

CITY COUNCIL PROCEEDINGS  
July 26, 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 July 20, 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, Police Chief Marla Schnell, Asst. Police Chief Devin Betzen, Ethan Joy with JEO, Randy Kirkpatrick and Brad Swerczek with K-Tech Services.

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 July 12, 2023 City Council meeting as presented. 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 Jessica Miller declared the public hearing open at 7:03 p.m. to consider the application of Western Oil, LLC, dba Speedee Mart 2723, 1510 N. 4<sup>th</sup> Street for a Class D Beer, Wine, Distilled Spirits, Off Sale Only liquor license.

Interim City Administrator Tami Comte explained that this is the company that is purchasing Stop-Inn from Sypal's.

Hearing no further comment, Mayor Jessica Miller declared the public hearing closed at 7:04 p.m.

Council member Keith Marvin made a motion to approve the application of Western Oil II, LLC, dba Speedee Mart 2723, 1510 N. 4th Street for a Class D Beer, Wine, Distilled Spirits,

Off Sale Only liquor license. 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 Jessic Miller declared the public hearing open at 7:04 p.m. to determine the sufficiency of the petitions and other circumstances relative to the creation of Street Improvement District No. 2023-1.

Interim City Administrator Tami Comte stated that there were no petitions received opposing Street Improvement District No. 2023-1.

Council member Keith Marvin made a motion to pass and adopt Resolution No. 30-2023 acknowledging any written objections to Street Improvement District No. 2023-1. 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

**RESOLUTION NO. 30-2023**

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

1. The Mayor and City Council heretofore adopted Ordinance No. 1447 creating Street Improvement District No. 2023-1, which ordinance was published in pamphlet form as provided by law on June 29, 2023.
2. That Notice of Creation of said Street Improvement District No. 2023-1 was given as provided by law by publication on July 6, 2023, July 13, 2023, and July 20, 2023 and notice was mailed to all non-resident owners as provided by law.
3. That no filings objecting to the creation of Street Improvement District No. 2023-1 were made by owners of abutting property to the office of the City Clerk, as shown on the records of the City Clerk:
4. Now be it further Resolved by the Mayor and City Council of the City of David City, Nebraska, that all things having been done as provided by law relative to the creation of Street Improvement District No. 2023-1 and the findings and determination that 5th Street from the Nebraska Central Railroad Tracks to "G" Street requires paving and improvement within the City of David City as allowed by Nebraska Revised Statutes section 17-509, the Mayor and City Council have authority to proceed with the paving and improvement of a portion of the said thoroughfare as provided by law and as set out in Ordinance No. 1447 creating said Street Improvement District, and the Mayor

and City Council shall proceed with the paving and improvements as set out in Ordinance No. 1447 and with other regulations and ordinances of the City of David City.

Passed this 26th day of July, 2023.

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

ATTEST:

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

(Seal)

Council member Bruce Meysenburg made a motion to approve Payment #11 for M.E. Collins Contracting Co., Inc. in the amount of \$104,096.47 for the "O" Street Project. 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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CERTIFICATE OF PAYMENT: 11



Date of Issuance: July 10, 2023

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

Project No.: 021-07066

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:		\$104,096.47

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	\$3,356.00
No. 8	\$19,456.00

Total Contract Cost: \$1,958,058.00

Value of completed work and materials stored to date	\$1,950,961.37
Less retainage percentage 5%	\$92,421.70
Net amount due including this estimate	\$1,858,539.67
Less: Estimates previously approved:	

No. 1	\$9,064.80	No. 5	\$543,937.23	No. 9	\$215,930.75
No. 2	\$189,875.93	No. 6	\$443,793.80	No. 10	\$93,382.40
No. 3	\$116,932.09	No. 7	\$35,461.00		
No. 4	\$79,720.20	No. 8	\$26,345.00	Total Previous Estimates:	\$1,754,443.20

**NET AMOUNT DUE THIS ESTIMATE: \$104,096.47**

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: 



Pay App. 11 Project: Municipal Paving Improvements, David City, Nebraska - 2022 Project #: 021-07068  
 Contractor: M.E. Collins Contracting Co., Inc. Date: 7/10/2023

