO. 20-2022**

**RESOLUTION SETTING THE PROPERTY TAX REQUEST**

WHEREAS, Nebraska Revised Statute 77-1632 and 77-1633 provides that the Governing Body of the City of David City passes by a majority vote a resolution or ordinance setting the tax request; and

WHEREAS, a special public hearing was held as required by law to hear and consider comments concerning the property tax request:

NOW, THEREFORE, the Governing Body of the City of David City resolves that:

1. The 2022-2023 property tax request be set at:

General Fund: \$919,966.25  
Bond Fund: -----

2. The total assessed value of property differs from last year's total assessed value by 5.2 percent.
3. The tax rate which would levy the same amount of property taxes as last year, when multiplied by the new total assessed value of property would be .467813 per \$100 of assessed value.
4. The City of David City proposes to adopt a property tax request that will cause its tax rate to be 0.5 per \$100 of assessed value.
5. Based on the proposed property tax request and changes in other revenue, the total operating budget of the City of David City will increase (or decrease) last year's budget by 7.03 percent.
6. A copy of this resolution be certified and forwarded to the County Clerk on or before October 15, 2022.

Motion by Pat Meysenburg, seconded by Kobus to adopt Resolution No. 20-2022.

Voting yes were:

Tom Kobus  
Bruce Meysenburg  
Pat Meysenburg  
Jessica Miller  
John Vandenberg  
Kevin Woita

Voting no were:

None

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Mayor Alan Zavodny

ATTEST:

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City Clerk Tami Comte

Council member Pat Meysenburg made a motion to pass and adopt Resolution No. 21-2022 carrying forward the unused budget authority. 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

**RESOLUTION NO. 21 – 2022**

A RESOLUTION OF THE CITY OF DAVID CITY  
TO CARRY FORWARD THE UNUSED BUDGET AUTHORITY

WHEREAS, Nebraska Revised Statute 13-521 provides that a governmental unit may choose not to increase its total of restricted funds by the full amount by law in a particular year. In such cases, the governmental unit may carry forward to future budget years the amount of unused restricted funds authority.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF DAVID CITY, NEBRASKA, that:

1. The unused budget authority of \$656,167.23 from the 2021 - 2022 budget shall be carried forward to the 2022 - 2023 budget of the City of David City, Nebraska.

PASSED AND APPROVED this 28<sup>th</sup> day of September, 2022.

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Mayor Alan Zavodny

ATTEST:

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City Clerk Tami Comte

Mayor Zavodny stated that the next item on the agenda was discussion concerning extending Nebraska Street between 10<sup>th</sup> and 11<sup>th</sup> Street.

Council member Pat Meysenburg stated that David Place had spoken to Council member Woita and himself about opening Nebraska Street to 11<sup>th</sup> Street because of changing the front entrance to 11<sup>th</sup> Street and changing the parking lot. He stated that it has really become an eye sore in that area and he would like to see that cleaned up. He stated that he doesn't understand why the street didn't go through when David Place was built.

Mayor Zavodny stated that he understands the concerns, but it should probably be a part of the One- and Six-Year Street Plan. Mayor Zavodny asked what the timeline was for David Place for the new entrance.

Council member Kevin Woita stated that the parking lot was finished, and they are working on landscaping. The superintendent asked about it when Woita was visiting with him one day.

City Attorney David Levy stated that the City would have to purchase the right-of-way or have it donated.

Council member Kevin Woita stated that it wouldn't have to be done immediately but it is something that should be given some thought.

Mayor Zavodny stated that there are a lot of steps should you choose to extend the street. You would need to acquire the land, have the land surveyed, have drainage studies, add it to the One-and Six Year Street Plan and figure out how to pay for it. There are a lot of steps between today and when you could potentially see that being done.

City Attorney David Levy stated that there would be a number of public hearings along the way as well.

Mayor Zavodny stated that if this is a priority on your streets then you can go ahead and start the process.

Mayor Zavodny stated that the next item on the agenda was a quote from Nebraska Sign to repair the neon sign from the old City Office.

Interim City Administrator/City Clerk Tami Comte stated that this is the old neon sign that used to hang in the window at 402 5<sup>th</sup> Street and was also at 557 N. 4<sup>th</sup> Street. It is not safe to hang in the current office because it is a fire hazard and needs to be redone.

The Mayor and Council members asked if the glass needed to be replaced and who would install the sign.

