

CITY COUNCIL PROCEEDINGS  
May 10, 2023

The City Council of the City of David City, Nebraska, met in open public session at 7:00 p.m. in the meeting room of the City Office at 490 "E" Street, David City, Nebraska. The Public had been advised of the meeting by publication of notice in The Banner Press on May 4, 2023, 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 Jessica Miller, Council President Bruce Meysenburg, Council members Kevin Woita, Pat Meysenburg, Jim Angell, Keith Marvin, Tom Kobus, City Attorney David Levy, and Interim City Administrator/City Clerk Tami Comte.

Also present for the meeting were: Deputy Clerk Lori Matchett, Account Clerk Elizabeth Parker, Police Chief Marla Schnell, Electric Supervisor Pat Hoeft, Special Projects Coordinator Dana Trowbridge, Matt Kalin with JEO Engineering, Brad Swerczek with K-Tech Project Services, David McPhillips, Louise Niemann and Alice Wood.

The meeting opened with the Pledge of Allegiance.

Mayor Jessica Miller 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. Mayor Miller read the speaking guidelines for the City Council meeting. She 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 Jim Angell made a motion to approve the minutes of the April 26, 2023 meeting of the Mayor & City Council as presented. Council Member Pat Meysenburg seconded the motion. The motion carried.

Jim Angell: Yea, Tom Kobus: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Woita: Yea  
Yea: 6, Nay: 0

Council member Keith Marvin made a motion to approve the claim of D-Sign Shop. Council Member Kevin Woita seconded the motion. The motion carried.

Jim Angell: Abstain (With Conflict), Tom Kobus: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Woita: Yea  
Yea: 5, Nay: 0, Abstain (With Conflict): 1

Council member Bruce Meysenburg made a motion to approve the payment of the claims as presented. Council Member Pat Meysenburg seconded the motion. The motion carried. A listing of claims follows the minutes.

Jim Angell: Abstain (With Conflict), Tom Kobus: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Woita: Yea  
Yea: 5, Nay: 0, Abstain (With Conflict): 1

Mayor Miller called for Committee and Officers reports.

Mayor Jessica Miller stated that the entire City Council has been invited to a groundbreaking ceremony and dinner by AGP on Wednesday, May 17, 2023, and they are able to attend without violating the Open Meetings Act.

City Attorney David Levy stated that there is a provision in the Open Meetings Act Section 84-1409 Subsection 5 provides that even though a quorum of the Council may be present, the Open Meetings Act does not apply to something like a groundbreaking ceremony. So, you may all go to that and that doesn't make it a public meeting. It's an exception to the Open Meetings Act but I would ask and remind you to please not talk about City business when you are at that meeting. You can certainly talk to each other; you don't have to ignore each other but please do not have conversations about City business when you are at that meeting.

City Clerk Tami Comte introduced Elizabeth Parker who has been recently hired as a new Account Clerk in the office.

Council member Keith Marvin made a motion to approve the Committee and Officer reports as presented. Council Member Pat Meysenburg seconded the motion. The motion carried. Jim Angell: Yea, Tom Kobus: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Woita: Yea  
Yea: 6, Nay: 0

Council member Pat Meysenburg made a motion to approve Certificate of Payment #9 for M.E. Collins Contracting Co., Inc. in the amount of \$215,930.75 for the "O" Street paving project. Council Member Bruce Meysenburg seconded the motion. The motion carried. Jim Angell: Yea, Tom Kobus: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Woita: Yea  
Yea: 6, Nay: 0

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CERTIFICATE OF PAYMENT: 9



Date of Issuance: April 24, 2023

Project: Municipal Paving Improvements, David City, Nebraska - 2022

Project No.: 021-07086

Contractor: M.E. Collins Contracting Co., Inc.

DETAILED ESTIMATE		
Description	Unit Price	Extension
See Attached.		
PLEASE REMIT PAYMENT TO: M.E. Collins Contracting Co., Inc.		

Value of Work Completed This Request: \$215,930.75

Original Contract Cost:	\$1,848,434.00
Approved Change Orders:	
No. 1	\$0.00
No. 2	\$47,250.00
No. 3	\$9,100.00
No. 4	\$0.00
No. 5	\$22,412.00
No. 6	\$8,050.00
No. 7	\$3,358.00

Total Contract Cost: \$1,938,602.00

Value of completed work and materials stored to date	\$1,753,482.50
Less retainage percentage 5%	\$82,421.70
Net amount due including this estimate	<u>\$1,661,060.80</u>

Less: Estimates previously approved:

No. 1	\$9,064.80	No. 3	\$116,932.09	No. 5	\$543,937.23
No. 2	\$189,875.93	No. 4	\$79,720.20	No. 6	\$443,793.80

Total Previous Estimates: \$1,445,130.05

**NET AMOUNT DUE THIS ESTIMATE: \$215,930.75**

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

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

cc: City of David City - Owner  
 M.E. Collins Contracting Co., Inc.  
 Project File

OLSSON

By:





P.O. Box 83 - 980 East 25th Street - Wahoo, NE 68066  
 Phone #: (402) 443-3663 Fax #: (402) 443-5013

### PROGRESS ESTIMATE

Date: 24-Apr-23  
 Project: MUNICIPAL PAVING IMRP DAVID CITY  
 Collins Project No: 222630

To: City of David City

Contractor Estimate No.: 9  
 Original Contract Amount: \$ 1,848,434.00

Attn: Olsson - Dave Ziska

Item	Description	Contract Qty		Qty To Date	Unit Price	Amount
1	MOBILIZATION/DEMOLITION	1.00	LS	1.00	\$ 92,857.00	\$ 92,857.00
2	BUILD 8" CONCRETE PAVEMENT W/INTEGRAL CURB	12,166.00	SY	11,981.00	\$ 73.00	\$ 874,613.00
3	BUILD 6" CONCRETE DRIVEWAY	801.00	SY	525.50	\$ 71.00	\$ 37,310.50
4	BUILD 4" CONCRETE SIDEWALK	1,370.00	SY	625.00	\$ 57.00	\$ 35,625.00
5	BUILD CONCRETE OUTFALL	104.00	SY	0.00	\$ 67.00	\$ -
6	DETECTABLE WARNING PANEL	180.00	SF	0.00	\$ 51.00	\$ -
7	BUILD 3" CRUSHED ROCK DRIVEWAY	34.40	TON	0.00	\$ 61.00	\$ -
8	BUILD AREA INLET (quantity change only)	7.00	EA	7.00	\$ 3,933.00	\$ 27,531.00
9	BUILD CURB INLET	8.00	EA	4.00	\$ 5,892.00	\$ 23,568.00
10	BUILD STORM SEWER MANHOLE	11.00	EA	11.00	\$ 6,639.00	\$ 73,029.00
11	BUILD CONCRETE COLLAR	1.00	EA	1.00	\$ 3,976.00	\$ 3,976.00
12	BUILD 18" FES	2.00	EA	1.00	\$ 1,234.00	\$ 1,234.00
13	BUILD 24" RE FES	13.00	EA	14.00	\$ 1,423.00	\$ 19,922.00
14	BUILD STORM SEWER TAP	1.00	EA	1.00	\$ 4,104.00	\$ 4,104.00
15	INSTALL 15" STORM SEWER PIPE	459.00	LF	459.00	\$ 64.00	\$ 29,376.00
16	INSTALL 18" STORM SEWER PIPE	2,293.00	LF	2,293.00	\$ 67.00	\$ 153,631.00
17	INSTALL 24" RE STORM SEWER PIPE	190.00	LF	206.00	\$ 133.00	\$ 27,396.00
18	BUILD FIRE HYDRANT ASSEMBLY	2.00	EA	0.00	\$ 7,799.00	\$ -
19	RECONSTRUCT 1" WATER SERVICES	1.00	EA	0.00	\$ 285.00	\$ -
20	12" WATER MAIN LOWERING	1.00	EA	0.00	\$ 7,692.00	\$ -
21	4" WATER MAIN LOWERING	1.00	EA	1.00	\$ 3,479.00	\$ 3,479.00
22	ADJUST FIRE HYDRANT TO GRADE	2.00	EA	0.00	\$ 1,122.00	\$ -
23	ADJUST VALVE TO GRADE	7.00	EA	5.00	\$ 432.00	\$ 2,160.00
24	ADJUST CURB STOP TO GRADE	5.00	EA	0.00	\$ 484.00	\$ -
25	ADJUST MANHOLE TO GRADE - TYPE 1	5.00	EA	4.00	\$ 315.00	\$ 1,260.00
26	ADJUST MANHOLE TO GRADE - TYPE 2	2.00	EA	1.00	\$ 420.00	\$ 420.00
27	REMOVE PAVEMENT	7,663.00	SY	7,663.00	\$ 11.00	\$ 84,293.00
28	REMOVE DRIVEWAY	664.00	SY	664.00	\$ 21.00	\$ 13,944.00
29	REMOVE SIDEWALK	70.00	SY	70.00	\$ 21.00	\$ 1,470.00
30	REMOVE STORM SEWER PIPE	1,155.00	LF	1,155.00	\$ 12.00	\$ 13,860.00

31 REMOVE FES	2.00	EA	2.00	\$	308.00	\$	616.00
32 REMOVE & SALVAGE FIRE HYDRANT	2.00	EA	0.00	\$	1,283.00	\$	-
33 REMOVE FENCE	442.00	LF	442.00	\$	8.00	\$	3,536.00
34 REMOVE TREE	3.00	EA	5.00	\$	2,731.00	\$	13,655.00
35 REMOVE & RESET MAILBOX	15.00	EA	13.00	\$	525.00	\$	6,825.00
36 SEEDING	10,140.00	SY	0.00	\$	1.70	\$	-
37 INLET SEDIMENT FILTER	9.00	EA	9.00	\$	281.00	\$	2,529.00
38 EROSION CONTROL MAT, CLASS 1D	2,468.00	SY	0.00	\$	2.20	\$	-
39 BUILD FABRIC SILT FENCE	731.00	LF	0.00	\$	6.00	\$	-
40 GENERAL CLEARING & GRUBBING	1.00	LS	1.00	\$	7,159.00	\$	7,159.00
41 EARTHWORK	1.00	LS	1.00	\$	36,347.00	\$	36,347.00
42 OVER-EXCAVATION	5,900.00	CY	5,900.00	\$	5.00	\$	29,500.00
43 IMPORT	4,100.00	CY	4,100.00	\$	12.00	\$	49,200.00
CO#2 3 WATER MAIN TAPS	3.00	EA	3.00		15,750.00	\$	47,250.00
CO#3 WATER RESTRAINTS & FENCE INSTALLATION	1.00	LS	0.60	\$	9,100.00	\$	5,460.00
CO#5 CHANGE ORDER #5 ADJUSTMENTS	1.00	LS	1.00	\$	26,345.00	\$	26,345.00
CO#6 CHANGE ORDER #6 SIDEWALK ADJUSTMENTS	1.00	LS	0.00	\$	8,050.00	\$	-

<i>Previous Requested Amounts:</i>		TOTAL EARNED TO DATE:	\$	1,753,482.50
Estimate #1:	\$ 9,064.80	Retainage	10%	\$ (92,421.70)
Estimate #2:	\$ 189,875.93	Other Deductions		\$ -
Estimate #3:	\$ 116,932.09	NET ESTIMATE TO DATE:		\$ 1,661,060.80
Estimate #4:	\$ 79,720.20	Less Previous Requests:		\$ 1,445,130.05
Estimate #5:	\$ 543,937.23	TOTAL DUE THIS ESTIMATE:		\$ 215,930.75
Estimate #6:	\$ 443,793.80			
Estimate #7:	\$ 35,461.00			
Estimate #8:	\$ 26,345.00			

Estimate Prepared by:



Christopher Woodward

24-Apr-23

Council member Jim Angell made a motion to approve the softball agreement with Aquinas Catholic Schools. Council Member Bruce Meysenburg seconded the motion. The motion carried.

Jim Angell: Yea, Tom Kobus: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Woita: Yea

Yea: 6, Nay: 0

## ***The City of David City & Aquinas Catholic Schools***

### ***Softball Field Rental Agreement***

This facility rental agreement entered into by the City of David City (Lessor) and Aquinas Catholic Schools (Lessee) on May 10, 2023 for the fall softball season of 2023 through the fall softball season of 2025 specifies the responsibilities and duties of each party and the amount owed yearly by the Lessee. The parties represented in this agreement are legally bound, fully recognize, and agree to the following conditions:

#### **Date and Times of Permitted Use:**

Access to the David City Ball Complex will commence at the end of the moratorium period prior at the start of the school year and end after the last post season game of the Lessee. In recognition of the Agreement with David City Public Schools, the Lessee is given use of Field 2 (two) with shared use of Field 3 (three). Exceptions to this rule can be made for tournaments and conditions of the fields.

The Lessee is permitted to use the David City Ball Complex at any time during the specified period for softball practice.