ITEM NO.	DESCRIPTION OF WORK	Pay Unit	Total Est Qty	Unit Price	SCHEDULED VALUE (D * E)	WORK COMPLETED				MATERIALS PRESENTLY STORED (NOT IN WORK)	TOTAL QUANTITY TO DATE (G+H)	TOTAL COMPLETED AND STORED TO DATE (M+J+K)	%(M/J)	BALANCE TO FINISH (F-M)	RETAINAGE
						Qty from previous pay app.	Total From previous pay app.	Qty this Period	Total from this Period						
<b>Base Bid</b>															
1	Mobilization/Demobilization	L.S.	1	\$92,857.00	\$92,857.00	1.00	\$92,857.00	0.00	\$0.00		1.00	\$92,857.00	100%	\$0.00	\$4,444.96
2	Build 8" Concrete Pavement w/Integral Curb	S.Y.	12166	\$73.00	\$888,118.00	12,175.00	\$888,118.00	0.00	\$0.00		12,175.00	\$888,118.00	100%	(\$657.00)	\$42,544.68
3	Build 6" Concrete Driveway	S.Y.	801	\$71.00	\$56,871.00	799.50	\$56,054.50	7.50	\$532.50		797.00	\$56,587.00	100%	\$284.00	\$2,708.76
4	Build 4" Concrete Sidewalk	S.Y.	1370	\$67.00	\$91,890.00	1,002.00	\$67,114.00	301.00	\$17,187.00		1,303.00	\$74,271.00	95%	\$3,819.00	\$3,555.27
5	Build Concrete Outfall	S.Y.	104	\$67.00	\$6,968.00	0.00	\$0.00	104.00	\$6,968.00		104.00	\$6,968.00	100%	\$0.00	\$333.55
6	Detectable Warning Panel	S.F.	180	\$51.00	\$9,180.00	72.00	\$3,672.00	108.00	\$5,508.00		180.00	\$9,180.00	100%	\$0.00	\$439.44
7	Build 3" Crushed Rock Driveway	TONS	34.4	\$61.00	\$2,098.40	34.40	\$2,098.40	15.17	\$925.37		49.57	\$3,023.77	144%	(\$925.37)	\$144.74
8	Build Area Inlet (I)	EA.	7	\$3,933.00	\$27,531.00	7.00	\$27,531.00	0.00	\$0.00		7.00	\$27,531.00	100%	\$0.00	\$1,317.88
9	Build Curb Inlet	EA.	8	\$5,892.00	\$47,136.00	8.00	\$47,136.00	0.00	\$0.00		8.00	\$47,136.00	100%	\$0.00	\$2,258.35
10	Build Storm Sewer Manhole	EA.	11	\$6,639.00	\$73,029.00	11.00	\$73,029.00	0.00	\$0.00		11.00	\$73,029.00	100%	\$0.00	\$3,486.82
11	Build Concrete Collar	EA.	1	\$3,976.00	\$3,976.00	1.00	\$3,976.00	0.00	\$0.00		1.00	\$3,976.00	100%	\$0.00	\$190.33
12	Build 18" flared end section	EA.	2	\$1,234.00	\$2,468.00	1.00	\$1,234.00	0.00	\$0.00		1.00	\$1,234.00	50%	\$1,234.00	\$69.07
13	Build 24" round equivalent flared end section	EA.	13	\$1,423.00	\$18,499.00	14.00	\$19,922.00	0.00	\$0.00		14.00	\$19,922.00	100%	(\$1,423.00)	\$653.64
14	Build storm sewer tap	EA.	1	\$4,104.00	\$4,104.00	1.00	\$4,104.00	0.00	\$0.00		1.00	\$4,104.00	100%	\$0.00	\$196.45
15	Install 15" storm sewer pipe	L.F.	459	\$64.00	\$29,376.00	459.00	\$29,376.00	0.00	\$0.00		459.00	\$29,376.00	100%	\$0.00	\$1,406.20
16	Install 18" storm sewer pipe	L.F.	2293	\$67.00	\$153,631.00	2,293.00	\$153,631.00	0.00	\$0.00		2,293.00	\$153,631.00	100%	\$0.00	\$7,354.15
17	Install 24" round equivalent storm sewer pipe	L.F.	190	\$133.00	\$25,270.00	206.00	\$27,398.00	24.00	\$3,192.00		230.00	\$30,590.00	121%	(\$5,320.00)	\$1,464.31
18	Build fire hydrant assembly	EA.	2	\$7,759.00	\$15,518.00	0.00	\$0.00	2.00	\$15,518.00		2.00	\$15,518.00	100%	\$0.00	\$745.66
19	Reconstruct 1" water services	EA.	1	\$285.00	\$285.00	0.00	\$0.00	0.00	\$0.00		0.00	\$0.00	0%	\$285.00	\$0.00
20	12" water main lowering	EA.	1	\$7,692.00	\$7,692.00	0.00	\$0.00	0.00	\$0.00		0.00	\$0.00	0%	\$7,692.00	\$0.00
21	4" water main lowering	EA.	1	\$3,479.00	\$3,479.00	1.00	\$3,479.00	0.00	\$0.00		1.00	\$3,479.00	100%	\$0.00	\$166.54
22	Adjust fire hydrant to grade	EA.	2	\$1,122.00	\$2,244.00	0.00	\$0.00	0.00	\$0.00		0.00	\$0.00	0%	\$2,244.00	\$0.00
23	Adjust valve to grade	EA.	7	\$432.00	\$3,024.00	7.00	\$3,024.00	0.00	\$0.00		7.00	\$3,024.00	100%	\$0.00	\$144.76
24	Adjust curb stop to grade	EA.	5	\$484.00	\$2,420.00	0.00	\$0.00	8.00	\$3,872.00		8.00	\$3,872.00	160%	(\$1,452.00)	\$185.35
25	Adjust manhole to grade - type 1	EA.	5	\$315.00	\$1,575.00	5.00	\$1,575.00	0.00	\$0.00		5.00	\$1,575.00	100%	\$0.00	\$75.39
26	Adjust manhole to grade - type 2	EA.	2	\$400.00	\$840.00	2.00	\$840.00	0.00	\$0.00		2.00	\$840.00	100%	\$0.00	\$40.21
27	Remove pavement	S.Y.	7663	\$11.00	\$84,293.00	7,663.00	\$84,293.00	0.00	\$0.00		7,663.00	\$84,293.00	100%	\$0.00	\$4,036.01
28	Remove driveway	S.Y.	664	\$21.00	\$13,944.00	664.00	\$13,944.00	0.00	\$0.00		664.00	\$13,944.00	100%	\$0.00	\$667.48
29	Remove sidewalk	S.Y.	70	\$21.00	\$1,470.00	70.00	\$1,470.00	0.00	\$0.00		70.00	\$1,470.00	100%	\$0.00	\$70.37
30	Remove storm sewer pipe	L.F.	1155	\$12.00	\$13,860.00	1,155.00	\$13,860.00	34.00	\$408.00		1,189.00	\$14,268.00	103%	(\$408.00)	\$652.99
31	Remove flared end section	EA.	2	\$308.00	\$616.00	2.00	\$616.00	0.00	\$0.00		2.00	\$616.00	100%	\$0.00	\$29.49
32	Remove and salvage fire hydrant	EA.	2	\$1,283.00	\$2,566.00	0.00	\$0.00	2.00	\$2,566.00		2.00	\$2,566.00	100%	\$0.00	\$122.83
33	Remove fence	L.F.	442	\$8.00	\$3,536.00	442.00	\$3,536.00	0.00	\$0.00		442.00	\$3,536.00	100%	\$0.00	\$169.26
34	Remove tree	EA.	3	\$2,711.00	\$8,133.00	5.00	\$13,655.00	0.00	\$0.00		5.00	\$13,655.00	167%	(\$5,482.00)	\$653.65
35	Remove and reset mailbox	EA.	15	\$526.00	\$7,875.00	13.00	\$6,825.00	2.00	\$1,050.00		15.00	\$7,875.00	100%	\$0.00	\$376.97
36	Seeding	S.Y.	10140	\$1.70	\$17,238.00	0.00	\$0.00	10,140.00	\$17,238.00		10,140.00	\$17,238.00	100%	\$0.00	\$825.16
37	Inlet sediment filter	EA.	9	\$281.00	\$2,529.00	9.00	\$2,529.00	0.00	\$0.00		9.00	\$2,529.00	100%	\$0.00	\$121.06
38	Erosion control mat, class 1D	S.Y.	2468	\$2.20	\$5,429.60	0.00	\$0.00	2,468.00	\$5,429.60		2,468.00	\$5,429.60	100%	\$0.00	\$259.91
39	Build fabric silt fence	L.F.	731	\$6.00	\$4,386.00	0.00	\$0.00	140.00	\$840.00		140.00	\$840.00	19%	\$3,546.00	\$40.21
40	General clearing and grubbing	L.S.	1	\$7,159.00	\$7,159.00	1.00	\$7,159.00	0.00	\$0.00		1.00	\$7,159.00	100%	\$0.00	\$342.69
41	Earthwork	L.S.	1	\$36,347.00	\$36,347.00	1.00	\$36,347.00	0.00	\$0.00		1.00	\$36,347.00	100%	\$0.00	\$1,739.89
42	Over-excavation	C.Y.	6900	\$5.00	\$34,500.00	5,900.00	\$29,500.00	0.00	\$0.00		5,900.00	\$29,500.00	100%	\$0.00	\$1,412.13
43	Import	C.Y.	4100	\$12.00	\$49,200.00	4,100.00	\$49,200.00	0.00	\$0.00		4,100.00	\$49,200.00	100%	\$0.00	\$2,355.15
					<b>\$1,844,601.00</b>		<b>\$1,769,768.80</b>		<b>\$61,284.47</b>			<b>\$1,841,044.37</b>		<b>\$3,466.83</b>	<b>\$88,128.77</b>
<b>Change Order</b>															
CO2-1	Water Main Tap	EA.	3	\$16,750.00	\$47,250.00	3.00	\$47,250.00	0.00	\$0.00		3.00	\$47,250.00	100%	\$0.00	\$2,261.81
CO3-1	Water Restraints	EA.	4	\$875.00	\$3,500.00	2.40	\$2,100.00	0.00	\$0.00		2.40	\$2,100.00	60%	\$1,400.00	\$100.62
CO3-2	Re-Install Fencing	L.S.	1	\$5,800.00	\$5,800.00	0.60	\$3,360.00	0.00	\$0.00		0.60	\$3,360.00	80%	\$2,340.00	\$160.84
CO4-1	Inlet Box	EA.	1	\$2,750.00	\$2,750.00	1.00	\$2,750.00	0.00	\$0.00		1.00	\$2,750.00	100%	\$0.00	\$131.64
CO5-1	Manhole #7, Grades were incorrect	L.S.	1	\$1,535.00	\$1,535.00	1.00	\$1,535.00	0.00	\$0.00		1.00	\$1,535.00	100%	\$0.00	\$73.46
CO6-2	Removed 1 Tree	L.S.	1	\$650.00	\$650.00	1.00	\$650.00	0.00	\$0.00		1.00	\$650.00	100%	\$0.00	\$31.11