Mayor Zavodny recommended tabling the item until some of the questions could be answered.

Council member Bruce Meysenburg made a motion to table the quote from Nebraska Sign to repair the neon sign from the old city office to the next meeting. Council Member Kevin Woita 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 Kevin Woita made a motion to pass and adopt Resolution No. 22-2022 authorizing the sale of the old sand/salt spreader to the Village of Rising City. 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

**RESOLUTION NO. 22-2022**

WHEREAS, the City of David City, Butler County, Nebraska, is the owner of the following described personal property, to wit:

2016 Swenson Sand/Salt Spreader  
and,

WHEREAS, the City of David City, Nebraska, does not have a present need to retain ownership of said above described personal property, and,

WHEREAS, the City of David City, Nebraska, deems it in the best interests of the citizens of the City of David City, Nebraska, that said personal property be disposed of, as set forth herein,

WHEREAS, the City of David City, Nebraska, has determined that the fair market value of the above described personal property is less than \$5,000.00,

NOW THEREFORE, BE IT RESOLVED BY THE CITY OF DAVID CITY, NEBRASKA, AS FOLLOWS:

1. That the above described personal property be sold to the Village of Rising City for \$1,750.00 as agreed upon in the Interlocal Agreement dated August 29, 2005 between the City of David City, the Village of Bellwood and the Village of Rising City.
2. That as advertised in a Notice of Sale of Personal Property posted in three public places in the City of David City, Nebraska, immediately after the passage of said Resolution and not later than seven (7) days prior to the sale of said item, as shall be evidenced by a Notice of Posting of the City of David City Clerk, and,
3. That pursuant to Neb. Rev. Stat. §17-503.01, confirmation of the sale of said personal property by an ordinance is not required.

PASSED AND APPROVED this 28th day of September, 2022.



CITY OF DAVID CITY, NEBRASKA

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Mayor Alan Zavodny

ATTEST:

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City Clerk Tami Comte

Mayor Zavodny stated that the next item on the agenda was proposals for geotechnical investigation/evaluation for the David City Water Main Loop to AGP.

Interim Administrator/City Clerk Tami Comte stated that Ethan Joy from JEO had emailed her and asked for this to be on the agenda and stated that he felt that going with the lower quote from Certified Testing Services (CTS) for \$3,850.00 was in the City's best interest.

Council member Tom Kobus made a motion to approve the quote from Certified Testing Services for geotechnical investigation/evaluation for the David City Water Main Loop to AGP. 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

The quotes are attached as follows:

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September 16, 2022

Mayor Zavodny & City Council Members  
City of David City  
490 E Street  
David City, NE 68632

RE: David City, Nebraska  
2022 - David City Water Main Loop to New AGP Site  
JEO Project No. 221276.00

Dear Honorable Mayor & City Council:

On behalf of the City of David City, JEO requested a proposal for geotechnical investigation/evaluation for the David City Water Main Loop to AGP project from two different companies: Certified Testing Services, Inc. (CTS) and Thiele Geotech Inc. The geotechnical investigation/evaluation report from Certified Testing Services, Inc. (CTS) is estimated at \$3,800 and Thiele Geotech Inc. estimation is in the amount of \$6,950.

JEO has completed past projects with each of the firms and the work has been satisfactory.

It is our recommendation that the City of David City award the contract to Certified Testing Services, Inc. (CTS) in the amount of \$3,850.00.

Feel free to contact me with any questions or concerns at 402.241.7409 or by email at [ejoy@jeo.com](mailto:ejoy@jeo.com).

Sincerely,

Ethan E. Joy, PE  
Branch Manager

EEJ  
Enclosures

cc: Tami Comte – City Clerk



## Certified Testing Services, Inc.

419 W. 6th Street • P.O. Box 1193 • Sioux City, Iowa 51102 • Phone (712) 252-5132

September 2, 2022

Attn: Ms. Tami Comte  
557 4th Street  
P.O. Box 191  
David City, NE 68632-0191

RE: Geotechnical Services  
Water Main Project  
David City, Nebraska  
CTS Proposal No. 6107

Dear Ms. Comte,

### Introduction

Certified Testing Services, Inc. is pleased to submit this proposal to perform a geotechnical exploration for the above referenced project. This proposal presents our understanding of the furnished project information, scope of work, as well as schedule and fees.