The Lessee is permitted to use the David City Ball Complex for in season softball games and softball tournaments upon reservation of specified dates. The specified dates must be reserved prior to the commencement of permitted use and must clearly state the following:

1. Date of the event
2. Time of the event
3. Number of fields needed for the event

Post season game reservations must be requested immediately upon the public announcement by the NSSA of hosting schools and must clearly state the following:

1. Date of the event
2. Time of the event
3. Number of fields needed for the event

#### **Rental Fee:**

The Lessee shall pay the Lessor a rental fee for use of the Lessor's facility in the amount determined by the following three-part plan:

1. A total of **\$450** for the reservation of softball practices for the entire period of use.
2. A total of **\$540** for the reservation of softball games for the entire period of use.
  - a. This fee of \$540 covers an average of 6 (six) nights of softball games per season. The Lessee will pay the entire amount regardless of the total number of in season games.
  - b. UNDER THIS SECTION OF THE AGREEMENT, THE LESSEE AGREES TO PAY FOR ANY POST SEASON GAMES AT AN ADDITIONAL CHARGE OF \$80 PER GAME ONLY IF THE STATED POST SEASON GAME GOES BEYOND THE LIMIT OF COVERED GAMES.
  - c. For additional clarification, the Lessee only pays for games beyond the covered 6 games if the additional games are post season games. If the Lessee hosts a post season game and they have not reached their 6-game limitation, the post season game (and any additional post season games) shall be of no charge to the Lessee until the amount is beyond the 6-game limitation.
3. A total of **\$500** for each softball tournament hosted over the entire period of use. THIS PART OF THE FEE SHALL ONLY BE CHARGED ON YEARS THAT THE LESSEE HOSTS SOFTBALL TOURNAMENTS.

The balance of the rental fee shall be paid in full by the Lessee to the Lessor no later than the end of December of the current year.

### **Responsibilities of Each Party:**

The Lessor shall be responsible for the following actions, services, equipment, and property:

- Maintenance of the grounds
  - Spraying, mowing, routine dragging, field repair, irrigation, fertilizing, etc.
- Maintenance of equipment
  - Concession stand equipment, maintenance equipment, screens/nets, bases, banners, etc.
- Maintenance of buildings/structures
  - Main building, maintenance shed, garage, bleachers, fences, batting cage, scoreboards, cleaning bathrooms, lights, post holes for snow fence, etc.
- Game day preparation:
  - Dragging field, marking/chalking field, painting field, ensuring field dimensions, ensuring concession stand is stocked (through Didiers), providing access to score boards, etc.
- Weekend tournament preparation and on-site field maintenance:
  - Dragging field prior to tournament, raking and marking/chalking prior to and during the tournament (as needed DETERMINED BY THE FIELD CREW), painting field prior to tournament, ensuring field dimensions, ensuring concession stands



are stocked, cleaning the main building for hospitality (per request by school), providing access to scoreboards, etc.

The Lessee is responsible for the following actions, services, equipment, and property:

- Reservation of proper game dates and tournament dates prior to the commencement of the use of the facility
- Payment of the lease bill no later than the end of December of the current year
- Maintenance of school owned shed
- Purchase and maintenance of necessary ball equipment, uniforms, and other items for softball activities
- Providing volunteers for concession stands:
  - A concession stand agreement is included in this agreement under the concession stand use section
- Management/Administration of games and tournaments
- Paying Umpires
- Providing hospitality beyond the upper room of the main building
- Setting up/taking down a snow fence in the outfield if team wishes to have one

### **Concession Stand Use by the Lessee:**

All equipment, property, and product within the concession stand is owned and maintained by the Lessor at the Lessor's expense. Any damage, neglect, destruction, or vandalism done to the property, equipment, or product within the concession stand by the Lessee, its agents, employees, contractors, lessees, invitees, or representatives shall be compensated for in full by the Lessee. The Lessee understands and accepts any and all risks of operating the concession stands and agrees to indemnify the Lessor from any damages clarified under the *Indemnification* section of this agreement.

The Lessor is responsible for providing change/starting cash and stocking the concession stand prior to any in season or post season games reserved by the Lessee. The Lessee is responsible for recording a starting inventory of the product in the concession stand, selling the product in the concession stand, recording an ending inventory of the product in the concession stand, running the equipment in the concession stand, cleaning any equipment used in the concession stand, and returning the change/starting cash to the Lessor. The change/starting cash shall be returned to the Lessor no later than next business day of the Lessor.

The Lessor is responsible for counting the profit of the concession stand and paying the Lessee the proper share of the profit.

1. The Lessee shall receive 80% of the profit. The Lessor shall withhold 20% of the profit.  
(Profit=Revenue-Expense of Product)
2. The Lessor shall pay the Lessee its share of the profit no later than the end of December of the current year.

The Lessee is not allowed to sell any product not already purchased through the Lessor without receiving approval from the Lessor prior the date of usage.

### **Indemnification:**

To the fullest extent applicable law permits, the Lessee shall indemnify, defend and hold harmless the Lessor, its officers, agents and employees from and against any and all loss, cost (including attorneys' fees), damage, expense, and liability (including statutory liability and liability under workers' compensation laws) in connection with claims, judgments, damages, penalties, fines, liabilities, losses, suits, administrative proceedings, arising out of or in connection with any occurrence, injury, damage or claim occurring in, on or about the David City Ball Complex at any time during Lessee's use or occupation thereof. This Indemnity shall survive the termination of this Agreement. The Lessee hereby releases the Lessor from any and all liability or responsibility to the Lessee and anyone claiming through or under Lessee by way of subrogation or otherwise for any loss or damage to the equipment or property of the Lessee covered by any insurance then in force.

### **Assignment and Sublicensing:**

The Lessee shall not assign any interest in this Agreement or otherwise transfer or sublicense the David City Ball Complex or any part thereof or permit use of the Facility to any party other than the Lessee.

### **Procedures for Rainouts, Weather Restraints, or Unforeseen Events/Limitations**

The Lessor reserves the right to cancel any practice, game, or tournament at the David City Ball Complex due to excessive rain. The Lessee WILL NOT be reimbursed for the first rainout of the season. The Lessee WILL be reimbursed for any rainout following the first rainout of the season. The reimbursement will be determined as follows:

1. If a single game, double header, or triangular is rained out, the Lessee shall be reimbursed \$90.
2. If a tournament is rained out, the following rules shall apply:
  - a. If the tournament is over halfway completed, there will be no refund given.
  - b. If the tournament is under halfway completed, \$250 will be refunded.
  - c. If the tournament is never started, \$500 will be refunded.

If the field for the game is prepped before the rainout occurs, the Lessee will receive no reimbursement regardless of the total number of rainouts. If the Lessor can prep another field that is in better condition to allow the Lessee to play, the Lessor shall reserve the right to do so regardless of whether the Lessor has already prepped another field.

Any weather restraints that occur during the competition of the Lessee shall be handled by the Lessee, its officials, and invitees. The Lessor is not responsible for any damage or injury caused by negligence of the weather by the Lessee.

In the event of an unforeseen restraint or limitation, this Agreement can be reevaluated upon the Lessor's consent.

**Termination and Renewal:**

The Lessor may terminate this Agreement at any time if the Agreement is breached by the Lessee.

This Agreement shall be renewed every 3 (three) years upon reevaluation unless one of the two parties wishes to end the Agreement.

***Both parties have read, understand, agree with, and acknowledge the terms and conditions listed in this Agreement and hereby willingly enter into this Agreement with the opposing party.***

\_\_\_\_\_  
Fr. Michael Ventri, AHS Superintendent

\_\_\_\_\_  
Jessica Miller, Mayor

5-10-23

\_\_\_\_\_  
Ron Mimick, AHS Athletic Director

\_\_\_\_\_  
Tami Comte, City Clerk

5-10-23

Mayor Jessica Miller declared the public hearing open at 7:08 p.m. to consider amending the Zoning Ordinance No. 1060 by amending section 5.12 C-1 Highway Commercial 5.12.03 Conditional Uses by adding #31. Food Pantry.

Janae McMahon with Bridging Our Community and the Butler County Food Pantry introduced herself and explained that they want to move into the building on S. 4<sup>th</sup> Street because it has a lot more room and it will be better for the community as they can assist more people.

Hearing no further comment, Mayor Jessica Miller declared the public hearing closed at 7:10 p.m.

Council member Keith Marvin introduced Ordinance No. 1440 amending Zoning Ordinance No. 1060 by amending Section 5.12 C-1 Highway Commercial 5.12.03 Conditional Uses by adding #31 Food Pantry. Mayor Jessica Miller read Ordinance No. 1440 by title.

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

Jim Angell: Yea, Tom Kobus: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Woita: Yea  
Yea: 6, Nay: 0

Council member Bruce Meysenburg made a motion to pass and adopt Ordinance No. 1440 amending Zoning Ordinance No. 1060 by amending section 5.12 C-1 Highway Commercial 5.12.03 Conditional Uses by adding #31. Food Pantry on 3rd & Final reading. Council Member Jim Angell seconded the motion. The motion carried.

Jim Angell: Yea, Tom Kobus: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Woita: Yea  
Yea: 6, Nay: 0

### **ORDINANCE NO. 1440**

AN ORDINANCE TO AMEND ZONING ORDINANCE NO. 1060 BY AMENDING ARTICLE 5: ZONING DISTRICTS SECTION 5.12 C-1 HIGHWAY COMMERCIAL 5.12.03 CONDITIONAL USES BY ADDING #31. FOOD PANTRY; 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:

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

##### **Section 5.12 C-1 Highway Commercial District**

##### **5.12.03 Conditional Uses.**

##### **31. Food Pantry.**

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 10<sup>th</sup> day of May, 2023.

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Mayor Jessica Miller

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City Clerk Tami Comte

Mayor Jessica Miller declared the public hearing open at 7:12 p.m. to consider adopting the Official Zoning Map and adopting the update to the One-Mile Extraterritorial Jurisdiction.

David McPhillips introduced himself and asked why the Council needed to do this.

City Clerk Tami Comte explained that the Official Zoning Map needed to be updated whenever a significant annexation occurred.

David McPhillips asked why they needed to adopt the Extraterritorial Jurisdiction.

Council member Keith Marvin explained that it is especially important in a County without zoning to protect the areas around the community from chicken barns and anything else that might be odorous.

Hearing no further comment, Mayor Jessica Miller declared the public hearing closed at 7:18 p.m.

Council member Bruce Meysenburg introduced Ordinance No. 1441 adopting the Official Zoning Map and Extraterritorial Jurisdiction. Mayor Miller read Ordinance No. 1441 by title.

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

Jim Angell: Yea, Tom Kobus: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Woita: Yea  
Yea: 6, Nay: 0

Council member Bruce Meysenburg made a motion to pass and adopt Ordinance No. 1441 adopting the Official Zoning Map and Extraterritorial Jurisdiction on 3rd & Final reading. Council Member Jim Angell seconded the motion. The motion carried.

Jim Angell: Yea, Tom Kobus: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Woita: Yea  
Yea: 6, Nay: 0

### **ORDINANCE NO. 1441**

AN ORDINANCE TO AMEND THE OFFICIAL ZONING MAP AND EXTRA TERRITORIAL JURISDICTION MAP OF THE CITY OF DAVID CITY; TO RE-ADOPT THE ZONING MAP, WITH CHANGES AND AMENDMENTS THERETO AS SHOWN ON MAPS PRODUCED BY MARVIN PLANNING CONSULTANTS AS THE OFFICIAL ZONING MAP AND EXTRA TERRITORIAL JURISDICTION MAP OF THE CITY OF DAVID CITY AS PROVIDED FOR IN SECTION 10-101; REPEALING ALL ORDINANCES IN CONFLICT HEREWITH; AND PROVIDING FOR PUBLICATION OF THE ORDINANCE IN PAMPHLET FORM.

WHEREAS, the Mayor and City Council of the City of David City are committed to the orderly plan necessary to accommodate future growth and transportation needs of the city; and

WHEREAS, on November 12, 2007, by Ordinance No. 1060, the City of David City approved and adopted the Official Zoning map as prepared by JEO Consulting, Inc. of Wahoo, Nebraska; and

WHEREAS, on September 28, 2022, by Resolution No. 23-2022, the City of David City approved and adopted the 2040 Comprehensive Plan as prepared by the firm of MSA Professional Services, Inc. and

WHEREAS, since the adoption of Ordinance #1060, numerous changes and amendments to the Plan, the municipal limits and the zoning map have been approved by ordinances and resolutions enacted or adopted by the City; and

WHEREAS, on April 8, 2023, the Planning Commission held a public hearing on a proposed zoning map of the City of David City and the recently annexed and recommended approval of an updated official zoning map and extra territorial jurisdiction map; and

WHEREAS, on May 10, 2023 the David City City Council held a public hearing on amendments to the Official Zoning Map and the updated Extra Territorial Jurisdiction.

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

SECTION 1. Zoning map amendments as depicted on the proposed zoning map for the City of David City dated March 2, 2023, should be and the same are hereby approved.

SECTION 2. The City of David City hereby adopts as the Official Zoning Map of the City of David City the zoning map adopted on November 12, 2007, by Ordinance #1060, incorporating subsequent changes and amendments thereto approved by Council and amendments hereinabove approved. The Official Zoning Map, re-issued March 2, 2023 and produced using Marvin Planning Consultants shall be the Official Zoning Map and Extra Territorial Jurisdiction Map of the City of David City and shall supersede all prior official versions of the Official Zoning Map.