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CO6-3	Dig Back 40' to Raise 2 Communication Lines @ 11th St Removed 2x4' Concrete Over 12" Water Line.	L.S.	1	\$2,455.00	\$2,455.00	1.00	\$2,455.00	0.00	\$0.00	1.00	\$2,455.00	100%	\$0.00	\$117.52		
CO6-4	Out-of-Flow Pipe Removed 4X8' Concrete Over Sewer Line @ 7th & 8th	L.S.	1	\$1,250.00	\$1,250.00	1.00	\$1,250.00	0.00	\$0.00	1.00	\$1,250.00	100%	\$0.00	\$59.84		
CO6-5	In Alley Lowered Electric Line	L.S.	1	\$550.00	\$550.00	1.00	\$550.00	0.00	\$0.00	1.00	\$550.00	100%	\$0.00	\$26.33		
CO6-6	Helped David City Lower 2" Water Line & Install 8" Water Line	L.S.	1	\$775.00	\$775.00	1.00	\$775.00	0.00	\$0.00	1.00	\$775.00	100%	\$0.00	\$37.10		
CO6-7	Helped to Run 120 LF of Pipe, Relocate Fiber & 1 Week to Run 120 LF of Pipe, Relocate Fiber & Communication Lines	L.S.	1	\$5,680.00	\$5,680.00	1.00	\$5,680.00	0.00	\$0.00	1.00	\$5,680.00	100%	\$0.00	\$271.90		
CO6-8	Install 1" Expansion/Sealing Joint	L.S.	1	\$10,700.00	\$10,700.00	1.00	\$10,700.00	0.00	\$0.00	1.00	\$10,700.00	100%	\$0.00	\$512.20		
CO7-1	Remove/Abandon Inlet	EA	2	\$8,050.00	\$8,050.00	1.00	\$8,050.00	0.00	\$0.00	1.00	\$8,050.00	100%	\$0.00	\$385.34		
CO7-2	Remove Storm Sewer Pipe	L.F.	11	\$1,200.00	\$2,400.00	0.00	\$0.00	2.00	\$2,400.00	2.00	\$2,400.00	100%	\$0.00	\$114.89		
CO7-3	Plug 18" Storm Sewer Pipe	EA	2	\$16.00	\$176.00	0.00	\$0.00	11.00	\$176.00	11.00	\$176.00	100%	\$0.00	\$8.42		
CO8-1	Install 8" Dia 141-45 Degree	EA	4	\$390.00	\$780.00	0.00	\$0.00	2.00	\$780.00	2.00	\$780.00	100%	\$0.00	\$0.00		
CO8-2	Install Valve Box	EA	4	\$753.00	\$3,036.00	0.00	\$0.00	4.00	\$3,036.00	4.00	\$3,036.00	100%	\$0.00	\$0.00		
CO8-3	Install 12" Gate Valve	EA	3	\$254.00	\$762.00	0.00	\$0.00	3.00	\$762.00	3.00	\$762.00	100%	\$0.00	\$0.00		
CO8-4	Install 12" x 6" Tee	EA	1	\$4,862.00	\$4,862.00	0.00	\$0.00	1.00	\$4,862.00	1.00	\$4,862.00	100%	\$0.00	\$0.00		
CO8-5	Install 12" Sleeve	EA	1	\$646.00	\$646.00	0.00	\$0.00	1.00	\$646.00	1.00	\$646.00	100%	\$0.00	\$0.00		
CO8-6	Install 10" Gate Valve	EA	2	\$458.00	\$458.00	0.00	\$0.00	1.00	\$458.00	1.00	\$458.00	100%	\$0.00	\$0.00		
CO8-7	Install 10" x 6" Tee	EA	2	\$3,841.00	\$7,682.00	0.00	\$0.00	2.00	\$7,682.00	2.00	\$7,682.00	100%	\$0.00	\$0.00		
CO8-8	Install 10" Sleeve	EA	1	\$512.00	\$512.00	0.00	\$0.00	1.00	\$512.00	1.00	\$512.00	100%	\$0.00	\$0.00		
CO8-9	Install 10" Sleeve	EA	2	\$752.00	\$1,498.00	0.00	\$0.00	2.00	\$1,498.00	2.00	\$1,498.00	100%	\$0.00	\$0.00		
<b>Contract Total</b>					<b>\$1,868,088.00</b>		<b>\$1,848,084.80</b>		<b>\$104,098.47</b>	<b>\$0.00</b>			<b>\$1,860,881.37</b>	<b>100%</b>	<b>\$7,088.83</b>	<b>\$92,421.70</b>

Original Contract	\$1,848,434.00
+ CO 1	\$0.00
+ CO 2	\$47,250.00
+ CO 3	\$9,100.00
+ CO 4	\$0.00
+ CO 5	\$32,412.00
+ CO 6	\$8,050.00
+ CO 7	\$3,356.00
+ CO 8	\$19,456.00
<b>Total Contract to Date</b>	<b>\$1,958,539.67</b>
Total Work Completed to Date	\$1,950,961.37
Total Materials Stored to Date	\$0.00
<b>Total Value completed &amp; Stored to Date</b>	<b>\$1,950,961.37</b>
- Retainage 5%	\$92,421.70
<b>Net Total Due Less Retainage</b>	<b>\$1,858,539.67</b>
- Pay AP 1	\$9,064.80
- Pay AP 2	\$189,875.53
- Pay AP 3	\$116,932.09
- Pay AP 4	\$79,720.20
- Pay AP 5	\$543,937.23
- Pay AP 6	\$443,793.80
- Pay AP 7	\$36,461.00
- Pay AP 8	\$26,346.00
- Pay AP 9	\$215,930.75
- Pay AP 10	\$93,382.40
<b>Total Previous</b>	<b>\$1,754,443.20</b>
<b>Net Amount Due This Estimate</b>	<b>\$104,096.47</b>