### Project Information

Mr. Merrett Lane of JEO Consulting Group provided preliminary project information in an email on August 30, 2022. The email included an RFP that included arials titled, "Site Map", "Boring Location 1", "Boring Location 2", "Boring Location 3", "Boring Location 4", "Boring Location 5", and "Boring Location 6". CTS understands that the project will consist of a new water main that will begin by the existing water tower on North 11<sup>th</sup> Street and extend north to along 11<sup>th</sup> Street to Highway 12B, turn west along Highway 12B, under Highway 15, and turn south along M Road to 36 Road where the water main will turn east and extend to the existing water main between N 2<sup>nd</sup> Street and N 4<sup>th</sup> Street. CTS understands that both open trench and horizontal directional bore are going to be used on the project.

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#### Scope of Work

Based on the RFP, CTS proposes to perform six soil test borings to depths of 15 feet below the existing grade at the locations provided on the aerials. At the completion of the fieldwork, samples collected in the field will be transported to the laboratory and tested to determine select engineering properties that will be used in our analysis. The results of the fieldwork, laboratory testing, project information and other information will be evaluated by a professional engineer familiar with the soil conditions in the area and presented in a report.

Items that will be addressed in the report will include our understanding of the project information, topographic and subsurface information, review of geologic and subsurface information, review of field and laboratory test procedures, classification of the material encountered, discuss suitability of existing material for open trench pipe installation to include bedding the proposed utilities and for trench backfill, provide recommendations for bore pit construction, and provide groundwater information.

The scope of services is based on the public utilities being located by CTS through the Iowa One Call Service and the boring locations being accessible to a truck mounted drill rig. It should be noted that Iowa One Call Service will not locate private utilities. The City of David City should make CTS aware of all private utilities that the Iowa One Call Service will not locate. CTS cannot be held responsible for private utilities that we cut that we are not made aware of their specific location. Field and laboratory testing will be performed, where applicable, in accordance with ASTM procedures. Our scope of work does not include an evaluation of existing environmental conditions.

#### Cost

Based on the scope of work discussed above, CTS is proposing to perform the work for a lump sum cost of \$3,850.00, which includes two hard copies and an electronic

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copy of our final report. CTS is also proposing that the work be performed in accordance with the attached CTS "General Conditions".

Costs associated with accessing the site, such as bulldozer rental and/or wrecker services would be billed at a rate of cost plus 15% in addition to our not to exceed amount. Standby time required due to access problems and problems caused by conditions outside of CTS's control would also be charged in addition to the not to exceed amount.

Our lump sum fee covers the activity required to present our findings in report form. Our lump sum fee includes engineering services for the review of applicable drawings and specifications, at our office, to determine their compliance with our report. This proposal does not include the preparation of construction specifications, special conferences and other activities requested after submittal of our report.

#### Schedule and Authorization

Based on our present schedule, we can commence the fieldwork within five to ten working days of receiving written authorization, if weather and site conditions allow. It is anticipated that our final written report would be completed within five to seven working days of completion of the fieldwork.

CTS will proceed with the fieldwork based on the receipt of a signed copy of this proposal. To speed up the process a copy of the signature page may be faxed to (712) 252-0110 or emailed to [mdailey@ctsgeo.com](mailto:mdailey@ctsgeo.com) and would serve as written authorization. Please complete as many items as possible on the attached project data sheet and return with the signature page.

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CTS appreciates the opportunity to submit this proposal and looks forward to working with you on this project. If you should have any questions or need additional information, feel free to contact our office.

Sincerely,

CERTIFIED TESTING SERVICES, INC.



James A. Bertsch, P.E.  
Senior Geotechnical Engineer



Matthew R. Dailey, P.E.  
Geotechnical Department Manager

JAM/MRD/md

Attachments: Geotechnical Schedule of Services and Fees  
Project Data Sheet  
General Conditions

<b>AGREED TO THIS</b> _____ <b>DAY OF</b> _____, 20____
<b>SIGNATURE:</b> _____
<b>PRINTED NAME:</b> _____
<b>TITLE:</b> _____
<b>FIRM:</b> _____