SECTION 3. The Official Zoning Map of the City of David City, Nebraska, as established by Section 10-101 of the David City Municipal Code and as adopted hereby shall be kept in the records of the David City Planning Department.

SECTION 4. This ordinance shall be published in pamphlet form and shall be in full force and effect from and after its passage as provided by law.

PASSED AND APPROVED this 10<sup>th</sup> day of May, 2023.

(ATTEST)

\_\_\_\_\_  
Mayor Jessica Miller

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City Clerk Tami Comte

Matt Kalin with JEO introduced himself and discussed the results of the bids for the “2023 AGP Substation Long Lead Equipment”. The bid results are as follows:



**Bid Tab**

PROJECT | 2023 AGP Substation - Long Lead Equipment

JEO PROJECT NO. | 220993.00

LOCATION | David City, NE

LETTING | May 10, 2023 @ 3:00 PM

OPINION OF PROBABLE COST | \$2,200,000 - \$2,442,000

Bidder	Total Group A	Total Group B	Total Group C	Total Group D	Total Groups A, B, C, & D	Start Date/Lead Time
Graybar Electric Company, Inc. North Platte, NE	No Quote	No Quote	\$254,371.22	No Quote	\$254,371.22	94 -98 Weeks ARO
Virginia Transformer Corp. Roanoke, VA	<i>\$856,851.63</i>	No Quote	No Quote	No Quote	\$856,851.63	45 -50 Weeks ARO
WEG Transformer USA, LLC Washington, MO	\$917,573.50	No Quote	No Quote	No Quote	\$917,573.50	90 -95 Weeks ARO
WESCO Distribution, Inc. Des Moines, IA	No Quote	\$164,335.25	No Quote	No Quote	\$164,335.25	72 -74 Weeks ARO

\* Number in italics indicate an irregularity in the contractor's/supplier's bid form  
 (Virginia Transformer Corp. did not include firm shipping pricing, but estimates it to be \$9,833.00)



**Tab Sheet**

PROJECT | 2023 AGP Substation - Long Lead Equipment

JEO PROJECT NO. | 220993.00

LOCATION | David City, NE

		Virginia Transformer Corp.		WEG Transformers USA, LLC		WESCO Distribution, Inc.		Graybar Electric Company, Inc.	
<b>GROUP A - SUBSTATION TRANSFORMER</b>									
Item	Description	Qty.	Unit	Unit Price	Total	Unit Price	Total	Unit Price	Total
1	Furnishing and Setting in Place One New 11.2/14 MVA Substation Transformer	1	LS		\$750,555.00		\$798,580.00		
1A	Non-Taxable	1	LS		\$50,005.00		\$59,100.00		
SUBTOTAL GROUP A					\$800,560.00		\$857,680.00		
SALES TAX FOR MATERIALS & EQUIPMENT ON GROUP A - ITEM 1 @ 7.5% (SHOWN SEPARATELY BY OPTION 1 CONTRACTORS ONLY)					\$56,291.63		\$59,893.50		
TOTAL GROUP A					\$856,851.63		\$917,573.50	No Quote	No Quote
<b>GROUP B - CIRCUIT SWITCHER</b>									
Item	Description	Qty.	Unit	Unit Price	Total	Unit Price	Total	Unit Price	Total
1	Furnish and Delivery of One New 72.5 KV Circuit-Switcher	1	LS						\$152,870.00
SUBTOTAL GROUP B									\$152,870.00
SALES TAX FOR MATERIALS & EQUIPMENT ON GROUP B @ 7.5% (SHOWN SEPARATELY BY OPTION 1 CONTRACTORS ONLY)									\$11,485.25
TOTAL GROUP B					No Quote	No Quote	No Quote	No Quote	\$164,335.25
<b>GROUP C - POWER CIRCUIT BREAKERS</b>									
Item	Description	Qty.	Unit	Unit Price	Total	Unit Price	Total	Unit Price	Total
1	Furnish and Delivery of 72.5 KV SF6 Power Circuit Breakers	3	EA						\$78,874.74
SUBTOTAL GROUP C									\$236,624.22
SALES TAX FOR MATERIALS & EQUIPMENT ON GROUP C @ 7.5% (SHOWN SEPARATELY BY OPTION 1 CONTRACTORS ONLY)									\$17,747.00
TOTAL GROUP C					No Quote	No Quote	No Quote	No Quote	\$254,371.22
<b>GROUP D - THREE-PHASE VOLTAGE REGULATOR</b>									
Item	Description	Qty.	Unit	Unit Price	Total	Unit Price	Total	Unit Price	Total
1	Furnishing and Setting in Place One New 1,500 KVA Three-Phase Voltage	1	LS						
SUBTOTAL GROUP D									
SALES TAX FOR MATERIALS & EQUIPMENT ON GROUP D @ 7.5% (SHOWN SEPARATELY BY OPTION 1 CONTRACTORS ONLY)									
TOTAL GROUP D					No Quote	No Quote	No Quote	No Quote	No Quote
<b>TOTAL GROUPS A, B, C, &amp; D</b>					\$856,851.63	\$917,573.50	\$164,335.25	\$254,371.22	

Council member Tom Kobus made a motion to approve the bid of Virginia Transformer in the amount of \$856,851.63 for Group A for the 2023 AGP Substation - Long lead equipment. Council Member Keith Marvin seconded the motion. The motion carried.  
 Jim Angell: Yea, Tom Kobus: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Woita: Yea  
 Yea: 6, Nay: 0

Council member Keith Marvin made a motion to approve the bid of Wesco Distribution in the amount of \$164,335.25 for Group B for the 2023 AGP Substation - Long lead equipment. Council Member Jim Angell seconded the motion. The motion carried.  
 Jim Angell: Yea, Tom Kobus: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Woita: Yea  
 Yea: 6, Nay: 0

Council member Kevin Woita made a motion to approve the bid of Graybar Electric Company, Inc. in the amount of \$254,361.22 for Group C for the 2023 AGP Substation - Long lead equipment. Council Member Keith Marvin seconded the motion. The motion carried.



Jim Angell: Yea, Tom Kobus: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Woita: Yea  
Yea: 6, Nay: 0

Council member Keith Marvin made a motion to approve Matt Kalin with JEO to get quotes for Group D from Siemens Corp. for the 2023 AGP Substation - Long Lead Equipment. Council Member Jim Angell seconded the motion. The motion carried.

Jim Angell: Yea, Tom Kobus: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Woita: Yea  
Yea: 6, Nay: 0

Council member Keith Marvin made a motion to approve the Transmission service agreement with Nebraska Public Power. Council Member Bruce Meysenburg seconded the motion. The motion carried.

Jim Angell: Yea, Tom Kobus: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Woita: Yea  
Yea: 6, Nay: 0

**TRANSMISSION SERVICE AGREEMENT**  
**between**  
**NEBRASKA PUBLIC POWER DISTRICT**  
**and**  
**CITY OF DAVID CITY, NEBRASKA**

This Transmission Service Agreement ("Agreement") is effective as of January 1, 2021, by and between the Nebraska Public Power District ("NPPD"), a public corporation and political subdivision of the State of Nebraska, and the City of David City, Nebraska, a municipal corporation and political subdivision of the State of Nebraska ("City"). NPPD and City may also be referred to individually as "Party" or collectively as "Parties."

**RECITALS**

WHEREAS, City receives a portion of its power supply through a power and energy from the Western Area Power Administration ("WAPA"), and the City requires service on NPPD's transmission system to deliver such power and energy to its electric system; and

WHEREAS, City has entered into a 2016 Wholesale Power Contract with NPPD, effective January 1, 2016, and receives the remainder of its power supply through said Wholesale Power Contract that is subject to the terms and conditions of the NPPD General Firm Power Station Rate Schedule, or its successor, as amended and in effect from time to time ("GFPS Rate Schedule"); and

WHEREAS, City has entered into a subtransmission service agreement with Butler Public Power District; and

WHEREAS, for purposes of assisting NPPD in making arrangements for delivery of City's power and energy from WAPA, NPPD and City have entered into an assignment agreement, as may be amended or replaced, of specific rights, duties and obligations of City's firm electric service contract with WAPA ("Assignment") and such Assignment has been approved by WAPA; and

WHEREAS, the Parties desire to enter into this Agreement, which sets forth certain terms and conditions applicable to the transmission service for delivery of the City's power and energy from WAPA; and

WHEREAS, City and NPPD desire to replace the Delivery Service Agreement dated February 25<sup>th</sup>, 2015.

NOW, THEREFORE, in consideration of the mutual promises and covenants of the Parties set forth herein, the Parties agree as follows:

## **ARTICLE I TERM AND EFFECTIVE DATE**

1. This Agreement is effective January 1, 2021, and shall continue in its effectiveness so long as all of the following conditions are satisfied:
  - 1.1. City continues to receive power and energy via a firm electric service contract with WAPA.
  - 1.2. City is receiving all its power and energy requirements, less the power and energy from WAPA, from NPPD.
  - 1.3. The Assignment between NPPD and City, and as approved by WAPA, remains in effect.
  - 1.4. A subtransmission service agreement between Butler Public Power District and City, as may be amended or replaced, remains in effect.
2. This Agreement may be terminated by either Party at any time with cause in the event either Party fails to comply with any term or condition of this Agreement, upon written notice to the other Party; provided, the Party receiving such termination notice with cause shall have thirty (30) days from the date of the notice to come into compliance with the applicable term or condition of this Agreement, in which case this Agreement shall continue in full force and effect.
3. Termination of this Agreement shall not relieve the Parties of any obligations and liabilities which arise from transmission service arrangements entered prior to receipt of such termination notice. Nothing will require NPPD to continue to provide transmission service to City in the event payment for transmission service under this Agreement is not received by NPPD under the 2016 Wholesale Power Contract in accordance with Article IV and V of this Agreement.
4. The City and NPPD have entered into, and WAPA has approved, the Assignment effective January 1, 2021, and in the event of termination of this Agreement, the City shall provide written notice of termination of the Assignment.

## **ARTICLE II REQUEST FOR TRANSMISSION SERVICES**

By entering into this Agreement, City requests that NPPD make arrangements for the delivery of City's power and energy from WAPA, NPPD agrees to make such arrangements pursuant to the terms of this Agreement and the Assignment, and NPPD further agrees to provide transmission service under the applicable terms of the GFPS Rate Schedule.

## **ARTICLE III FIRM ELECTRIC SERVICE CONTRACT ASSIGNMENT**

1. In accordance with the Assignment, City has granted to NPPD the right to receive the power and energy associated with the City's firm electric service contract, and such receipt shall occur at the points of interconnection between the transmission systems of NPPD and WAPA.
2. NPPD intends to use, and agrees to arrange, SPP Network Integration Transmission Service ("NITS") for delivery to the City of power and energy received by NPPD under the Assignment. For purposes of arrangement of NITS by NPPD, (i) NPPD will designate the entire load requirements of the City as NPPD Network Load, (ii) NPPD will designate the City's firm electric service contract power and energy as a NPPD Designated Network Resource ("DNR"), and (iii) NPPD will utilize NITS service to deliver said firm electric service contract to the City.
3. Such rights were granted to NPPD notwithstanding that the City contracts directly with WAPA for said firm electric service, and such rights granted to NPPD do not amend or modify the firm electric service contract between City and WAPA.
4. City agrees that NPPD is not financially responsible for any amounts owed to WAPA by City under the firm electric service contract between City and WAPA.

#### **ARTICLE IV SERVICE, SCHEDULING AND COMPENSATION**

1. During the term of this Agreement, NPPD will provide transmission service to City, in accordance with the provisions of the GFPS Rate Schedule. It is understood that NPPD, pursuant to the terms of the Agreement and pursuant to the Wholesale Power Contract shall have the obligation to provide for the delivery of the City's full requirements for its power supply, including City's power and energy from WAPA and power and energy from NPPD, to the Point(s) of Delivery.
2. An Exhibit A shall be created and maintained for mutual acceptance by NPPD and City for each Point of Delivery, which Exhibit A will define the Point(s) of Delivery, loss factors, and point(s) of measurement, as applicable. The rates and charges for transmission and ancillary services are contained in the GFPS Rate Schedule. The Parties agree to promptly communicate any changes including, but not limited to loss factors and other point of delivery changes and execute a revised Exhibit A as soon as practicable.
3. NPPD agrees to provide or, where applicable, arrange for the provision of, transmission and ancillary services, necessary to deliver to the City, less applicable losses, the power and energy that the City purchases from WAPA, where NPPD receives the power and energy at the interface of the NPPD and WAPA transmission systems.
4. NPPD agrees, acting on behalf of City, to coordinate with WAPA for the scheduling of power and energy associated with the City's firm electric service contract from WAPA, and NPPD shall receive said power and energy as set forth in Article III.
5. Initially upon execution of this Agreement and as necessary thereafter, City shall provide to NPPD information regarding the amount of the power and energy received in City's firm electric service contract with WAPA.