**Footnotes:**  
 (1) Item 8 - Quantity updated from 8 EA to 7 EA per Change Order #5



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

## PROGRESS ESTIMATE

Date: 6-Jul-23

Project: MUNICIPAL PAVING IMRP DAVID CITY

Collins Project No: 222630

To: City of David City

Contractor Estimate No.: 11

Attn: Olsson - Dave Ziska

Original Contract Amount: \$ 1,848,434.00

Item	Description	Contract Qty		Qty To Date	Unit Price	Amount
1	MOBILIZATION/DEMobilIZATION	1.00	LS	1.00	\$ 92,857.00	\$ 92,857.00
2	BUILD 8" CONCRETE PAVEMENT W/INTEGRAL CUR	12,166.00	SY	12,175.00	\$ 73.00	\$ 888,775.00
3	BUILD 6" CONCRETE DRIVEWAY	801.00	SY	797.00	\$ 71.00	\$ 56,587.00
4	BUILD 4" CONCRETE SIDEWALK	1,370.00	SY	1,303.00	\$ 57.00	\$ 74,271.00
5	BUILD CONCRETE OUTFALL	104.00	SY	104.00	\$ 67.00	\$ 6,968.00
6	DETECTABLE WARNING PANEL	180.00	SF	180.00	\$ 51.00	\$ 9,180.00
7	BUILD 3" CRUSHED ROCK DRIVEWAY	34.40	TON	49.57	\$ 61.00	\$ 3,023.77
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	8.00	\$ 5,892.00	\$ 47,136.00
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	230.00	\$ 133.00	\$ 30,590.00
18	BUILD FIRE HYDRANT ASSEMBLY	2.00	EA	2.00	\$ 7,799.00	\$ 15,598.00
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	7.00	\$ 432.00	\$ 3,024.00
24	ADJUST CURB STOP TO GRADE	5.00	EA	8.00	\$ 484.00	\$ 3,872.00
25	ADJUST MANHOLE TO GRADE - TYPE 1	5.00	EA	5.00	\$ 315.00	\$ 1,575.00
26	ADJUST MANHOLE TO GRADE - TYPE 2	2.00	EA	2.00	\$ 420.00	\$ 840.00
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	1,189.00	\$ 12.00	\$ 14,268.00
31	REMOVE FES	2.00	EA	2.00	\$ 308.00	\$ 616.00

32 REMOVE & SALVAGE FIRE HYDRANT	2.00	EA	2.00	\$ 1,283.00	\$ 2,566.00
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	15.00	\$ 525.00	\$ 7,875.00
36 SEEDING	10,140.00	SY	10,140.00	\$ 1.70	\$ 17,238.00
37 INLET SEDIMENT FILTER	9.00	EA	9.00	\$ 281.00	\$ 2,529.00
38 EROSION CONTROL MAT, CLASS 1D	2,468.00	SY	2,468.00	\$ 2.20	\$ 5,429.60
39 BUILD FABRIC SILT FENCE	731.00	LF	140.00	\$ 6.00	\$ 840.00
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	1.00	\$ 8,050.00	\$ 8,050.00
CO#7 REMOVAL OF INSTALLED INLETS	1.00	LS	1.00	\$ 3,356.00	\$ 3,356.00
CO#8 ADDITIONAL WATER VALVE WORK	1.00	LS	1.00	\$ 19,456.00	\$ 19,456.00

<b>Previous Requested Amounts:</b>		<b>TOTAL EARNED TO DATE:</b>		<b>\$ 1,950,961.37</b>
Estimate #1:	\$ 9,064.80	Retainage	10%	\$ (92,421.70)
Estimate #2:	\$189,875.93	Other Deductions		\$ -
Estimate #3:	\$116,932.09	<b>NET ESTIMATE TO DATE:</b>		<b>\$ 1,858,539.67</b>
Estimate #4:	\$ 79,720.20	Less Previous Requests:		\$ 1,754,443.20
Estimate #5:	\$543,937.23	<b>TOTAL DUE THIS ESTIMATE:</b>		<b>\$ 104,096.47</b>
Estimate #6:	\$443,793.80			
Estimate #7:	\$ 35,461.00			
Estimate #8:	\$ 26,345.00			
Estimate #9:	\$215,930.75			
Estimate #10:	\$ 93,382.40			

Estimate Prepared by :



Christopher Woodward

6-Jul-23



Council member Jim Angell made a motion to approve Pay Application No. 1 for Virginia Transformer Corporation in the amount of \$85,684.66 for the '2023 AGP Substation - Long Lead Equipment - Group A - Substation Transformer' project. 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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**Contractor's Application for Payment**

<b>Owner:</b> <u>City of David City</u>	<b>Owner's Project No.:</b> _____
<b>Engineer:</b> <u>JEO Consulting Group, Inc.</u>	<b>Engineer's Project No.:</b> <u>220993.00</u>
<b>Contractor:</b> <u>Virginia Transformer Corporation</u>	<b>Contractor's Project No.:</b> <u>M231303A Rev.1</u>
<b>Project:</b> <u>2023 AGP Substation - Long Lead Equipment</u>	
<b>Contract:</b> <u>2023 AGP Substation - Long Lead Equipment, Group A - Substation Transformer</u>	

**Application No.:** 1                      **Application Date:** 7/21/2023  
**Application Period:** From \_\_\_\_\_ to \_\_\_\_\_

1. Original Contract Price	\$ 856,846.63
2. Net change by Change Orders	\$ -
3. Current Contract Price (Line 1 + Line 2)	\$ 856,846.63
4. Total Work completed and materials stored to date (Sum of Column G Lump Sum Total and Column J Unit Price Total)	\$ 85,684.66
5. Retainage	
a. <u>0%</u> X \$ <u>85,684.66</u> Work Completed =	\$ -
b. <u>0%</u> X \$ - Stored Materials =	\$ -
c. Total Retainage (Line 5.a + Line 5.b)	\$ -
6. Amount eligible to date (Line 4 - Line 5.c)	\$ 85,684.66
7. Less previous payments (Line 6 from prior application)	
8. Amount due this application	\$ 85,684.66
9. Balance to finish, including retainage (Line 3 - Line 4 + Line 5.c)	\$ 771,161.97

**Contractor's Certification**  
 The undersigned Contractor certifies, to the best of its knowledge, the following:  
 (1) All previous progress payments received from Owner on account of Work done under the Contract have been applied on account to discharge Contractor's legitimate obligations incurred in connection with the Work covered by prior Applications for Payment;  
 (2) Title to all Work, materials and equipment incorporated in said Work, or otherwise listed in or covered by this Application for Payment, will pass to Owner at time of payment free and clear of all liens, security interests, and encumbrances (except such as are covered by a bond acceptable to Owner indemnifying Owner against any such liens, security interest, or encumbrances); and  
 (3) All the Work covered by this Application for Payment is in accordance with the Contract Documents and is not defective.

**Contractor:** Virginia Transformer Corp.  
**Signature:** [Signature]                      **Date:** 7/21/2023

<b>Recommended by Engineer</b>	<b>Approved by Owner</b>
<b>By:</b> _____	<b>By:</b> _____
<b>Title:</b> _____	<b>Title:</b> _____
<b>Date:</b> _____	<b>Date:</b> _____
<b>Approved by Funding Agency</b>	
<b>By:</b> _____	<b>By:</b> _____
<b>Title:</b> _____	<b>Title:</b> _____
<b>Date:</b> _____	<b>Date:</b> _____





**VIRGINIA TRANSFORMER CORP.**

220 Glade View Drive, N.E. • Roanoke, Virginia 24012  
 Tel. (540) 345-9892 • Fax (540) 342-7694

INVOICE NO.