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**GEOTECHNICAL SCHEDULE OF SERVICES AND FEES**

<u>Field Services</u>	<u>Unit</u>	<u>Unit Fees</u>
Mobilization	Per Mile	\$4.00
Drilling	Per Foot	11.00
Sampling	Each	10.00
Standby	Hour	155.00
 <u>Lab Services</u>		
Atterberg Limits	Each	\$90.00
Moisture Content	Each	9.00
Dry Density	Each	11.00
Unconfined Compression	Each	16.00
Gradation Test	Each	90.00
Moisture Content (ASTM D2216)	Each	8.50
Gradation Test (ASTM D6913)	Each	90.00
 <u>Report</u>		
Additional Hard Copies of Report	Each	\$30.00
Senior Engineering Technician	Hour	68.00
Crew Chief	Hour	78.00
Staff Engineer	Hour	130.00
Senior Engineer	Hour	160.00

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**CERTIFIED TESTING SERVICES, INC  
PROJECT DATA SHEET  
SUBSURFACE EXPLORATION**

1. Project Name: \_\_\_\_\_
2. Project Location: \_\_\_\_\_
3. Your Job Number \_\_\_\_\_ Purchase Order No.: \_\_\_\_\_
4. Project Manager: \_\_\_\_\_ Telephone No.: \_\_\_\_\_
5. Distribution of Reports:  
Copies To: \_\_\_\_\_ Copies To: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_ Attn: \_\_\_\_\_
6. Invoicing Address:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_



## GENERAL CONDITIONS SUBSURFACE EXPLORATION SERVICES

### SECTION 1: Scope of Work

CTS shall perform the services defined in the contract and shall invoice the client for those services at the fee schedule rates. Any cost estimates stated in this contract shall not be considered as a firm figure unless otherwise specifically stated in this contract. If unexpected site conditions are discovered, the scope of work may change, even as the work is in progress. CTS will provide these additional services at the contract fee schedule rate.

Rates for work beyond the scope of this contract and not covered by the contract fee schedule can be provided. CTS can perform additional work with verbal authorization, and will provide written confirmation of fee, if requested. All costs incurred because of delays in authorizing the additional work will be billed to the client.

Fee schedules are valid for one year following the date of the contract unless otherwise noted.

### SECTION 2: Access to Sites

Unless otherwise agreed, the client will furnish CTS with right-of-access to the site in order to conduct the planned exploration.

While CTS will take all reasonable precautions to minimize any damage to the property, it is understood by the client that in the normal course of work some damage may occur, the restoration of which is not part of this agreement.

### SECTION 3: Soil Boring Locations

The client will furnish CTS with a diagram indicating the location of the site. Test boring locations may also be indicated on the diagram. CTS reserves the right to deviate a reasonable distance from the boring locations specified unless this right is specifically revoked by the client in writing at the time the location diagram is supplied. CTS reserves the right to terminate this contract if conditions preventing drilling at the specified locations are encountered which were not made known to CTS prior to the date of this contract.

The accuracy and proximity of provided survey control will affect the accuracy of in situ test location and evaluation determinations. Unless otherwise noted, the accuracy of test locations and elevations will be commensurate only with pacing and approximate near-surface or estimates.

### SECTION 4: UTILITIES

In the performance of its work, CTS will take all reasonable precautions to avoid damage or injury to subterranean structures or utilities.

The client agrees to hold CTS harmless and indemnify CTS for any claims, payments or other liability, including costs and attorney fees incurred by CTS for any damages to subterranean structures which are not called to CTS's attention and correctly shown on plans furnished to CTS.

### SECTION 5: Samples

CTS will retain all soil and rock samples for 30 days after submission of the report. Further storage or transfer of samples can be made at owner expense upon written request.

### SECTION 6: Unanticipated Hazardous Materials

It shall be the duty of the owner or his representative to advise CTS of any known or suspected hazardous substances which are or may be related to the services provided, such hazardous substances including but not limited to products, materials, by-products, wastes or samples of the foregoing which CTS may be provided or obtain performing its services or which hazardous substances exist or may exist on or near any premises upon which work is to be performed by CTS's employees, agents or subcontractors.

If during the course of providing services CTS observes or suspects the existence of unanticipated hazardous materials, CTS may at its option terminate further work on the project and notify client of the condition. Services will be resumed only after a renegotiation of scope of services and fees. In the event that such renegotiation cannot occur to the satisfaction of CTS, CTS may at its option terminate this contract.

### SECTION 7: Reports and Invoices

CTS will furnish three (3) copies of the report to the client. Additional copies will be furnished at the rate specified in the fee schedule.