**ARTICLE V  
BILLING AND PAYMENT**

For any transmission and ancillary services provided to City under this Agreement, NPPD will bill City in accordance with the 2016 Wholesale Power Contract between NPPD and City, as it may be amended or replaced.

**ARTICLE VI  
REPLACEMENT OF PRIOR AGREEMENT**

When it is executed, this Agreement shall supersede and replace the Delivery Service Agreement between the Parties that became effective April 1, 2015. Upon the effective date of this Agreement, said Delivery Service Agreement shall be null and void and without further force and effect.

**ARTICLE VII  
GENERAL**

1. The City shall not assign, sell, convey or otherwise transfer this Agreement or any of its rights or obligations thereunder, without prior express written consent of NPPD.
2. This Agreement is entered into under and shall be governed and construed by the laws of the State of Nebraska, and any legal action on or arising out of this Agreement shall be commenced and maintained only in courts in the State of Nebraska.
3. Any modification, supplement or amendment of the provisions of this Agreement shall not be valid and effective unless contained in a writing signed by the Parties.
4. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Counterparts may be delivered via electronic mail and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

**ARTICLE VIII  
NOTICES, CORRESPONDENCE, BILLING AND PAYMENTS**

Any notices, billings, payments and other communications related to this Agreement shall be given in writing and sent by mail, postage prepaid, national express delivery service or by electronic communication. A Party may change its address or the person to which notices, billings or payments are to be sent by providing written notice of such change to the other Party.

City of David City:  
NOTICES/CORRESPONDENCE  
City of David City  
Clerk/Treasurer  
P.O. Box 191  
557 4<sup>th</sup> Street  
David City, NE 68632-0191

BILLINGS  
City of David City  
Clerk/Treasurer  
P.O. Box 191  
557 4<sup>th</sup> Street  
David City, NE 68632-0191

NPPD:

NOTICES/CORRESPONDENCE  
Nebraska Public Power District  
Contracts Manager  
P.O. Box 499  
Columbus, NE 68602-0499

PAYMENTS  
Nebraska Public Power District  
Accounting Department  
PO Box 499  
Columbus, Nebraska 68602-0499

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed the day and year first above written.

**CITY OF DAVID CITY, NEBRASKA**

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

Title: \_\_\_\_\_

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

**NEBRASKA PUBLIC POWER DISTRICT**

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

Title: \_\_\_\_\_

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

**EXHIBIT A  
TRANSMISSION SERVICE AGREEMENT  
between  
NEBRASKA PUBLIC POWER DISTRICT  
and  
CITY OF DAVID CITY, NEBRASKA**

1. Point of Receipt: NPPD/WAPA transmission system connections
2. Point of Delivery (Bus A): 34.5 kV Bus of NPPD's 115/34.5 kV David City Substation
3. Point(s) of Measurement:
  - A. 13.8 kV Bus of Butler PPD's 34.5/13.8 kV Sub 59-61 Delivered to City
  - B. 13.8 kV Bus of Butler PPD's 34.5/13.8 kV Sub 59-62
  - C. 2.4 kV Gross Generation
  - D. 13.8 kV Bus of Butler PPD's 34.5/13.8 kV Sub 59-61 Received from City

4. Application of NPPD's GFPS Rate Schedule:

a. Deduction to City's metered load for purchases of NPPD's Production Demand and Energy:

A deduction to City's metered load will be calculated by NPPD based on the City's directly purchased WAPA power and energy adjusted for losses from the Point of Receipt to Bus A.

b. Monthly Transmission and Ancillary Service Charges:

City's WAPA power and energy amounts will not reduce City's total load for Transmission and Ancillary Service billing determinants. Transmission and Ancillary Service billing determinants will be based on City's total load. Transmission and Ancillary Service billing determinants are then billed by NPPD to City under the GFPS Rate Schedule for the following rates:

- (i) Transmission Line Charge  Yes  No
- (ii) Transmission Substation Charge  Yes  No
- (iii) Ancillary Service Charges:
  - (1) Reactive Supply & Voltage Control Service  Yes  No
  - (2) Regulation Up Service  Yes  No
  - (3) Regulation Down Service  Yes  No
  - (4) Spinning Reserve Service  Yes  No
  - (5) Supplemental Reserve Service  Yes  No
- c. Loss factors to adjust Point(s) of Measurement to Bus A:

Loss factors are per the current exhibit B for City's 2016 Wholesale Power Contract with NPPD, for calculating the City's total load at Bus A based upon the coincidental readings at the Points of Measurement.

5. Subtransmission service is between City and Butler Public Power District.

This is the Original Exhibit A.

NPPD: \_\_\_\_\_ Dated: \_\_\_\_\_

CITY: \_\_\_\_\_ Dated: \_\_\_\_\_

Mayor Jessica Miller stated that the next item was discussion/action concerning installing a sidewalk in the purple (Jaycee) park.

Deb Dinkelman, President of the Friends of David City, introduced herself and explained that the Friends of David City have put a lot of time and money into renovating the park and asked if the City could pay for and install a sidewalk at the park.

Council member Kevin Woita made a motion to approve the installation of a sidewalk at the purple (Jaycee) park. Council Member Pat Meysenburg seconded the motion. The motion carried.

Jim Angell: Yea, Tom Kobus: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Woita: Yea  
Yea: 6, Nay: 0

Mayor Jessica Miller stated that the next item on the agenda was consider Ordinance No. 1442 changing the name of 35 ½ Road to West H Street.

Council member Bruce Meysenburg stated that the name of the street technically is already West H Street, but we need to change it officially.

Council member Pat Meysenburg introduced Ordinance No. 1442 changing the name of 35 ½ Road to West H Street. Mayor Jessica Miller read Ordinance No. 1442 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 Keith Marvin seconded the motion. The motion carried.

Jim Angell: Yea, Tom Kobus: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Woita: Yea  
Yea: 6, Nay: 0

Council member Bruce Meysenburg made a motion to pass and adopt Ordinance No. 1442 changing the name of 35 ½ Road to West H Street on 3rd & Final reading. Council Member Jim Angell seconded the motion. The motion carried.

Jim Angell: Yea, Tom Kobus: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Woita: Yea  
Yea: 6, Nay: 0

### **ORDINANCE NO. 1442**

AN ORDINANCE TO RENAME "35 ½ ROAD" TO BE HENCEFORTH KNOWN AS "WEST H STREET". REPEALING ANY ORDINANCE OR RESOLUTION IN CONFLICT THEREWITH; PROVIDING AN EFFECTIVE DATE THEREOF; AND PROVIDING FOR PUBLICATION OF THE ORDINANCE IN PAMPHLET FORM.

WHEREAS, the Mayor and City Council of the City of David City, Nebraska, have authority by virtue of Section 6-202 of the Municipal Code of the City of David City, Nebraska, to rename any street, and,

WHEREAS, it is the desire of the Mayor and City Council of the City of David City, Nebraska, to rename the street heretofore known as 35 ½ Road to be known henceforth as "West H Street".

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF DAVID CITY, NEBRASKA that the street heretofore known as "35 ½ Road" be known henceforth as "West H Street", and,

BE IT FURTHER ORDAINED that any other ordinance or section of any ordinance passed and approved prior to the passage, approval, and publication or posting of this ordinance and in conflict with its provisions, is hereby repealed.

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 10th day of May, 2023.

---

Mayor Jessica Miller

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City Clerk Tami L. Comte

Council member Keith Marvin made a motion to approve the bid specs for electrical at the RV Campground with a correction under Bid Terms from the City of Madelia to City of David City. Council Member Kevin Woita seconded the motion. The motion carried.  
Jim Angell: Yea, Tom Kobus: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Woita: Yea  
Yea: 6, Nay: 0

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**CITY OF DAVID CITY**  
**Request for Proposals Advertisement**  
**Request for Proposals**  
**Campground Improvements – Electrical Package**

NOTICE IS HEREBY GIVEN that the City of David City ("City") is requesting sealed Proposals from qualified contractors to provide all labor, supervision, equipment, services, materials, and expertise to provide construction services for the electrical construction concerning City's electrical campground improvements.

City is seeking qualified contractors to provide electrical construction services for the project.

Interested parties may obtain a copy of the Request for Proposals (the "RFP") (and related documents) by downloading a copy from City's website at [www.davidcityne.com](http://www.davidcityne.com). Interested parties may receive a hard copy of the RFP (and related documents) at David City City Hall at 490 E Street, David City, NE 68632.

The City has engaged KTECH Project Services to perform as its Representative and Project Manager. All communication on the Request for Proposals responses should be made to the primary contact. The Proposals primary contact is:

KTECH Project Services  
Brad Swerczek, Senior Project Executive  
14121 Ames Ave.  
Omaha, NE 68164  
402-915-3350  
[bswerczek@ktech-ki.com](mailto:bswerczek@ktech-ki.com)

City will not consider any Proposals received after the stated date and time, that is incomplete, and/or that is not submitted in the proper manner and format as instructed in the Request for Proposals.

**CITY OF DAVID CITY**  
**Request for Proposals**  
**Campground Improvements – Electrical Package**

**OVERVIEW**

City of David City ("City"), located in Butler County, is making improvements to the City's Campground and requires the electrical system to be upgraded from the secondary of the city utility supplied power source, to each of the pad sites. The selected electrical contractor will report directly to the City Administrator and/or his or her designee.

**SCOPE OF SERVICES**

David City is seeking bids from interested and qualified contractors to provide all labor, supervision, equipment, services, materials, and expertise to perform the electrical work at the new campground. The scope of services to be performed by the contractor, pursuant to this RFP include, without limitation, will include the following construction services concerning the Project (collectively, the "Services") as described and specified in the Construction Documents:

1. Construction Documents Issued by JEO Consulting Group, for the 2022, Campground Improvements, David City, NE:
  - a. E1.1, Electrical Site Plan, dated 11/17/2022
  - b. E2.1 Electrical Plan, dated 11/17/2022
  - c. E2.2, Lift Station Electrical Plan, dated 11/17/2022
  - d. E2.3, Electrical Details, dated 11/17/2022
2. Specifications Issued by JEO Consulting Group, for the Campground Improvements, David City, NE:
  - a. Section 26 00 00, Electrical Work, dated Revised 10/24/2022

**BID TERMS**

The City reserves the right to reject any and all bids received as a result of this RFP. If a bid is selected it will be the most advantageous regarding price, quality of service, contractors' qualifications and capabilities to provide the specified service. The City reserves the right to consider bids for modifications at any time before a contract would be awarded and negotiations would be undertaken with that contractor whose bid is deemed to best meet the City's specifications and needs.

Bids must be signed by an official authorized to bind the contractor to its provisions for at least a period of 60 days. Failure of the successful proposer to accept the obligation of the contract may result in the cancellation of any award.

In the event it becomes necessary to revise any part of this RFP, an addendum will be provided. Deadlines for submission of RFPs may be adjusted to allow for revisions. To be considered, original bid and amended bid must be at the noted email address or mailing address on or before the date and time specified.

The prices stated in the bidder's proposal will not be subject to any price increase from the date on which the proposal is opened to the mutually agreed end date of contract.

#### **TIMELINE**

##### Anticipated Timeline of Events:

- May 15, 2023 Release Request for Proposals
- May 23, 2023 Deadline for submission of questions, 3:00 PM (Central Time Zone)
- June 1, 2023 Deadline for Submittal of Proposals/Bids, 3:00 PM (Central Time Zone)
- June 14, 2023 Apparent Qualified Proposal present to City Council
- June 15, 2023 Notice of Award of Contract

Request for Proposals/Bids submissions should be submitted per the timeframe noted above to:

KTECH Project Services  
Brad Swerczek, Senior Project Executive  
14121 Ames Ave.  
Omaha, NE 68164  
[bswerczek@ktech-ki.com](mailto:bswerczek@ktech-ki.com)

Please note, email submissions are preferred in PDF format.

#### **INSURANCE REQUIREMENTS**

Insurance shall be in such form as will protect the contractor from all claims and liabilities for damages for bodily injury, including accidental death, and for property damage, which may arise from operations under the contract whether such operation by themselves or by anyone directly or indirectly employed by them.

Prior to entering into a contractual agreement, the contractor shall furnish certificates of the following insurance to the City:

1. Workers' Compensation
2. Public Liability in the amount of \$1,000,000 per person. \$500,000 per accident and property damage in the amount of \$300,000 per accident. All such liability insurance shall apply to liability assured under these specifications.
3. The City shall be named as an additional insured to the extent of the operations under this contract.

The certification of insurance shall be on file with the City prior to any work being performed. Failure to maintain insurance during this contract period will result in contract forfeiture.

All insurance including Workers' Compensation, Comprehensive General Liability, and/or Automobile shall be maintained at the expense of the contractor during the term of this contract.

#### **ADDITIONAL INFORMATION**

1. It is understood that all submittals will become part of the public file on this matter, without obligation to City. City will attempt to maintain the confidentiality of materials marked "Proprietary" to the extent permitted under Nebraska Public Records Law.
2. Notwithstanding anything contained in this RFP to the contrary, if in City's best interest, City reserves the right to amend and/or revise this RFP in whole or in part, cancel this RFP, extend the

submittal deadline for responses to this RFP, and/or reject any or all Proposals for any reason and/or without indicating reasons for rejection. Further, City reserves the right to (a) seek clarification(s) from each proposer and/or require supplemental information for any proposer, (b) waive and/or correct any irregularities in Proposals after prior notice to the proposer, and/or (c) negotiate with alternate proposers, if initial contract negotiations are unsuccessful.