72368

Page 1

**"The Commitment Company"**

SHIP TO:

CITY OF DAVID CITY  
 CITY OF DAVID CITY  
 490 E STREET  
 DAVID CITY, NE 68632

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12135  
 CITY OF DAVID CITY  
 490 E STREET  
 PO BOX 191  
 DAVID CITY, NE 68632  
 USA

DATE: 07/14/23

EUSCO #178			PAYMENT TERMS		FREIGHT TERMS	
			PROGRESS PAYMENTS		PREPAID & ADD	
SALES ORDER NO.	ORDERED BY	ORDER DATE	CUSTOMER P.O. NO.		FOB	
DA331		07-13-23	PENDING		FREE ON BOARD	
ITEM NO.	SERIAL NO.	DESCRIPTION	QTY. ORDER	QTY. SHIP	UNIT PRICE	TOTAL COST
DA331A		LIQUID 11200 / 12544 / 14000 / 15680				
		10.00% ON ORDER ENTRY			75,055.00	75,055.00
DA331C		FIELD SERVICE OFFLOAD ASSEMBLY & TEST				
		10.00% ON ORDER ENTRY			5,000.50	5,000.50
DA331F		SALES TAX				
		10.00% ON ORDER ENTRY			5,629.16	5,629.16
Total for Line Items						85,684.66
Invoice Total (USD)						85,684.66

**INVOICE**

THIS INVOICE CONTAINS THE ONLY TERMS AND CONDITIONS, WITH RESPECT TO THE SALE OF THE ABOVE DESCRIBED GOODS, TO WHICH THE SELLER AGREED PER OUR CONFIRMATION OF ORDER. THE COMPANY RESERVES THE RIGHT TO REFUSE TO FULFILL ALL OF OUR OBLIGATIONS IF THE PAYMENT IS NOT RECEIVED PER OUR TERMS OF SALE.

Council member Bruce Meysenburg made a motion to approve the Mutual Aid Agreement between the City of David City/David City Police Department and Butler County and the Butler County Sheriff's Office. 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

### **MUTUAL AID INTERLOCAL COOPERATION AGREEMENT**

THIS MUTUAL AID INTERLOCAL COOPERATION AGREEMENT (the "Agreement") is entered into by and between the law enforcement agencies of the City of David City, Nebraska ("David City") (the David City Police Department (the "Police Department")), and Butler County, Nebraska ("Butler") (the Butler County Sheriff's Office (the "Sheriff")). The Police Department and the Sheriff are each an "Agency" and collectively the "Agencies".

WHEREAS, the Agencies wish to implement to the extent hereafter provided by Nebraska Revised Statutes section 29-215, to empower law enforcement officers ("Officers") of each of the Agencies to provide for personnel backup and such other assistance as any of the Agencies may require in time of Emergency or other time of need; and

WHEREAS, the Police Department has primary jurisdiction within the corporate limits of the City of David City, and the Sheriff has primary jurisdiction in the remainder of Butler County; and

WHEREAS, the Agencies have common goals, staffing needs, training needs and other needs in common in the area of law enforcement, and the joint cooperation contemplated by this Agreement will allow the Agencies each to provide improved law enforcement services in Emergency situations; and

WHEREAS, each of the Agencies, as among themselves, wish to improve law enforcement services and implement, to the extent herein provided, the authority given by section 29-215 to law enforcement officers of each of the Agencies to enforce the laws of this state and legal ordinances of Agencies; and

WHEREAS, the Agencies wish to formalize their understanding pursuant to the Interlocal Cooperation Act of the State of Nebraska, Nebraska Revised Statute sections 13-801 et seq., as amended.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. **Definitions:** As used herein the following terms shall have the following meanings:
  - A. "Agency of Primary Jurisdiction" shall mean the Agency responsible for territorial limits of the geographic area within which an arrest is made, warrant served or other law enforcement activity occurred. The Police Department is the Agency of Primary Jurisdiction within the corporate limits of the City of

David City. The Sheriff is the Agency of Primary Jurisdiction in the remainder of Butler County, including, but not limited to, the City's extraterritorial zoning jurisdiction area.

- B. "Agencies" shall mean the Agencies signatory hereto, and "Agency" shall mean any one of the Agencies.
  - C. "Emergency" shall mean officer needs assistance as that term is defined in Neb. Rev. Stat. §29-215(c); and shall also include incidents involving domestic disturbances/fights in progress, incidents in which the presence of a weapon is reported or is reasonably believed to be present; major accidents; major residential fires; pursuits coming into or near David City; armed or barricaded subjects; major weather-related damage/incidents; incidents of high importance in the detention center (i.e. inmate fights, staff needs assistance, fire, inmate has weapon, etc.), and any incident in which the threat of imminent bodily harm or death to a person is highly possible based on the circumstances presented.
  - D. "Nonemergency" shall mean incidents which do not fall within the scope of Neb. Rev. Stat. §29-215 (c) or subsection 1C above.
  - E. "Host Agency" shall mean an Agency of Primary Jurisdiction other than an Officer's own Agency of regular employment.
  - F. "Officer" shall mean a duly sworn full-time or part-time paid law enforcement officer in the employ of an Agency.
  - G. "Officer's Primary Jurisdiction" shall mean the geographic area within the corporate limits of the Agency which regularly employs the Officer.
2. Authority. The authority for the Agencies entering into this Agreement is the general powers of the Agencies, the Interlocal Cooperation Act (sections 13-801, et seq.), and section 29-215.<sup>1</sup>
3. Purpose. The purpose of this Agreement is to authorize the Officers of each Agency to provide law enforcement services outside the limits of their respective primary jurisdictions as authorized by Subsection (2)(d) of section 29-215, and to improve law enforcement in each of the Agencies and throughout the agency areas through fuller authority and utilization of Officers throughout the agency areas, through sharing of equipment, mutual assistance and the ability to staff Officers based upon the availability of assistance in time of need and to generally enhance law enforcement capacities of the Agencies. Each Agency acknowledges that section 29-215 provides each Agency with certain powers and authorities beyond their primary jurisdiction. This Agreement does not in any way limit the power and authority granted by section 29-215. To that end, each Agency may individually impose on its own Officers such conditions or limitations regarding their exercise of statutory law enforcement powers as such Agency may choose and so long as not inconsistent with the terms hereof.

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<sup>1</sup> All statutory references are to the Nebraska Revised Statutes.

4. Mutual Assistance. Each Agency agrees to render law enforcement assistance to each of the other Agencies when Emergency assistance requiring backup or additional Officer force is necessary. In non-emergency situations the following protocol will be followed.

A. Requests for Assistance.

- 1) Emergency Situations. Any office employed by either Agency may request assistance from the other Agency in Emergency situations (see definition of "Emergency" herein).
- 2) Nonemergency Situations. Any office employed by either Agency may request assistance from the other Agency in Nonemergency situations (see definition of "Nonemergency" herein only after the following conditions are met:

a. All on-call and off duty officers with the Agency seeking assistance would be contacted to provide assistance first. The dispatcher shall at the request of the officer requesting assistance contact each member of said officer's agency and shall inform the officer whether an officer from his/her Agency is available to assist and will document such information in the CAD.

b. If no officers from the Agency requesting assistance are available to provide assistance the requesting Agency officer will contact the head or acting head of the Agency from whom assistance is sought and request assistance from the Agency. The contact to the Agency head or acting Agency head shall be made through dispatch and the dispatcher making such contact shall notify the requesting officer whether such assistance will be provided and shall document such authorization or nonauthorization in the CAD.

c. Each Agency head shall develop their own protocols to follow to determine if assistance in nonemergency situations will be granted.