CTS will submit invoices to the client monthly and a final bill upon completion of services. Payment is due upon presentation of invoice and is past due thirty (30) days from the invoice date. Client agrees to pay a finance charge of one and one-half percent (1 1/2%) per month, but not exceeding a maximum rate allowed by law, on past due accounts.

### SECTION 8: Ownership of Documents

All reports, boring logs, field data, field notes, laboratory test data, calculations, estimates, and other documents prepared by CTS as instruments of service, shall remain the property of CTS, unless there are other contractual agreements.

### SECTION 9: Confidentiality

CTS shall hold confidential all business or technical information obtained from the client or his affiliates or generated in the performance of services under this agreement and identified in writing by the client as "confidential". CTS shall not disclose such information without the client's consent except to the extent required for 1) Performance of services under this agreement; 2) Compliance with professional standards of conduct for preservation of public safety, health, and welfare; 3) Compliance with any court order or other governmental directive

and/or 4) Protection of CTS against claims or liabilities arising from performance of services under this agreement. CTS obligations hereunder shall not apply to information in the public domain or lawfully acquired on a non-confidential basis from others.

### SECTION 10: Standard of Care

Services performed by CTS under this Agreement will be conducted in the manner consistent with that level of care and skill ordinarily exercised by members of the profession customarily practicing under similar conditions. No other warranty, express or implied, is made or intended by the proposal for consulting services or by furnishing oral or written reports of the findings made.

The client recognizes that the subsurface conditions may vary from those encountered at the location where borings, surveys or explorations are made by CTS and that the data, interpretations and recommendations of CTS are based solely upon the data available to CTS. CTS will be responsible for those data, interpretations, and recommendations, but shall not be responsible for the interpretation by others of the information developed.

### SECTION 11: Subpoenas

The client is responsible, after notification, for payment of fees charges and expenses resulting from our required responses to subpoenas issued by any party in conjunction with our work. Charges are based on the schedule in effect at the time the subpoena is served.

### SECTION 12: Limitation of Liability

The client agrees to limit CTS's liability to the owner and all construction contractors and subcontractors on the project arising from CTS's professional acts, errors, or omissions, such that the total aggregate liability of CTS to all those named shall not exceed \$50,000 or CTS's total fee for the services rendered on this project, whichever is more. The owner further agrees to require of the contractor and his subcontractors an identical limitation of CTS's liability for damages suffered by the contractor or subcontractor arising from CTS's professional acts, errors, or omissions. Neither the contractor nor any of his subcontractors assumes any liability for damages to others which may arise on account of CTS's professional acts, errors or omissions.

### SECTION 13: Insurance and Indemnity

CTS represents that it and its staff are protected by worker's compensation insurance and that CTS has such coverage under public liability and property damage insurance policies which CTS deems to be adequate. It is the policy of CTS to require certificates of insurance from all consultants or subcontractors employed by CTS. Certificates for all such policies of insurance will be provided to client upon request in writing. Within the limits and conditions of such insurance, CTS agrees to indemnify and save client harmless from and against any loss, damage, injury or liability arising from any negligent acts of CTS or its employees. CTS shall not be responsible for any loss, damage or liability beyond the amounts, limits and conditions of such insurance. CTS shall not be responsible for any loss, damage or liability arising from any acts by a client, its agents, staff or other consultants employed by others.

CTS's compensation hereunder is not commensurate with the potential risk of injury or loss that may be caused by exposure to pollution, hazardous wastes or toxic or other dangerous substances or conditions. Accordingly, except as expressly provided in this contract, the client waives any claim against CTS and agrees to indemnify and save CTS, its agents, and its employees harmless from any claim, liability or defense cost for injury or loss sustained by any party from such exposures allegedly arising out of or related to CTS's performance of services hereunder.

### SECTION 14: Termination

This Agreement may be terminated by either party upon seven (7) days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof. Such termination shall not be effective if that substantial failure has been remedied before expiration of the period specified in the written notice. In the event of termination, CTS shall be paid for services performed to the termination notice date plus reasonable termination expenses. Expenses of termination or suspension shall include all direct costs of CTS required to complete analysis and records necessary to complete its files and may also include a report on the services performed to the date of notice of termination or suspension.

### SECTION 15: Precedence

These Standard, Terms and Conditions shall take precedence over any inconsistent or contradictory provisions contained in any proposal, contract, purchase order, requisition, notice to proceed, or file document regarding CTS's services.