3. Proposers may submit to City questions and/or requests for additional information, including, without limitation, inquiries related to substantive portions of the RFP, questions regarding the intent of the Services, and/or questions concerning technical aspects of the Services and/or Project. All questions and/or requests must be submitted in writing either by mail or email to:

KTECH Project Services  
Attention: Brad Swerczek  
14121 Ames Ave.  
Omaha, NE 68164  
Email: bswerczek@ktech-ki.com

All requests for additional information must clearly reference, "City of David City, Request for Proposals – Campground Improvements." All questions and/or requests to change any provision, specification, or contract term must be received not later than seven (7) calendar days prior the deadline to submit Proposals. Substantive questions and all responses will be made available at City's website at [www.davidcityne.com](http://www.davidcityne.com). When appropriate, revisions, substitutions, and/or clarifications will be issued as official addenda to this RFP. Proposers are responsible for checking City's website at [www.davidcityne.com](http://www.davidcityne.com) for addenda prior to submission of their Proposals.

4. This RFP does not obligate City to award a contract and/or to procure the services described herein. Contractors responding to this RFP do so at their own expense and City is not responsible for any costs and/or expenses associated with the preparation and/or submission of any Proposals.
5. Interested parties may obtain a copy of the Request for Proposals (the "RFP") (and related documents) by downloading a copy from City's website at [www.davidcityne.com](http://www.davidcityne.com). Interested parties may receive a hard copy of the RFP (and related documents) at David City City Hall at 490 E Street, David City, NE 68632.
6. Indemnification: The contractor shall indemnify and hold harmless the City, its officers and employees, from all damages, claims, suits and actions of any description, for or resulting from injuries or damages received or sustained by any party or parties, arising out of any act, of said contractor, or his agents, in the execution of work under the contract.

Council member Bruce Meysenburg made a motion to pass and adopt Resolution No. 19-2023 approving an Agency Agreement with the Nebraska Department of Transportation - Division of Aeronautics for Project No. 3-310025-107-2023 (L02). Council Member Pat Meysenburg seconded the motion. The motion carried.

Jim Angell: Yea, Tom Kobus: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Woita: Yea  
Yea: 6, Nay: 0

Resolution No. 19-2023

EXTRACT FROM THE MINUTES OF AN OFFICIAL MEETING OF THE CITY COUNCIL OF DAVID CITY, NEBRASKA, SPONSOR OF DAVID CITY MUNICIPAL AIRPORT, HELD ON May 10, 2023.

The following resolution was introduced by Bruce Meysenburg, read in full, seconded by Pat Meysenburg and considered:

A RESOLUTION ADOPTING AND APPROVING THE EXECUTION OF AN AGENCY AGREEMENT WITH NEBRASKA DEPARTMENT OF TRANSPORTATION, AERONAUTICS DIVISION FOR GRANT NO. 3-31-0025-017-2023 TO BE SUBMITTED BY THE DEPARTMENT TO THE FEDERAL AVIATION ADMINISTRATION TO OBTAIN FEDERAL ASSISTANCE FOR THE DEVELOPMENT OF THE AIRPORT:

Be it resolved by the Mayor and members of the City Council of David City, Nebraska, that:

1. The City of David City shall enter into an Agency Agreement with the Department of Transportation, Aeronautics Division for Grant No. 3-31-0025-017-2023 for the purpose of obtaining Federal assistance for the Airport and that such agreement shall be set forth hereinbelow.
2. The Mayor of the City of David City is hereby authorized and directed to execute said Agency Agreement on behalf of the City of David City, and the City Clerk is hereby authorized to attest said execution.
3. The said agreement, referred to hereinabove, is inserted in full and attached herewith, and made a part hereof as Exhibit "O".

Upon calling for a vote on the resolution, 6 voted yea, and 0 voted nay, and the resolution therefore was declared passed and approved on May 10, 20  .

ATTEST: \_\_\_\_\_  
Clerk

\_\_\_\_\_  
Mayor



## AGENCY AGREEMENT

### Project No. 3-31-0025-017-2023 (L02)

This is an agreement between the City Council of David City, Nebraska, hereinafter referred to as the "Airport Sponsor" and the Nebraska Department of Transportation- Division of Aeronautics, hereinafter referred to as the "Division," made and entered into in accordance with, and for the purpose of, complying with the laws of the State of Nebraska.

The Airport Sponsor desires to develop the David City Municipal Airport and to use federal airport aid funds available for that purpose. Therefore, the Airport Sponsor hereby designates the Division as its agent in accordance with §3-124 and §3-239, Neb. Rev. Stat. (Reissue 2016), and the Division hereby accepts such designation and agrees to act as the agent of the Airport Sponsor.

It is mutually understood and agreed between the parties that the Airport Sponsor has submitted to the Division its proposed project for the development of said airport, and that such project has been approved by the Division, in accordance with §3-239, Neb. Rev. Stat. (Reissue 2016).

The Airport Sponsor hereby warrants, undertakes and agrees that if the Federal Aviation Administration makes a grant offer, and the Airport Sponsor executes a Grant Agreement, it will develop and manage said airport in the manner set forth in the Grant Agreement and abide by the conditions, rules and regulations of the Federal Aviation Administration.

The terms and conditions of this Agency Agreement and the respective duties, undertakings and agreements of the parties with respect to this Agency Agreement and with respect to the project of airport development, are as follows:

- A. The Division shall accept, receive, receipt for, and disburse all funds granted by the United States for airport aid in accordance with federal laws, rules and regulations and in accordance with §3-101 to §3-154 and §3-239, Neb. Rev. Stat. (Reissue 2016), as the agent of the Airport Sponsor.
- B. Upon receipt of such federal funds, the Division shall deposit them in the State Treasury, according to law, and shall cause disbursement to be made therefrom as follows:

FIRST: If the Division advances funds to the Airport Sponsor as the equivalent of the United States' share of allowable project cost, the Division shall reimburse itself for any such advancement out of such federal funds thereafter received.

SECOND: The Division shall cause the balance of such federal funds due the Airport Sponsor to be paid promptly to the Airport Sponsor.

- C. The Division shall maintain accurate records of all the funds received and expended by it in connection with the project. These records shall be open to inspection by the Airport Sponsor, the Federal Aviation Administration and their authorized representatives in the offices of the Division at all reasonable times.

- D. The Airport Sponsor reserves the right, power and authority to execute the Application for Federal Assistance, the federal Grant Agreement, all construction and engineering contracts, all agreements related to the purchase of land and all amendments to these items. Aside from the matters so reserved, the Division shall, as agent for the Airport Sponsor, process, execute and submit to the Federal Aviation Administration all papers, forms and documents required by that agency for the approval, carrying out and completion of the project.
  
- E. The Airport Sponsor agrees to reimburse the Division for its administrative costs of furnishing all services performed by it as agent of the Airport Sponsor, including, but not limited to, the services set forth in the attached Exhibit A, "Administrative Services". Division administrative costs charged to the project are considered allowable costs for federal and state participation. These costs will be charged according to the "Schedule of Fees and Charges" shown in the attached Exhibit B, which schedule shall be subject to change upon notification in writing by the Division to the Airport Sponsor.

As used herein, the following words, terms and phrases shall have the meanings herein given:

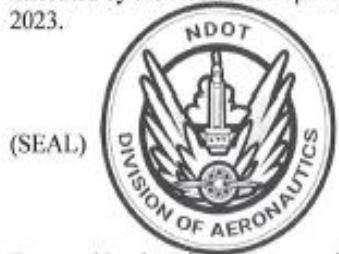
"Application for Federal Assistance" means the document prepared as the formal application submitted to the Federal Aviation Administration for a grant of federal funds.

"Develop" means to plan, construct or improve the airport as defined in the Application for Federal Assistance.

"Project" means a plan of action for the accomplishment of specific airport developments.

"Grant Agreement" means the contract between the United States of America and the Airport Sponsor in which the Federal Aviation Administration, on behalf of the United States, agrees to pay a portion of the allowable costs of the project.

Executed by the Nebraska Department of Transportation, Aeronautics Division this 3rd day of May, 2023.



*Andre B. Amos*  
Deputy Director

Executed by the Airport Sponsor this \_\_\_ day of \_\_\_\_\_, 20\_\_\_.

\_\_\_\_\_  
Clerk

\_\_\_\_\_  
Mayor

**EXHIBIT A**  
**AGENCY AGREEMENT**  
**ADMINISTRATIVE SERVICES**

1. Conduct airport site inspections.
2. Review and secure federal approval of Airport Layout Plans (ALP).
3. Prepare and process CIP Data Sheets and related documents used to request an allocation of federal funds, if requested by the Sponsor.
4. Assist in the preparation and processing of Environmental Impact Statements and other environmental studies.
5. Review and process land acquisition documents, title opinions, sponsor certifications and audit reports.
6. Prepare an independent cost analysis of consultant costs, if requested by the Sponsor.
7. Prepare a Disadvantaged Business Enterprise (DBE) Program, if requested by the Sponsor and represent the Sponsor in the DBE Unified Certification Program.
8. Review, process, and secure federal approval of all contracts and agreements, change orders and amendments to these agreements.
9. Attend pre-design conferences and conduct design (plan-in-hand) inspections.
10. Review and process the plans, specifications, special provisions and contract documents.  
Provide U.S. Labor Department wage rate determinations.
11. Attend pre-bid and pre-construction conferences.
12. Prepare and secure execution of Applications for Federal Assistance and associated documents.  
Prepare and process program changes.
13. Process Grant Agreements and amendments.
14. Review periodic pay estimates and forward federal funds to the Airport Sponsor.
15. Prepare applications, requests, transfers or letters of credit for Grant Agreement payments.
16. Conduct or participate in periodic and final inspections.
17. Prepare and/or process other federal documents not otherwise specifically covered above.



**EXHIBIT B  
AGENCY AGREEMENT  
SCHEDULE OF FEES AND CHARGES**

- A. Salary Costs. Charges will be the monthly rate worked times an overhead/benefits factor for the following positions:

Engineer VI	Engineering Associate (all)*
Engineer V	Engineering Aide (all)*
Engineer IV	Accountant (all)
Engineer III	Accounting Clerk*
Engineer II*	Attorney (all)
Engineer I*	Drafter (all)*

“The overhead/benefits factor will be determined annually based on an audit using the methodology contained within Appendix VII to Part 200 – States and Local Government and Indian Tribe Indirect Cost Proposals (formerly found in OMB A-87)”.

\* Employees in these positions receive time and one half for time worked over 40 hours per week.

- B. Living Costs and Outside Expenses. Actual.

Charges will be actual expenses and shall include meals, lodging, telephone calls, etc. normally paid by Division.

- C. Materials, Supplies, & Rental Equipment. Actual.

Charges will be actual costs and shall be charged in accordance with invoices, billings, contracts or agreements.

- D. Transportation. Actual.

Charges will be those established by Division policy for all users for operating a state automobile or using a state aircraft.

Council member Pat Meysenburg made a motion to approve the reappointment of Allen Steinberger to another 5 - year term as Commissioner on the David City Housing Authority - Board of Commissioners. Council Member Bruce Meysenburg seconded the motion. The motion carried.

Jim Angell: Yea, Tom Kobus: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Woita: Yea  
Yea: 6, Nay: 0

Council member Pat Meysenburg made a motion to approve \$2,000 towards the funding of the Creative District for the downtown area. Council Member Jim Angell seconded the motion. The motion carried.

Jim Angell: Yea, Tom Kobus: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Woita: Yea  
Yea: 6, Nay: 0

Council member Keith Marvin made a motion to pass and adopt Ordinance No. 1437 adopting the Holoubek Detachment Plat on 3rd & Final reading. Council Member Pat Meysenburg seconded the motion. The motion carried.

Jim Angell: Yea, Tom Kobus: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Woita: Yea  
Yea: 6, Nay: 0

#### **ORDINANCE NO. 1437**

AN ORDINANCE TO DETACH FROM THE CORPORATE LIMITS OF THE CITY OF DAVID CITY, NEBRASKA, BUTLER COUNTY, NEBRASKA, CERTAIN PROPERTY AS DESCRIBED; TO PROVIDE FOR SEVERABILITY; TO HARMONIZE POTENTIALLY CONFLICTING ORDINANCES; TO PROVIDE FOR AN EFFECTIVE DATE HEREOF; AND TO AUTHORIZE PUBLICATION IN PAMPHLET FORM.