- B. No Liability for Failure to Respond. The Agencies understand and agree that each Agency cannot assure or guarantee assistance. It is expressly agreed by and between all Agencies that any Agency to which a request is made, or which shall otherwise have knowledge of need of assistance in another Agency, shall have no liability whatsoever to the requesting Agency or any other Agency signatory hereto or to the Officers or employees of any Agency or to any third person whomsoever for failure for whatever reason to respond to, or delay in responding to, a call for assistance or for failure to communicate such call or any failure or delay. Each Agency covenants not to sue and agrees to hold harmless each of the other Agencies for any claim or action based, in any manner, on a failure to respond in or to a request for assistance under this Agreement.

- C. Command at Scene. The Agency requesting assistance shall provide command at the scene for the requested assistance.

- D. Procedures. The Agencies may develop and effectuate mutually agreed upon written procedures consistent with the mutual assistance provisions hereof.

5. Training. Each Agency is responsible for the training of its personnel. Agencies may participate in joint training as agreed upon by the Agencies.
6. Search Warrants. Unless otherwise agreed to by a Host Agency, search warrants to be served or acted upon in Host Agency jurisdiction shall have named thereon and shall be served by an Officer of the Host Agency. An Officer of the requesting Agency may, but need not be, named on the warrant or other issuance in addition to an Officer of the Host Agency. Each Agency shall treat requests for service of warrants from other Agencies in the most expeditious manner reasonably possible under the circumstances.
7. Equipment. Each Agency shall be solely responsible for the maintenance of all equipment provided and utilized by its Officers, and shall not be required to provide any equipment, maintenance, or repair to any equipment used by those Officers providing assistance pursuant to this Agreement and who are employed by the other Agencies. Any supplies, equipment, vehicles or other personal property or other real property utilized in the performance of the duties and obligations created under this Agreement, shall remain at all times the property and the sole responsibility of each Agency and shall not be the obligation or responsibility of the other Agencies.
8. Financing. Each Agency shall be responsible for all compensation and remuneration of its own employees and shall pay all required payroll, wages, taxes, and benefits as provided by law. Each Agency shall also be responsible for the costs of equipment provided and utilized by its law enforcement officers.
9. Officers Remain Employees of Own Agency. An Officer, while serving outside the Officer's Primary Jurisdiction, shall at all times be considered and held as serving in the regular line of duty of the Agency which employs the Officer as fully as if the Officer were serving within the limits of the Officer's Primary Jurisdiction.
10. Disciplinary Procedures. Each Agency that employs the Officer will handle any disciplinary action arising out of such Officer's conduct, actions, or omissions, whether occurring within or outside the Officer's Primary Jurisdiction.
11. Rules and Regulations. The Agencies recognize that the duties, work, skills and working conditions may differ between Agencies. Officers performing service pursuant to this Agreement shall conduct themselves in accordance with the policies and procedures of the Officer's Primary Jurisdiction, except as otherwise agreed to by such Officer's Agency of Primary Jurisdiction and the Host Agency.
12. Liability Insurance. Each Agency agrees to be self-insured or to carry liability insurance written on an "occurrence" basis (as distinguished from "claims made" basis) covering all law enforcement personnel assigned by each Agency under this Agreement and insuring against liability for bodily injury, personal injury (including false arrest) and property damage, in an amount not less than the maximum liability of such Agencies under applicable law. Each Agency's insurance or self-insurance shall cover acts and omissions of its Officers while performing services under this Agreement. These Insurance provisions do not waive an Agency's sovereign immunity. The Nebraska Political Subdivision Tort Claims Act, or other applicable provisions of law, governs each Agency's liability.



13. Public Information. To the extent an Agency makes public specific case information relating to a mutual effort with other Agencies, each Agency shall be responsible for responding to the request to determine which of the reports that it generated may be available to the public. Unless release required by a court order, no Agency shall release any document generated by another Agency without permission.
14. No Agency Relationship Created. This Agreement creates the framework for cooperation among the Agencies for the purposes hereof, and there is no agency or instrumentality and no agency relationship created hereby between the Agencies or between any Agency's employee and any other Agency. The cooperative activity hereby established does not constitute an independent agency or employer. Agencies and Officers performing any services under this Agreement shall at all times and for all purposes remain employees exclusively of the law enforcement department of the Agency which encompasses the Officer's Primary Jurisdiction and shall for no purpose be an employee of any other Agency.
15. No Separate Entity. This Agreement does not create a separate legal entity. This Agreement does not contemplate acquiring, holding or disposing of joint property nor does it contemplate the levying or collecting of any tax.
16. Term of Agreement. This Agreement shall be effective when last executed and shall continue in full force and effect for three (3) years unless terminated earlier by ordinance or resolution of the governing body of any Agency, the effective date of which shall not be less than thirty (30) days following such terminating Agency's written notice to all other Agencies. At the end of the initial three (3) year term, this Agreement shall automatically renew each year for one (1) year terms. A review of the Agreement may occur upon request of any of the Agencies.
17. Other Agreements. The cooperative program hereby established is cumulative to and not in lieu of specific agreements heretofore or hereafter entered into between any of the Agencies in respect to other aspects of public safety. In the event of conflict or when resolving any ambiguities, this Agreement takes precedence over any other agreement.
18. Implementing Action. Prior to the operative date of this Agreement, each Agency shall take formal action by ordinance or resolution of its governing body approving this Agreement. Each Agency shall furnish the other Agencies executed copies of such authorizing action.
19. Mutual Non-Discrimination Clause. The Agencies agree that in accordance with the Nebraska Fair Employment Practice Act, Nebraska Revised Statutes section 48-1122, and 42 USCS §§ 12101, et seq., Agencies and their subcontractors will not discriminate against any employee or applicant for employment, to be employed in the performance of this Agreement, with respect to hire, tenure, terms, conditions, or privileges of employment because of the age, race, color, religion, sex, disability, political or religious opinions or affiliations, or national origin of the employee or applicant. Agencies and their subcontractors shall not, in the performance of this Agreement, discriminate or permit discrimination in violation of any applicable federal or state laws or local ordinances.

20. Multiple Counterparts. The Agencies may execute this Agreement in multiple counterparts, each of which may bear the signatures of less than all of the Agencies hereto, and it shall be in full force and effect even if so executed.
  