Geotechnical Engineering  
& Construction Testing

SHREVEPORT, LA • 713-852-5152  
STORM LAKE, IA • 712-212-8278



13478 Chandler Road  
Omaha, Nebraska 68138-3716  
402.556.2171 Fax 402.556.7831  
www.thielegeotech.com

September 8, 2022

Tami Comte  
557 4<sup>th</sup> Street  
P.O. Box 191  
David City, NE 68632

**RE: PROPOSAL FOR GEOTECHNICAL EXPLORATION  
DAVID CITY WATER MAIN LOOP TO AGP FACILITY  
NORTH 11<sup>TH</sup> STREET AND ROAD N, DAVID CITY, NEBRASKA**

Dear Ms. Comte:

Enclosed is our proposal for geotechnical exploration related to the proposed water main loop project to be located near the North 11<sup>th</sup> Street and Road N connection in David City, Nebraska. The accompanying proposal describes our approach and proposed scope of services, the estimated cost of the study, and the contract terms.

Thiele Geotech is a service-oriented firm offering geotechnical, material, and environmental engineering. Our focus is on providing quality engineering solutions based on each individual client's needs. Our professional staff has extensive experience with similar projects, and we have the equipment and resources available to complete this study.

We look forward to working with you and your design team on this project. If you have any questions, please call. If the accompanying proposal is acceptable, please return an executed copy to our office.

Respectfully,  
Thiele Geotech, Inc.

A handwritten signature in blue ink that reads 'Heath E. Cutler'.

Heath E. Cutler, P.E.  
Project Engineer

Enclosure

Copy: Tim Adams, P.E. – JEO Consulting Group

R:\PROPOSAL\GEOTECHNICAL DEPARTMENT\DAVID CITY WATER MAIN LOOP TO AGP FACILITY.DOCX

**Geotechnical Exploration Proposal  
David City Water Main Loop to AGP Facility  
North 11<sup>th</sup> Street and Road N  
David City, Nebraska  
September 8, 2022**

Thiele Geotech, Inc. is pleased to submit our proposal for geotechnical exploration related to the referenced project. The following sections detail our understanding of the project, our proposed scope of services, and the cost of the study. The contract terms are attached in Exhibit A. This proposal will be held open for a period of 45 days from the above date.

**PROJECT DESCRIPTION**

Our understanding of the project is based upon information provided by JEO Consulting Group.

The project is still in the preliminary stages of design, but is anticipated to consist of installing water main lines in the northern extents of David City from the existing municipal water tower to the new AGP soybean processing facility. Construction of the water main is anticipated to consist of approximately 18,000 lineal feet of 16-inch PVC pipe with invert depths ranging from 5 to 10 feet below existing grades. The pipe will primarily be installed using cut and cover methods, with jack and bored installation anticipated where the alignment crosses Highway 15 at 37 Road, the railroad track crossing on M Road, and the railroad track crossing on 36 Road.

Based on previous experience in the area, the soils on the site are expected to consist of Peoria loess deposits overlying older loess deposits in the upland areas of the site and alluvial deposits in the lower-lying drainage areas of the site. The loess and alluvium are assumed to be of firm and soft consistency, respectively.

**SCOPE OF SERVICES**

Our proposed geotechnical exploration will consist of test borings to obtain geologic information and samples of the site soils, laboratory tests to determine the relevant engineering properties of the various soil strata, and a report of geotechnical engineering recommendations.

Prior to mobilization, we will contact Nebraska One-Call for public utility locates. Locations of private utilities not identified as part of the public locate are the responsibility of the Owner. Boring locations will be modified as necessary to avoid utilities and/or areas of limited access.

All work will be conducted on city or county property, within existing right-of-way, or within permanent easements if possible. We assume that permission to enter any private property will be acquired by JEO.

With the anticipated soil conditions and in accordance with the request for proposal, we propose to conduct a total of six test borings. The borings will be widely spaced across the site and near the strategic locations indicated by JEO, with at least a single boring in proximity to each bore pit location. Based on boring depths of 15 feet, a total drilling footage of up to 90 lineal feet is proposed. The borings will be sampled at intervals of 5 feet or less and a descriptive log of the test borings will be prepared. Shelby tube samples will be followed by split-spoons at the bore pit locations. All borings will be backfilled with cuttings.

Based on the results of the test borings, a laboratory testing program will be established to evaluate the engineering properties of the various soil strata. Laboratory testing may include moisture content and

density determinations to characterize the state and uniformity of the deposits, unconfined compression tests to determine shear strength parameters, and index property tests for classification.