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

SECTION 1. It is hereby found and determined by the Mayor and City Council that:

- (a) The tract of real estate described in Exhibit "A" attached hereto and incorporated herein by reference as if fully set forth (the "Real Estate") is urban and suburban in character and contiguous and adjacent to the corporate limits of said City of David City, Nebraska (the "City");
- (b) By Ordinance No. 1413, the City properly and legally annexed the Real Estate and other, adjacent territory;
- (c) The City later determined that while legal and proper, it did not intend to include the Real Estate in the annexation because it would cause difficulty for the owner of the Real Estate if annexed; and
- (d) In good faith and comity to the owner of the Real Estate, the City desires to detach the Real Estate from the corporate limits of the City;

- (e) The City has provided all legally-required notices and has followed all legally-required procedures with respect to this detachment, which Nebraska law authorizes at Nebraska Revised Statutes section 18-3316.

SECTION 2: That the boundaries of the City of David City, Nebraska, be and hereby are, reduced so as to exclude, detach and deannex from the corporate limits of said City the Real Estate.

SECTION 3: That a certified copy of this Ordinance, together with the map of the territory, be filed on record in the Offices of the County Clerk of Butler County, Nebraska.

SECTION 4: That said territory is hereby detached from the corporate limits of the City of David City, Nebraska, along with all rights and obligations appurtenant thereto and arising by virtue of exclusion from the corporate limits of the City.

SECTION 5: If any section, subsection, sentence, clause or phrase of this Ordinance or the deannexation of the territory by this Ordinance is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of the annexation of other tracts of land, streets or highways by this Ordinance or other ordinances, since it is the express intent of the Mayor and City Council to enact each section, subsection, clause or phrase separately and to annex or deannex each tract of land separately.

SECTION 6: As effectively modified by this Ordinance, Ordinance 1413 [the Holoubek annexation ordinance] remains in full force and effect and is intended to coexist in harmony with this Ordinance.

SECTION 7: This Ordinance shall be in full force and effect from and after its passage, approval and publication according to law.

PASSED and APPROVED this 10<sup>th</sup> day of May, 2023.

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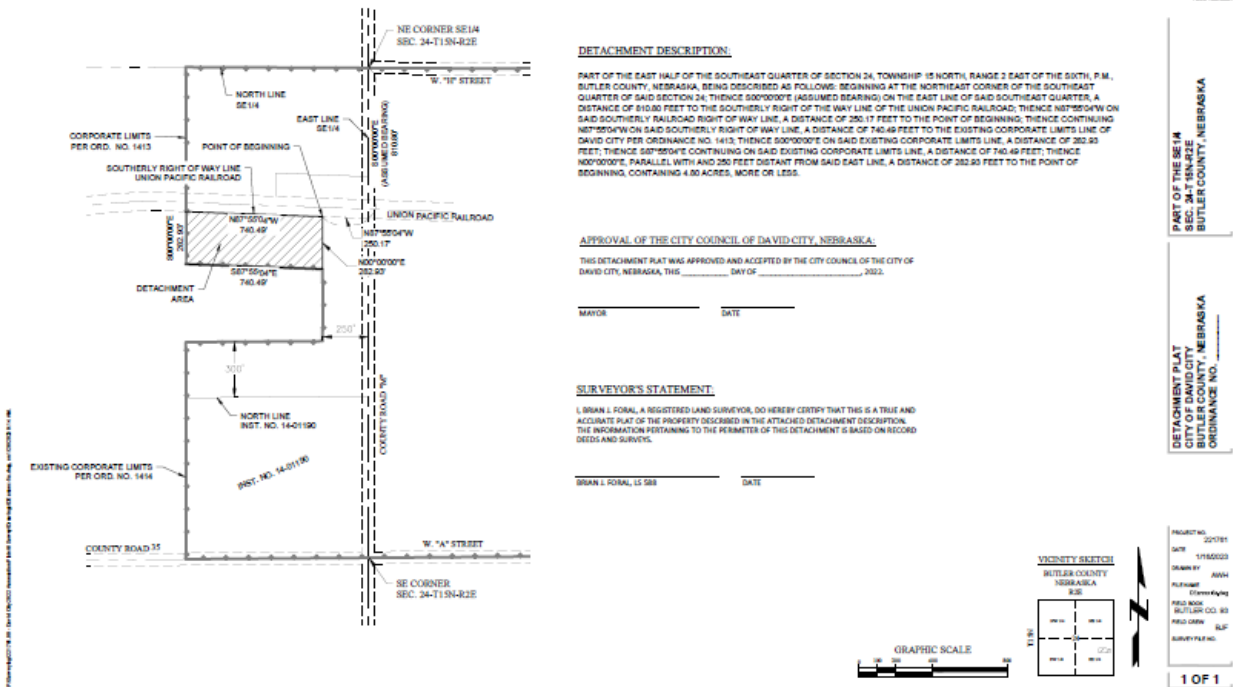
Mayor Jessica J. Miller

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City Clerk Tami Comte

**EXHIBIT "A"**

**DETACHMENT PLAT**  
**CITY OF DAVID CITY, BUTLER COUNTY, NEBRASKA**  
 ORDINANCE NO. \_\_\_\_\_



Mayor Jessica Miller stated that the next item on the agenda was discussion regarding TIF report to taxing entities.

City Attorney David Levy stated that this is a fairly new requirement within the Community Development law and that some of the school districts in particular had complained that they weren't aware of city's using tax increment financing and they thought they were losing tax revenue and so the Legislature now requires City's to provide this report by May 1<sup>st</sup> of each year.

Council member Bruce Meysenburg made a motion to approve the TIF report to taxing entities. Council Member Keith Marvin seconded the motion. The motion carried.  
 Jim Angell: Yea, Tom Kobus: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Woita: Yea  
 Yea: 6, Nay: 0

P.O. Box 191  
 557 4th Street  
 David City, NE 68632



Phone: (402) 367-3135  
 FAX: (402) 367-3126  
 Website: www.davidcityne.com

The Community Development Agency of the City of David City, Nebraska provides this report in compliance with the requirements under Section 18-2117.02, Nebraska Revised Statutes, Sections 18-2101, et seq. (the "Nebraska Community Development Law"). The Nebraska Community Development law governs the use of tax-increment financing. Pursuant to Section 18-2117.02 of the Nebraska Community Development Law, this report contains the following information:

**(1) The total number of redevelopment projects within the city that have been financed in whole or in part through the division of taxes as provided in section 18-2147:**

To date, nine redevelopment projects within the city have been financed in whole or in part through the division of taxes as provided in section 18-2147.

**(2) The total estimated project costs for all such redevelopment projects:**

The total estimated project costs for all such redevelopment projects listed in item 1 above is \$17,545,000.00.

**(3) A comparison between the initial projected valuation of property included in each such redevelopment project as described in the redevelopment contract and the assessed value of the property included in each such redevelopment project as of January 1 of the year of the report:**

Project Description	Redevelopment Area	Year Approved	Amount of Financing	Est. Project Cost	Base Valuation	2022 Valuation	Est. Valuation per Redevelopment Plan	2021 TIF Taxes Collected	Project Paid In full
NW Redevelopment - Sewer District TIF	Area 2	2022	13,000,000.00	13,000,000.00	18,547,195.00	18,547,195.00	24,962,083.00	0.00	
Northland Subdivision	Area 6	2022	2,113,558.00	3,087,570.00	360,000.00	360,000.00	9,000,000.00	0.00	
Industrial Park Expansion- Timpte	Area 2	2019	796,000.00	796,000.00	142,985.00	4,991,925.00	4,991,925.00	124,427.78	
GDC Properties, LLC	Area 4	2019	1,777,000.00	1,777,000.00	140,205.00	127,195.00	0.00	0.00	
Dana Point Dvlp Housing Phase 2	Area 3	2017	900,000.00	900,000.00	100,000.00	1,907,740.00	2,022,000.00	29,507.53	
Dana Point Dvlp Housing Phase 1	Area 3	2015	1,405,000.00	1,405,000.00	60,000.00	1,013,630.00	2,103,000.00	7,102.10	
The Eating Establishment	Area 1	2007	137,000.00	137,000.00	38,760.00	250,665.00		0.00	Yes- 2021
DC Apartment Partners, LLC	Area 0	1999	100,000.00	100,000.00	1,800.00	281,260.00		0.00	Yes - 2015
			20,228,558.00	21,202,570.00	19,390,945.00	27,479,610.00	43,079,008.00	161,037.41	

**(4) The number of such redevelopment projects for which financing has been paid in full during the previous calendar year and for which taxes are no longer being divided pursuant to section 18-2147:**

There was one project that was paid in full during calendar year 2022.

**(5) The number of such redevelopment projects approved by the governing body in the previous calendar year:**

Two redevelopment projects were approved by the City Council of the City of David City in the previous calendar year.

**(6) Information specific to each such redevelopment projects approved by the governing body in the previous calendar year, including the project area, project type, amount of financing approved, and total estimated project costs:**

1. Northland Subdivision, Area 6, \$2,113,558, Financed, \$3,087,570 Est. Cost
2. Sewer Treatment Facilities, Area 2, \$799,615, Financed, \$13,000,000 Est. Cost

**(7) The percentage of the city that has been designated as blighted.**

Currently, 40.6% of the City of David City, Nebraska, has been designated as blighted, substandard and in need of redevelopment.

If you have any questions concerning the contents of this report, please contact Tami Comte, City Clerk/Treasurer at 402-367-3135. Thank you.

Sincerely,

Tami Comte  
City Clerk/Treasurer  
City of David City

Electric Supervisor Pat Hoeft introduced himself and stated that he used Sourcewell and received a quote from Terex Utilities for a C4047 Digger Derrick. Altec was asked for a quote but did not submit one.

David McPhillips asked some questions and discussion followed.

Council member Kevin Woita made a motion to approve the quote from Terex Utilities for a C4047 Digger Derrick. Council Member Tom Kobus seconded the motion. The motion carried. Jim Angell: Yea, Tom Kobus: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Woita: Yea  
Yea: 6, Nay: 0

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**TEREX**<sup>®</sup>

**CUSTOMER ORDER ACKNOWLEDGEMENT**

Terex Utilities, Inc. - 3140 15th Avenue SE - Watertown, SD 57201 - Phone: 605-882-4000

Date: 4/21/2023 Sourcewell Contract # - 110421-TER  
Quote Number: QU23410 Unit: C4047  
City of David City Light Dept  
174 E Street  
David City NE 68632  
(402) 367-3197  
Attention: Patrick Hoeft

**Baseline Price: \$384,621**

**Grand Total Each: \$384,621**

This written description and attached specifications represents Terex South Dakota, INC. and shall not be released, disclosed, nor duplicated without the written permission of Terex South Dakota, INC.

Prices are subject to change until shipment. Applicable taxes and surcharges to be added. Taxes, shipping, handling and lead times are estimates and subject to change. Quoted prices are based on total package and subject to change if all items not purchased. All prices quoted are in U.S. dollars unless otherwise specified. Payment by cash or certified check only. Chassis price based off current pricing available at time of quote. Pricing is subject to change based on vehicle sourcing; final price to be confirmed prior to time of invoice. Chassis payment is due within 30 days of chassis receipt at our facility. Quote withdrawn after 60 days.

Please ensure the accuracy of the specifications and drawings you provide. Changes made after receipt of order may incur additional charges. If you are trading equipment in, you warrant that: You have good title to the trade-in, it is free of all liens and encumbrances, all information you have provided related to the trade-in is true and correct.

Terex purchased chassis through Terex preferred International Dealer will include at no additional cost a special tow package for 12 months/unlimited mileage to nearest International Dealership for a warrantable failure. Coverage limited to \$550 per incident. Roadside assistance call 1-800-448-7825

Terex purchased chassis through Terex preferred Freightliner Dealer will include at no additional cost a special tow package for 12 months/unlimited mileage/KM extended towing coverage \$550 cap FEX applies. Roadside assistance call 1-800-FTL-HELP

**Notes:**

- 1) Delivery Terms are: CPT Destination
- 2) Terms: Net 30 days
- 3) Delivery days from receipt of order shall be 480-770 Days

Buyer hereby agrees to purchase the products in this quotation, subject to acceptance by Seller. Buyer has read and agrees to Seller's Terms and Conditions of Sale.

Terex Utilities Inc.

*Mike Stolz*  
Sales Coordinator

*Ryan Klees*  
Account Manager

**⚠WARNING** Cancer and Reproductive Harm  
www.P65Warnings.ca.gov.

Accepted By: \_\_\_\_\_

PO Number: \_\_\_\_\_

Quantity: \_\_\_\_\_

Grand Total: \_\_\_\_\_

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



**TERMS AND CONDITIONS OF SALE**  
**TEREX SOUTH DAKOTA, INC./TEREX UTILITIES, INC.**  
**U.S. and CANADA (except Quebec)**

**1. Terms and Conditions.** The provision by Seller to Buyer of any Equipment or Parts (collectively referred to as "Products") shall be exclusively governed by these Terms and Conditions of Sale ("Terms and Conditions") and Seller's sales order acknowledgement (collectively referred to as "Agreement"). This Agreement cancels and supersedes any and all terms and conditions previously issued by Seller and shall remain in effect unless and until superseded in writing by Seller. Acceptance of an order for Products by Seller shall be deemed to constitute a binding agreement between the parties pursuant to these Terms and Conditions and Buyer agrees that the order may not thereafter be countermanded or otherwise changed without the explicit prior written consent of Seller. No other terms and conditions shall apply, including the terms of any purchase order submitted to Seller by Buyer, whether or not objected to by Seller or whether or not such terms are inconsistent or conflict with or are in addition to these Terms and Conditions. These Terms and Conditions shall be deemed accepted by Buyer if any of the following occurs: (i) if confirmed by Buyer, (ii) if undisputed by Buyer within ten (10) days after receipt, or (iii) if Seller delivers Products to Buyer. Any communication construed as an offer by Seller and acceptance thereof is expressly limited to these Terms and Conditions. The Products are intended for industrial/commercial use by professional contractors and their trained employees and are not intended for use by consumers.