21. General Provisions
  - A. Independent Contractors. The Agencies agree that this Agreement does not in any manner create or establish a partnership or joint venture between the Agencies. Any and all acts that any Agency or its personnel, employees, agents, or contractors, performed pursuant to the terms of this Agreement, are acts of independent contractors and not as employees of the other. The Agencies shall, except as provided herein, act in their individual capacities and not as agents, employees, partners, joint ventures or associates of the other. An employee or agent of one shall not be the employee or agent of the other for any purpose whatsoever. No Agency, nor its personnel, employees, agents, or contractors shall be entitled to any benefits of the other. The Agencies shall not provide any insurance coverage to the other or their employees including, but not limited to, workers' compensation insurance. Each Agency shall pay all wages, salaries and other amounts due its employees and shall be responsible for all reports, obligations, and payments pertaining to social security taxation, income tax withholding, workers' compensation, unemployment compensation, group insurance coverage, collective bargaining agreements or any other such similar matters. Any and all claims that may or might arise under the Workers' Compensation Act of the State of Nebraska on behalf of said personnel or other persons while so engaged, and any and all claims whatsoever on behalf of any such person or personnel arising out of employment or alleged employment, including without limitation claims of discrimination against an Agency its officers, employees, agents, or contractors shall in no way be the responsibility of that Agency. No Agency shall have any authority to bind the other by or with any contract or agreement, nor to impose any liability upon the other. All acts and contracts of each shall be in its own name and not in the name of the other, unless otherwise provided herein.
  
  - B. Release and Indemnity. Each Agency shall assume all risk of loss, indemnify the other against loss, and hold the others, its employees, agents, assignees, and legal representatives harmless from all liabilities, demands, claims, suits, losses, causes of action, fines, settlements or judgments and all expenses incident thereto, including, but not limited to, legal fees, for injuries to persons and for loss of damage to, or destruction of property, arising out of or in connection with this Agreement and proximately caused by the indemnifying Agency's negligent acts or omissions or those of its officers, employees or agents, and assigns, for any losses caused by failure of the indemnifying Agency to comply with terms and conditions of the Agreement, and for any losses caused by other Agencies which have entered into agreements with the indemnifying Agency, provided that the Indemnified Agency gives the Indemnifying Agency prompt, written notice of any such claim, suit, demand or cause of action. The Indemnified Agency shall cooperate in the defense or settlement negotiation of such claim, suit, demand or cause of action. The provisions of this section shall survive expiration or termination of this Agreement. This section does not waive an Agency's sovereign immunity.

The Nebraska Political Subdivision Tort Claims Act, or other applicable provisions of law, governs and limits each Agency's liability.

- C. Drug Free Policy. Each Agency assures the others that it has established and maintains a drug free workplace policy.
- D. New Employee Work Eligibility Status. The Agencies shall use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program authorized by the illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. section 1324a, known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee.
- E. Public Benefits. With regard to Nebraska Revised Statutes sections 4-108 – 4-113, no Agency is an individual or sole proprietorship. Therefore, no Agency is subject to the public benefits attestation and related requirements of Nebraska Revised Statutes sections 4-108 through 4-113.
- F. Conflict of Interest. In the performance of this Agreement, Agencies will avoid all conflicts of interests or appearances of conflict of interest. Agencies will report any conflict of interest immediately to each other. Agencies assure each other that no Agency employee will have a financial or personal interest in this Agreement. Agencies have not and will not provide any money or other benefit of any kind to any other Agency employee in the procuring of, facilitation of, execution of or during the duration of this Agreement.
- G. Amendments. The Agencies may modify this Agreement only by written amendment, duly executed by authorized representatives of the Agencies. The Agencies agree that any alteration or variation of the terms and conditions of this Agreement are invalid unless in writing and signed by the Agencies hereto. Every amendment shall specify the date on which its provisions shall be effective.
- H. Choice of Law. The Agencies to this Agreement shall conform to all existing and applicable city ordinances, resolutions, state and local laws, federal laws, and all existing and applicable rules and regulations. The laws of the State of Nebraska shall govern this Agreement. In addition, all claims relating to or arising out of this contract, or the breach thereof, whether based in contract, tort or otherwise, shall likewise be governed by the laws of the State of Nebraska without giving effect to any choice or conflict of law provision as previously provided here. Venue for any non-federal legal proceeding under this Agreement shall be in the State of Nebraska, District Court of Butler County, and for any federal legal proceeding in the United States District Court for the State of Nebraska located in Omaha Nebraska.
- I. Assignment and Delegation. This Agreement is exclusive to the Agencies and rights may not be assigned nor duties delegated by either Agency except by

prior written consent of the other Agencies. Any attempted assignment or delegation without such approval shall be void and shall constitute a material breach of contract. If the Agencies approve to assign or delegate this Agreement, all covenants, stipulations, and agreements herein shall inure to the benefit of the Agencies and extend to and bind the legal representatives, successors, and assigns of the Agencies.

- J. Joint Work Product. This Agreement is the joint work product of both Agencies. Accordingly, in the event of any ambiguity, the court shall not impose any presumption against or in favor of either Agency by reason of document preparation.
- K. Entire Agreement. This Agreement contains the entire agreement of the Agencies. Any Agency may not explain, supplement, or qualify the provisions of this Agreement through evidence of trade usage or prior course of dealings. No Agency made or relied upon any representations by any Agency, other than those that are expressly set forth herein. No agent, employee or other representative of either Agency is empowered to alter any of the terms hereof except as provided herein.
- L. Incorporation of Recitals. This Agreement incorporates the recitals as set forth above.
- M. No Third Party Rights. The Agencies execute this Agreement for the benefit of the named Agencies only. This Agreement does not, nor shall it provide rights to any third party, excluding any assignment as provided herein, with any remedy, claim, liability, reimbursement, cause of action or other right or privilege; except that this Agreement's indemnification provision shall also inure to the benefit of an Agency's employees, officers and agents.
- N. Authorized Representatives and Notice. Each Agency shall deliver notice in writing and effective upon receipt by the authorized representative. Delivery may be by certified mail, return receipt requested. For purposes of Notice, the following individuals are the authorized representatives of the Agencies:

David City  
Chief of Police  
490 E Street  
David City, Nebraska 68632  
Phone: (402) 367-3135

Butler County, Nebraska  
Sheriff  
451 North Fifth Street  
David City, Nebraska 68632  
Phone: (402) 367-7400

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS HEREOF, the parties hereunto executed this Agreement as of the 26th of July, 2023.

CITY OF DAVID CITY, NEBRASKA

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

ATTEST:

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

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

IN WITNESS HEREOF, the parties hereunto executed this Agreement as of the \_\_\_\_\_  
of \_\_\_\_\_, 2023.

COUNTY OF BUTLER, NEBRASKA

\_\_\_\_\_  
Chairperson, Butler County Board of  
Supervisors

ATTEST:

\_\_\_\_\_  
County Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
County Attorney

Council member Tom Kobus made a motion to approve the easement for JB Schmid for Northland Subdivision and authorized the mayor to sign. 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 approve the Frontier Coop Airport Lease Agreement renewal. 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

**AGREEMENT FOR  
MUNICIPAL AIRPORT USE**

This Agreement for Municipal Airport Use, hereinafter referenced as "Agreement", is made and entered into between the CITY OF DAVID CITY, NEBRASKA, a Nebraska Municipal Corporation, hereinafter referenced as "DAVID CITY" and the FRONTIER COOPERATIVE, A Nebraska Cooperative Association, hereinafter referenced as "COOP".