Our report will discuss the general soil and ground water conditions underlying the site, present the relevant engineering properties of the existing soils, provide earthwork and site preparation recommendations, and recommend design criteria and parameters for water main installation.

The proposed scope of services does not include an evaluation of potential contamination on or near the site. If the environmental condition of the property is a concern, an environmental site assessment can be provided as an additional service.

#### ESTIMATED COST & SCHEDULE

Based on the indicated work scope, we propose a lump sum fee of \$6,950 for the geotechnical exploration. If additional work is authorized by the client due to unforeseen subsurface conditions or due to a change in scope, additional drilling, testing, and/or engineering will be provided at our normal fee schedule rates or for an agreed lump sum fee.

Approximately 6 to 8 weeks from your notice to proceed will be required to complete the study. The schedule is somewhat dependent on weather, site access conditions, and other factors including the actual subsurface conditions identified in the test borings. If this proposed schedule does not meet your project requirements, we would be happy to discuss alternate schedules.

#### ADDITIONAL SERVICES

Subsequent to completion of the geotechnical exploration report, additional services are often required that are not included in the above estimate. These include consultation with the design team and review of the final plans and specifications. In addition, construction phase quality control testing is an additional service not included in the above estimate. An environmental assessment, if required, can also be performed as an additional service. If we are requested to provide additional services including, but not limited to the above, you will be billed in accordance with our normal fee schedule. We would be happy to provide cost estimates for any additional services at your request.

#### EXHIBITS

Exhibit A – General Conditions

THIELE GEOTECH, INC.

By: Raeanna C. D. Thiele

Raeanna C. D. Thiele

13478 Chandler Road

Omaha, Nebraska 68138-3716

402/556-2171 Fax 402/556-7831

CLIENT: \_\_\_\_\_

By: \_\_\_\_\_ Date: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

City, State: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

## GENERAL CONDITIONS

**1. SCOPE OF WORK:** Thiele Geotech, Inc. (including its officers, directors, employees and subconsultants, hereafter referred to as TG) shall perform the services described in the contract and shall invoice the client for those services at the Fee Schedule rates. Any cost estimates stated in this contract shall not be considered as firm figures unless specifically stated in this contract. If unexpected site conditions are discovered, the scope of services may change. TG will provide additional services at the contract Fee Schedule rates.

**2. ACCESS TO SITES, PERMITS, AND APPROVALS:** The client shall furnish TG with right-of-access to the site in order to conduct the planned exploration. Unless otherwise agreed, the client will also secure all necessary permits, approvals, licenses, and consents necessary to the performance of the services hereunder. While TG will take reasonable precautions to minimize damage to the property, it is understood by the client that, in the normal course of work, some damage may occur, the restoration of which is not part of this agreement.

**3. UTILITIES:** In the performance of its work, TG will take reasonable precautions to avoid damage or injury to subsurface utilities or structures. This includes requesting locates of utility owned lines and services. The client agrees to hold TG harmless and indemnify TG for any claims, payments, or other liability, including attorney fees, incurred by TG for damage to any privately owned subsurface utilities or structures which are not correctly identified to TG.

**4. UNANTICIPATED HAZARDOUS MATERIALS:** It shall be the duty of the client to advise TG of any known or suspected hazardous substances which are or may be related to the services provided; such hazardous substances including but not limited to products, materials, or wastes which may exist on or near any premises upon which work is to be performed by TG. If TG observes or suspects the existence of hazardous materials during the course of providing services, TG may, at its option, suspend further work on the project and notify client of the conditions. Services will be resumed only after a renegotiation of scope of services and fees. In the event that such renegotiation cannot occur to the satisfaction of TG, TG may, at its option, terminate this contract. It is understood and agreed that TG does not create, generate, or at any time take possession or ownership of hazardous materials as a result of its exploration services.

**5. REPORTS AND INVOICES:** TG will furnish up to 3 copies of reports to the client. Additional copies will be provided at the expense of the client. TG may submit invoices to the client monthly and upon completion of services. Payment is due upon presentation of invoices and past due 30 days from the invoice date. Client agrees to pay a finance charge on past due invoices of 1.25 percent per month, but not exceeding the maximum rate allowed by law.

**6. OWNERSHIP OF DOCUMENTS:** All reports, boring logs, data, notes, calculations, estimates, and other documents prepared by TG as instruments of service shall remain the property of TG.