**2. Terms of Payments.** Payment for Products purchased by Buyer shall be made in accordance with any of the following terms, provided they have been previously arranged with and expressly approved by Seller in writing: (1) cash in advance; (2) confirmed, irrevocable letter of credit established in such amount and form and at such time and at such bank as shall be approved by Seller in respect of each order; (3) credit account purchases for which payment will be due and payable on net thirty (30) day terms, plus service and other charges applicable to past due amounts in accordance with Seller's written notices; or (4) other payment arrangements expressly approved by Seller in writing prior to or at the time the order is placed. If any Buyer credit account purchase is not paid in accordance with Seller's credit payment terms, in addition to any other remedies allowed in equity or by law, Seller may refuse to make further shipments without advance payment by Buyer. Nothing contained herein shall be construed as requiring Seller to sell any Products to Buyer on credit terms at any time, or prohibiting Seller from making any and all credit decisions which it, in its sole discretion, deems appropriate for Seller. Seller shall have the right, at its option, to charge interest on all amounts not paid when due and Buyer agrees to pay such interest calculated on a daily basis, from the date that payment was due until the Seller receives payment in full, at the rate of 1.5% per month or the maximum rate permitted by applicable law. Unless otherwise agreed in writing between Seller and Buyer, Seller may, in its sole discretion, increase or decrease the price of any Product, as Seller deems reasonably necessary, at any time prior to shipment and invoice Buyer for the same. If Buyer orders the chassis through Seller, the chassis payment is due upon receipt of chassis by Seller and the balance owed for the completed unit is due in accordance with agreed upon payment terms. When supplied by Buyer, Seller will inspect the chassis upon receipt and will notify Buyer of any chassis mounted components (including but not limited to fuel tanks, air tanks, battery boxes and exhaust systems) that require relocation. Buyer will be invoiced for such work upon completion of the finished Equipment.

**3. Taxes and Duties.** Unless otherwise noted, prices quoted do not include taxes or duties of any kind or nature. Buyer agrees that it will be responsible for filing all tax returns and paying applicable tax, duty, export preparation charge and export documentation charge resulting from the purchase of the Products. In addition, in the event any other similar tax is determined to apply to Buyer's purchase of the Products from Seller, Buyer agrees to indemnify and hold Seller harmless from and against any and all such other similar taxes, duties and fees. All prices quoted are U.S. dollars unless otherwise specified. The amount of any present or future taxes applicable to the sale, transfer, lease or use of the Products shall be paid by Buyer; or in lieu thereof, Buyer shall provide Seller with a tax exemption certificate satisfactory to the applicable taxing authority proving that no such tax is due and payable upon such sale, transfer, lease or use.

**4. Title, Property, Risk and Delivery.** Unless otherwise stated in writing, for all intra-continental United States shipments, all prices and delivery are FCA, point of manufacture (Incoterms 2020); for all other shipments, all prices and delivery are FAS, named port of shipment (Incoterms 2020). Title and all risk of loss or damage to Products shall pass to Buyer upon delivery, as per Incoterms 2020. Any claims for loss, damage or delay in transit must be entered and prosecuted by the Buyer directly with the carrier, who is hereby declared to be the agent of the Buyer. Seller shall not be liable for any delay in performance of this agreement or delivery of the Products, or for any damages suffered by Buyer by reason of delay, when the delay is caused, directly or indirectly, by a force majeure event described in Section 20 herein or any other cause beyond Seller's control. Claims for shortages in shipments shall be deemed waived and released by Buyer unless made in writing within five (5) days after Buyer's receipt of shipment. Seller's responsibility for shipment shall cease upon delivery of the Products to the place of shipment, and all claims occurring thereafter shall be made to or against the carrier by Buyer. Delivery shall generally be 240 to 270 days after receipt by Seller of a signed Order, provided that, where applicable: (1) Seller receives the chassis a minimum of 90 days prior to scheduled delivery, (2) drawings are timely sent by Buyer and the approved drawings are returned to Seller by Buyer by the requested date, (3) all vendor-supplied components and Buyer-supplied accessories are received by Seller by the date necessary to comply with scheduled delivery. Seller shall not be liable for any delay in performance of this agreement or delivery of the Products, or for any damages suffered by Buyer by reason of delay, when the delay is caused, directly or indirectly, by a force majeure event described in Section 20 herein or any other cause beyond



Seller's control. Claims for shortages in shipments shall be deemed waived and released by Buyer unless made in writing within fifteen (15) days after Buyer's receipt of shipment. Seller's responsibility for shipment shall cease upon delivery of the Parts and or Equipment to the place of shipment, and all claims occurring thereafter shall be made to or against the carrier by Buyer.

**5. Delays Caused By Buyer.** In the event of a delay in shipment or delivery due to delay by Buyer in furnishing delivery instructions, arranging a method of payment satisfactory to Seller, submitting valid import permits or licenses, or any other delay caused by Buyer or at Buyer's request, if the Products are not shipped or delivered within five (5) days from the first date they are ready to be shipped or delivered, then Seller shall be entitled to charge, as compensation, any additional costs incurred related to such delay. If the Products are not shipped or delivered by the date which is ten (10) days from the first date they are ready to be shipped or delivered, then Buyer's order shall be deemed cancelled and Seller may, in its sole discretion, sell such Products to another buyer without any liability or responsibility to Buyer whatsoever. Seller shall have the right to keep payments on account already received from Buyer, and the difference between the sales price (increased by any other and all further costs, including but not limited to attorney's fees and expenses, storage and other costs, and interest accrued thereon) and the price received from another buyer shall constitute a debt of Buyer and bear interest at the same rate set forth in Section 2 herein. Seller shall be entitled to claim for any further damages suffered as a consequence of Buyer's breach of its obligations hereunder.

**6. Cancellation.** Prior to delivery to place of shipment, a Product order may be cancelled only with Seller's prior consent and upon terms indemnifying Seller from all resulting losses and damages. Seller shall have the right to cancel and refuse to complete a Product order if any term and/or condition governing this agreement is not complied with by Buyer. In the event of cancellation by Seller, or in the event Seller consents to a request by Buyer to stop work or to cancel the whole or any part of any order, Buyer shall, in the event that Seller asks Buyer to do so, make reimbursement to Seller, as follows: (i) any and all work that can be completed within thirty (30) days from date of notification to stop work on account of cancellation shall be completed, shipped and paid in full; and (ii) for work in progress and any materials and supplies procured or for which definite commitments have been made by Seller in connection with the order, Buyer shall pay such sums as may be required to fully compensate Seller for actual costs incurred, plus fifteen percent (15%). Buyer may not cancel any order after Seller's delivery to place of shipment. Orders for "Special" Equipment may not be cancelled after acceptance, except by Seller. Items of "Special" Equipment are those that differ from standard Seller specifications, have a limited market, or incorporate specifications that have been determined for a specific application. Determination of whether an item of Equipment is "Special" shall be made by Seller in its sole discretion.

**7. Inspection and Acceptance.** Buyer agrees that it shall inspect the Products immediately after receipt and promptly (in no event later than fifteen (15) days after receipt) notify Seller in writing of any non-conformity or defect. Buyer further agrees that failure to give such prompt notice or the commercial use of the Products shall constitute acceptance. Acceptance shall be final and Buyer waives the right to revoke acceptance for any reason, whether or not known by Buyer at the time of such acceptance. The giving of any such notice by Buyer shall automatically cause the provisions of Seller's warranty to apply and govern the rights, obligations and liabilities of the parties with respect to such nonconformity or defect, provided under no circumstances shall rejection give rise to any liability of Seller for incidental or consequential damages or losses of any kind. Seller shall not be bound by any agent's, employee's or any other representation, promise or inducement not set forth herein. Seller's catalogues, technical circulars, price lists, illustrations, drawings and any other similar literature are for Buyer's general guidance only and the particulars contained in them shall not constitute representations by Seller and Seller shall not be bound by them.

**8. Warranty for New Products.** Seller warrants its new Equipment and Parts manufactured and sold worldwide, to be free, under normal use and service, of any defects in material or workmanship for a period of twelve (12) months from the date of delivery (as limited by Seller's Limited Product Warranty); provided that Buyer sends Seller written notice of the defect within thirty (30) days of its discovery and establishes that: (i) the Equipment has been operated and maintained in strict compliance with Seller's operating and maintenance manuals; and (ii) the defect did not result in any manner from the intentional or negligent action or inaction of Buyer, its agents or employees and (2) a new machine registration certificate has been completed, signed and delivered to the Seller within thirty (30) days of the Equipment's "in-service" date. If requested by Seller, Buyer must return any defective Product to Seller's manufacturing facility, or other location designated by Seller, for inspection, and if Buyer cannot establish that conditions (i) and (ii) above have been met, then this warranty shall not cover the alleged defect. Failure to give written notice of defect within such period shall be a waiver of this warranty and any assistance rendered thereafter shall not extend or revive it. Accessories, assemblies and components included in the Products of Seller, which are not manufactured by Seller, are subject to the warranty of their respective manufacturers. This warranty shall not cover any item on which serial numbers have been altered, defaced or removed. Maintenance and wear parts are not covered by this warranty and are the sole maintenance responsibility of Buyer. This warranty is limited to the original purchaser or end-user if sold to a distributor, and is not assignable or otherwise transferable without written agreement of Seller. **THIS WARRANTY IS EXPRESSLY IN LIEU OF AND EXCLUDES ALL OTHER WARRANTIES, EXPRESS OR IMPLIED (INCLUDING THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE) AND ALL OTHER OBLIGATIONS OR LIABILITY ON SELLER'S PART. THERE ARE NO WARRANTIES THAT EXTEND BEYOND THE LIMITED WARRANTY CONTAINED HEREIN.** Seller neither assumes nor authorizes any other person to assume for Seller any other liability in connection with the sale of Seller's Products. This

warranty shall not apply to any of Seller's Products or any part thereof which has been subject to misuse, alteration, abuse, negligence, accident, acts of God or sabotage. No action by either party shall operate to extend or revive this limited warranty without prior written consent of Seller.

**9. Warranty for Used Equipment.** Used Equipment sold hereunder is sold on an "AS IS, WHERE IS, WITH ALL FAULTS" BASIS WITH NO WARRANTIES WHATSOEVER, EXCEPT AS TO TITLE, UNLESS OTHERWISE SPECIFICALLY AGREED IN WRITING BY BUYER AND SELLER. SELLER ASSUMES NO RESPONSIBILITY FOR THE CONDITION, SAFETY, LEGAL COMPLIANCE, OR USABILITY OF THE USED EQUIPMENT AND MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE USED EQUIPMENT INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. SELLER MAKES NO REPRESENTATION OR WARRANTY REGARDING THE CONDITION OF THE USED EQUIPMENT, NOR THE SUFFICIENCY OF ANY WARNINGS, INSTRUCTIONS OR MANUALS PROVIDED WITH THE USED EQUIPMENT. Seller recommends and Buyer acknowledges that Buyer should contact the original manufacturer to obtain all available information for the used Equipment, including but not limited to product manuals, warnings, safety bulletins, recall notices, and instructional placards before using the used Equipment. Seller shall not be responsible for providing such information. Buyer agrees not to assert any claims against Seller with respect to the used Equipment or its use. Buyer agrees that it shall inspect the used Equipment prior to issuance of a purchase order for such Equipment and acknowledges that it is not relying upon any photographs, images, videos, representations, statements or other assertions made by Seller with respect to the used Equipment's condition, but is relying upon its own knowledge and/or inspection of the used Equipment.

**10. Remedies for Breach.** IN THE EVENT OF ANY BREACH OF THE WARRANTY BY SELLER, THE PARTIES AGREE THAT SELLER'S LIABILITY SHALL BE LIMITED EXCLUSIVELY TO THE REMEDIES OF REPAIR OR REPLACEMENT (AT SELLER'S SOLE DISCRETION) OF ANY DEFECTIVE EQUIPMENT COVERED BY THE WARRANTY. In no event shall any repair or replacement of any defective equipment covered by the Seller's warranty extend the length of the warranty beyond the period specified in Section 8 herein.

**11. Limitation of Liability.** NOTWITHSTANDING ANYTHING CONTAINED IN THIS AGREEMENT TO THE CONTRARY, SELLER AND ITS AFFILIATES SHALL NOT BE LIABLE FOR, AND SPECIFICALLY DISCLAIM, ANY LIABILITY FOR ANY: (A) LOST PROFITS AND/OR BUSINESS INTERRUPTION (WHETHER DIRECT OR INDIRECT); AND (B) INDIRECT, INCIDENTAL, CONSEQUENTIAL (WHETHER DIRECT OR INDIRECT) OR OTHER DAMAGES OR LOSSES OF ANY KIND WHATSOEVER, including, without limitation, labor costs, lost profits, loss of use of other equipment, third party repairs, personal injury, emotional or mental distress, improper performance or work, penalties of any kind, loss of service of personnel, or failure of Products to comply with any federal, state, provincial or local laws, regardless of whether arising from a breach of contract, or warranty, legal claims or otherwise. Nothing in this Section shall operate to exclude Seller's liability for death or personal injury when directly related to Seller's negligent act or omission.

**12. Limitation of Actions.** Any action for breach of this agreement must be commenced within one (1) year after the cause of action has accrued.

**13. Specification Changes.** In the event Seller incurs additional expense because of changes in specifications or drawings previously approved by Buyer, or in the event Seller is required to modify the ordered Equipment, perform any additional work or supply any additional Products, the additional expense shall be added to the purchase price. Buyer must submit to Seller a revised purchase order specifying any and all requested changes. Upon receipt of Buyer's revised purchase order, Seller shall have the right, in its sole discretion, to accept or reject any changes in specifications requested by Buyer.

**14. Trade-in Offers.** Trade-in offers are subject to Seller's inspection and acceptance of the equipment, which must have been maintained to U.S. Department of Transportation operating and safety standards. All accessories on the equipment, including without limitation jibs, winches, pintle hooks and trailer connectors, must remain with the equipment unless otherwise agreed by Seller and Buyer in writing. Seller reserves the right to cancel any trade-in offers or agreements if these conditions are not met, or if Buyer has misrepresented any information about the trade-in unit.

**15. Insurance.** Until the purchase price of any Products is paid in full, the Buyer shall provide and maintain insurance equal to the total value of the Equipment delivered hereunder against customary casualties and risks; including, but not limited to fire and explosion, and shall also insure against liability for accidents and injuries to the public or to employees, in the names of Seller and Buyer as their interest may appear, and in an amount satisfactory to Seller. If the Buyer fails to provide such insurance, it then becomes the Buyer's responsibility to notify the Seller so that the Seller may provide same; and the cost thereof shall be added to the contract price. All loss resulting from the failure to affect such insurance shall be assumed by the Buyer.

**16. Patents, Copyrights, Trademarks, Confidentiality.** No license or other rights under any patents, copyrights or trademarks owned or controlled by Seller or under which Seller is licensed are granted to Buyer or implied by the sale of Products hereunder. Buyer shall not identify as genuine products of Seller products purchased hereunder which Buyer has treated, modified or altered in any way, nor shall Buyer use Seller's trademarks to identify such products; provided, however, that Buyer may identify such products as utilizing, containing or having been manufactured from genuine products



of Seller as treated, modified or altered by Buyer or Buyer's representative, upon prior written approval of Seller. All plans, photographs, designs, drawings, blueprints, manuals, specifications and other documents relating to the business of Seller ("Information") shall be and remain the exclusive property of Seller and shall be treated by Buyer as confidential information and not disclosed, given, loaned, exhibited, sold or transferred to any third party without Seller's prior written approval; provided, however, that these restrictions shall not apply to Information that Buyer can demonstrate: (a) at the time of disclosure, is generally known to the public other than as a result of a breach of this Agreement by Buyer; or (b) is already in Buyer's possession at the time of disclosure by from a third party having a right to impart such Information.

**17. Default and Seller's Remedies.** In the event of default by Buyer, all unpaid sums and installments owed to Seller, shall, at Seller's sole option, become immediately due and payable without notice of any kind to Buyer. In addition to its right of acceleration, Seller may pursue any and all remedies allowed by law or in equity, including but not limited to any and all remedies available to it under the Delaware Uniform Commercial Code. In addition to the foregoing, and not in limitation thereof, Seller shall have the right to set off any credits or amounts owed to Buyer against any amounts owed by Buyer to Seller.

**18. Indemnification by Buyer.** Buyer hereby agrees to indemnify, release, defend and hold harmless Seller, its directors, officers, employees, agents, representatives, successors, and assigns against any and all suits, actions or proceedings at law or in equity (including the costs, expenses and reasonable attorney's fees incurred in connection with the defense of any such matter) and from any and all claims demands, losses, judgments, damages, costs, expenses or liabilities, to any person whatsoever (including Buyer's and Seller's employees or any third party), or damage to any property (including Buyer's property) arising out of or in any way connected with the performance or the furnishing of Products under this agreement, regardless of whether any act, omission, negligence (including any act, omission or negligence, relating to the manufacture, design, repair, erection, service or installation of or warnings made or lack thereof with respect to any Products furnished hereunder) of Seller, its directors, officers, employees, agents, representatives, successors or assigns caused or contributed thereto. If Buyer fails to fulfill any of its obligations under this paragraph or this agreement, Buyer agrees to pay Seller all costs, expenses and attorney's fees incurred by Seller to establish or enforce Seller's rights. The provisions of this paragraph are in addition to any other rights or obligations set forth in this agreement.

**19. Installation.** Unless otherwise expressly agreed in writing, Buyer shall be solely responsible for the installation and erection of the Products purchased. Although Seller may in some cases provide a serviceman, data and drawings to aid Buyer with installation or start-up, Seller assumes no responsibility for proper installation or support of any Products when installed and disclaims any express or implied warranties with respect to such installation and support. Notwithstanding whether data and drawings are provided or a serviceman aids in the installation, Buyer shall indemnify and hold Seller harmless and at Seller's request, defend Seller from all claims, demands or legal proceedings (including the costs, expenses and reasonable attorney's fees incurred in connection with the defense of any such matter) which may be made or brought against Seller in connection with damage or personal injury arising out of said installation or start-up.

**20. Force Majeure.** Seller shall not be liable to Buyer or be deemed to be in breach of this agreement by reason of any delay in performing, or any failure to perform, any of Seller's obligations in relation to the Products if the delay or failure was due to any cause beyond the reasonable control of Seller including (without limitation) strike, lockout, riot, civil commotion, fire, accident, explosion, tempest, act of God, war, epidemic, stoppage of transport, terrorist activity, supply shortage or changes in government, governmental agency, laws, regulations or administrative practices.

**21. Anti-Corruption; Export Controls; No Boycotts.** Buyer agrees that it shall, and that any party retained or paid by the Buyer ("Retained Party") shall, comply with all applicable laws including, but not limited to, laws prohibiting public corruption and commercial bribery. Buyer further agrees that it shall, and that any Retained Party shall, comply with all applicable export controls, economic sanctions, embargoes and regulations regarding the export, re-export, shipment, distribution and/or sale of Products, technology, information or warranty related services. Buyer further agrees that it shall not, and any Retained Party shall not, export or re-export Products, technology, information or warranty related services directly or with its knowledge indirectly into Iran, Sudan, Cuba, Syria, North Korea, the Crimea Region of the Ukraine or Russia without Buyer first obtaining written approval from Seller. Failure to comply strictly with this section and all applicable laws, regulations and licensing/approval requirements shall be grounds for immediate termination of this agreement by Seller. Notwithstanding anything to the contrary contained in any agreement between the Buyer and Seller or in any other document or agreement relating to the Products sold hereunder, Seller will not comply with requests related to the boycott of any country or other jurisdiction, except to the extent such boycott is required by or otherwise not inconsistent with United States law.

**22. Telematics.** If a telematics system is included with the Equipment, the telematics system is administered by a third party ("Teleservice Provider") and collects a range of operational data about the Equipment including, but not limited to, usage, performance and reliability. Buyer consents to Seller's obtaining such data from the Teleservice Provider for warranty, product improvement, marketing and customer support purposes and to Seller's management and reporting of data (personal and non-personal) about the Equipment including, but not limited to, fuel consumption, up/down times, operation, defects, parts replacement, movement and location. Buyer shall, to the extent required by applicable law, obtain consent from its customers and/or any third party for Seller and/or third parties to provide teleservices and data to Buyer. Buyer shall

comply with all applicable laws relating to the provision of teleservices. Buyer agrees to be bound by the current version of the Terex Telematics Terms of Use at <https://www.terex.com/en/products/telematics-tou>.

**23. Construction and Severability.** These Terms and Conditions of Sale constitute the entire agreement between the parties regarding the subject matter hereof and shall be construed and enforced in accordance with the laws of Delaware. The United Nations Convention on Contracts for the International Sale of Goods (1980) (CISG) shall not apply. The invalidity or unenforceability of any provisions of this agreement shall not affect any other provision and this agreement shall be construed in all respects as if such invalid or unenforceable provision were omitted.

**24. Jurisdiction.** The parties agree that the proper and exclusive forum and venue in all legal actions brought to enforce or construe any provisions herein shall be in United States District Court, District of Delaware or, if federal jurisdiction is lacking in such action, in New Castle County Superior Court in Delaware.

**25. No Assignment.** No rights arising under this agreement may be assigned by the Buyer unless expressly agreed to in writing by the Seller.

**26. No Set-off.** Buyer shall have no right to set-off any amounts it may owe Seller against amounts Seller may owe Buyer under this or any other agreement between Buyer and Seller.

**27. Miscellaneous.** Buyer represents that: (i) it is solvent and has the financial ability to pay for the Equipment and Parts purchased hereunder and (ii) it has all requisite right, power and authority to perform its obligations under this agreement.

Buyer's Initials: \_\_\_\_\_

Council member Pat Meysenburg made a motion to approve the estimate from Final Touch Detailing for Tinting Upstairs Office Windows. Council Member Kevin Woita seconded the motion. The motion carried.

Jim Angell: Yea, Tom Kobus: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Woita: Yea

Yea: 6, Nay: 0

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**ESTIMATE**

**Final Touch Detailing**  
 325 Maple St  
 Rising City, NE 68658

finaltouchdetailing.brenden@gmail.com  
 +1 (402) 276-7366



**DAVID CITY POLICE DEPARTMENT**

<b>Bill to</b>	<b>Ship to</b>	<b>Estimate details</b>
DAVID CITY POLICE DEPARTMENT 490 E ST DAVID CITY, NEBRASKA 68632	DAVID CITY POLICE DEPARTMENT 490 E ST DAVID CITY, NEBRASKA 68632	Estimate no.: 1008 Estimate date: 05/04/2023

Product or service	Amount
1. <b>OFFICE WINDOWS TINTED</b>	<b>\$975.00</b>
13 UPSTAIRS OFFICE WINDOWS	
DUAL REFLECTIVE CERAMIC FILM - 25% VLT (\$975.00)	
DUAL REFLECTIVE NON-CERAMIC FILM - 15%-30% VLT (\$850.00)	
THESE PRICES DO NOT INCLUDE SALES TAX AND ARE SUBJECT TO CHANGE IF THE PRICE OF MATERIAL OR PRODUCT CHANGES. THANKS FOR REACHING OUT. FEEL FREE TO CALL WITH ANY QUESTIONS. 402-276-7366	
<b>Total</b>	<b>\$975.00</b>

Council member Pat Meysenburg made a motion to authorize the City Attorney to commence eminent domain proceedings for "O" Street easements. Council Member Tom Kobus seconded the motion. The motion carried.  
 Jim Angell: Yea, Tom Kobus: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Woita: Yea  
 Yea: 6, Nay: 0

Council member Tom Kobus made a motion to authorize the City Attorney to take the necessary steps to remove the code violations from 342 5th Street (Speedy Treat property) by Friday, May 19, 2023. Council Member Pat Meysenburg seconded the motion. The motion carried.  
 Jim Angell: Yea, Tom Kobus: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Woita: Yea  
 Yea: 6, Nay: 0

Council member Kevin Woita made a motion to recess the City Council meeting at 8:23 p.m. Council Member Bruce Meysenburg seconded the motion. The motion carried.  
Jim Angell: Yea, Tom Kobus: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Woita: Yea  
Yea: 6, Nay: 0

Mayor Jessica Miller declared the City Council meeting back in session at 8:32 p.m.

Council member Bruce Meysenburg made a motion to approve entering into closed session to discuss litigation, personnel and contracts. Council Member Keith Marvin seconded the motion. The motion carried.  
Jim Angell: Yea, Tom Kobus: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Woita: Yea  
Yea: 6, Nay: 0

Mayor Miller stated, "Now, at 8:32 p.m., we are going into closed session to discuss contracts, and pending litigation." Mayor Miller, all of the Council members, City Attorney David Levy and City Clerk Comte went into closed session at 8:32 p.m.

Council member Bruce Meysenburg made a motion to come back into open session. Council Member Keith Marvin seconded the motion. The motion carried and Mayor Miller declared the Council back in open session at 9:22 p.m.  
Jim Angell: Yea, Tom Kobus: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Woita: Yea  
Yea: 6, Nay: 0

Council member Keith Marvin made a motion to adjourn. Council Member Bruce Meysenburg seconded the motion. The motion carried and Mayor Jessica Miller declared the meeting adjourned at 9:23 p.m.  
Jim Angell: Yea, Tom Kobus: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Woita: Yea  
Yea: 6, Nay: 0



CERTIFICATION OF MINUTES  
May 10, 2023

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 May 10, 2023; 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