**7. SAMPLE DISPOSAL:** Unless otherwise agreed, test specimens or samples will be disposed immediately upon completion of the test.

**8. CONFIDENTIALITY:** TG will hold confidential all business or technical information obtained from the client or generated in the performance of services hereunder and identified in writing by the client as confidential. TG will not disclose such information without the client's consent except to the extent required for: 1) performance of services under this contract; 2) compliance with professional standards of conduct for preservation of public safety, health, and welfare; 3) compliance with any court order or other governmental directive; and/or 4) protection of TG against claims or liabilities arising from performance of services under this contract. TG's obligations hereunder shall not apply to information in the public domain or lawfully acquired on a non-confidential basis from others. TG's technical and pricing information are to be considered confidential and proprietary, and shall not be released or otherwise made available to any third party without the express written consent of TG.

**9. STANDARD OF CARE:** Services performed by TG under this contract will be conducted in a manner consistent with the level of care and skill ordinarily exercised by members of the profession currently practicing

under similar conditions. No other warranty, express or implied, is made or intended by the proposal for services or by furnishing oral or written reports of the findings made. The client recognizes that TG does not owe any fiduciary responsibility to the client. The client further recognizes that subsurface conditions may vary from those encountered at the location where borings, surveys, tests, or explorations are made by TG, and that the data, interpretations, and recommendations of TG are based solely upon the data available to TG. TG will be responsible for those data, interpretations, and recommendations, but shall not be responsible for the interpretation by others of the information developed.

**10. LIMITATION OF LIABILITY:** In recognition of the relative risks, rewards, and benefits to both the client and to TG, the risks have been allocated such that the client agrees to limit TG's liability to the client and all other parties claiming to have relied on TG's work provided through the client to \$50,000 or TG's total fee for services rendered on this project, whichever is greater. This limitation of liability is a business understanding between the parties voluntarily and knowingly entered into, and shall apply to all theories of recovery including, but not limited to, breach of contract, warranty, tort (including negligence), strict or statutory liability, or any other cause of action except for willful misconduct or gross negligence.

**11. CONSEQUENTIAL DAMAGES:** Neither party, including their respective contractors or subconsultants, shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages. This mutual waiver of consequential damages shall include, but is not limited to: loss of use, loss of profit, loss of business, loss of income, loss of reputation, and any other consequential damages that either party may have incurred from any cause of action including negligence, strict liability, breach of contract, and breach of strict or implied warranty.

**12. CLAIMS:** Client agrees that any claim for damages filed against TG by Client or any contractor or subcontractor hired directly or indirectly by Client will be filed solely against TG or its successors or assigns, and that no individual person shall be made personally liable for damages, in whole or in part. All claims by Client shall be deemed relinquished unless filed within one year after substantial completion of TG's services under this agreement.

**13. TERMINATION:** This contract may be terminated by either party upon 7 days prior written notice. In the event of termination, TG shall be compensated by client for all services performed up to and including the termination date and for the completion of such services and records as are necessary to place TG's files in order and/or protect its professional reputation. If either party terminates this contract, these General Conditions shall survive termination and shall remain enforceable between the parties.

**14. DISPUTE RESOLUTION:** In an effort to resolve any conflicts that arise during or following this project, the client and TG agree that all disputes between them arising out of or related to this agreement shall be submitted to nonbinding mediation unless the parties mutually agree otherwise. The client and TG also agree to include a similar mediation provision in all agreements with independent contractors and consultants thereby providing for mediation as the primary method for dispute resolution for all parties on the project.

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

**16. ASSIGNMENT:** Neither party under this contract may transfer or assign any rights under or interests in this contract without the prior written consent of the other party.

**17. PROVISIONS SEVERABLE:** In the event that any of the provisions of these General Conditions should be found to be unenforceable, it shall be stricken and the remaining provisions shall be enforceable.

Mayor Alan Zavodny stated that the next item on the agenda was closed session for personnel, contracts or pending litigation (as necessary).

Mayor Alan Zavodny stated that closed session was not necessary at this time.

Council member Bruce Meysenburg made a motion to adjourn. Council Member Pat Meysenburg seconded the motion. The motion carried and Mayor Zavodny declared the meeting adjourned at 8:36 p.m.

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  
September 28, 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 September 28, 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.

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Tami Comte, City Clerk