WHEREAS, DAVID CITY owns, maintains and operates the David City Municipal Airport; and,

WHEREAS, COOP desires to utilize the David City Municipal Airport for the 2023 crop dusting season to conduct a spraying operation, including tying down (parking) COOP-owned airplanes and flying in and out of the David City Municipal Airport as needed; and

WHEREAS, the purpose of this Agreement is to establish responsibilities, authorities, and constraints mutually agreeable to the parties hereto including, but not necessarily limited to the following:

- (A) Establish COOP to be responsible for any damage to the airport in the tie down area where they will set up their temporary spraying operation;
- (B) Establish COOP to be responsible for the damages and any clean-up associated with any chemical spills occurring as a result of COOP's temporary spraying operation;
- (C) Provide terms of fee setting and collection of fee;
- (D) Provide limitations for the said temporary spraying operation; and
- (E) Provide for other factors important to the parties hereto.

NOW, THEREFORE, IN CONSIDERATION OF THE TERMS AND CONDITIONS STATED HEREIN, which the parties agree to be valuable consideration, the parties agree as follows, to-wit:

I

#### DURATION

This Agreement shall commence on the date of execution of this Agreement and shall end on August 31, 2023.

II

#### FEE

COOP will pay a total usage fee of ONE THOUSAND FIVE HUNDRED DOLLARS AND NO CENTS (\$1,500.00) for the term of this Agreement. The total usage fee shall be paid by COOP to DAVID CITY in lump sum upon execution of this Agreement.

III

#### TYPE OF USE

COOP agrees that the David City Municipal Airport will be used for a temporary spraying operation throughout the 2023 crop dusting season.

IV

#### LAWS AND ORDINANCES

COOP agrees to execute and fulfill all State, County, Federal, and/or City Ordinances or acts applicable to the David City Municipal Airport for the purposes for which the David City Municipal Airport is being used, AND all requirements of any Federal, State, County or City Board of Health, sanitary and Sheriff's Department for the correction, prevention and abatement of nuisances in, upon and/or connected with COOP's use of said airport.

V

#### INDEMNIFICATION

COOP shall defend, indemnify, and hold DAVID CITY and its agents, officers, and employees harmless from and against any and all claims, suits, demands, actions, liabilities, losses, damages, judgments, or fines arising by reason of injury or death of any person, or damage to any property, including all reasonable costs for investigation and defense thereof (including, but not limited to, attorney fees, court costs, investigator fees, and expert fees) of any nature whatsoever arising out of COOP's activities on the David City Municipal Airport grounds or in its use or occupancy of the David City Municipal Airport regardless of where the injury, death, or damage may occur, except to the extent that such injury, death, or damage is caused by the willful misconduct of DAVID CITY. DAVID CITY shall give COOP reasonable notice of, and an opportunity to defend against, any such claims or actions. Notwithstanding the above

indemnification, COOP shall give DAVID CITY reasonable notice of any matter covered herein and shall forward to DAVID CITY a copy of every demand, notice, summons, or other process received in any claim or legal proceeding covered hereby.

VI

RESPONSIBILITY FOR CHEMICAL SPILLS

In addition to the indemnification provided for in Paragraph V above, COOP hereby accepts full responsibility for any and all cleanup as a result of any hazardous and non-hazardous chemicals spilled in connection with COOP's use of the David City Municipal Airport. COOP agrees to provide emergency response, cleanup and disposal services of hazardous material and/or non-hazardous material spilled in connection with COOP's use of the David City Municipal Airport. COOP shall abide by all applicable Federal, State, County and/or City Ordinances or acts in the response, cleanup and disposal of hazardous and/or non-hazardous material spilled in connect with COOP's use of the David City Municipal Airport.

VII

COMMUNICATIONS WITH OTHER USERS

COOP agrees to utilize radio controls at all times and communicate with other users of the David City Municipal Airport, including, but not necessarily limited to, Roth Aerial and Storm Aeronautics, throughout the duration of this Agreement.

VIII

INSURANCE

COOP shall at all times carry the necessary insurance coverage to protect DAVID CITY or its assigns, from any claims for damages that might arise during COOP's use of the David City Municipal Airport in the following particulars, to-wit:

(A) To protect DAVID CITY, its agents, officers and employees against liability or loss expense of whatever kind arising in any way out of, in connection with, or resulting from COOP's activities on or use of the David City Municipal Airport, COOP shall procure and maintain, at its sole expense and during the full term of the Agreement, insurance as hereinafter enumerated.

(B) COOP shall submit to DAVID CITY at the time COOP executes this Agreement, a Certificate of Insurance, in form satisfactory to DAVID CITY, evidencing that satisfactory coverage of the type and limits set forth herein are in effect. Policies providing such coverage shall contain provisions that no cancellation or material changes in the policies shall become effective except on 30 days advance written notice thereof to DAVID CITY.

(C) All insurance coverage shall be placed with insurers authorized to do business in the State of Nebraska and must be placed with an insurer that has an AM Best's rating of no less than A: VII, unless specific approval has otherwise been granted by DAVID CITY.

IX

AMENDMENTS TO AGREEMENT

Amendments to the original Agreement may be made and modifications made upon mutual agreement and consent by the parties hereto.

X

BINDING EFFECT





The foregoing instrument was acknowledged before me on \_\_\_\_\_, 2023 by \_\_\_\_\_, as \_\_\_\_\_ of Frontier Coop, a Nebraska Cooperative Association, on behalf of the COOP.

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

Council member Bruce Meysenburg introduced Ordinance No. 1448 approving the Interlocal Agreement with the Village of Abie. Mayor Jessica Miller read Ordinance No. 1448 by title.

Council member Keith Marvin made a motion to suspend the statutory rule requiring an Ordinance to be read on three separate readings. 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 Bruce Meysenburg made a motion to pass and adopt Ordinance No. 1448 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. 1448

AN ORDINANCE to approve the Interlocal Agreement with the City of David City, Nebraska, and the Village of Abie, Nebraska, for the assistance and support of water services; and providing for an effective date hereof.

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

Section 1. That the City Council hereby approves as requested by the Mayor, the attached Interlocal Agreement between the City of David City, Nebraska and the Village of Abie, Nebraska with to provide assistance and support for water services.

Section 2. That the Ordinance being administrative in character shall be in full force and take effect immediately upon its passage.

INTRODUCED BY COUNCILMEMBER

Bruce Meysenburg

APPROVED BY:

MAYOR JESSICA MILLER                      DATE

PASSED July 26, 2023

ATTEST:

CITY CLERK TAMI COMTE                      DATE

APPROVED AS TO FORM:

CITY ATTORNEY                      DATE

INTERLOCAL AGREEMENT

THIS INTERLOCAL AGREEMENT (this “Agreement”) is entered into by and between the VILLAGE OF ABIE, NEBRASKA and the CITY OF DAVID CITY, NEBRASKA. The Parties are entering into this Agreement pursuant to the Interlocal Cooperation Act, Nebraska Revised Statutes sections 13-801, et seq., which permits local government units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage.<sup>2</sup>

WHEREAS, the Village of Abie requires assistance for various water services in said Village;

WHEREAS, David City has the appropriate equipment and personnel to provide said assistance; and

WHEREAS the parties wish to enter into this Agreement as section 13-804 authorizes to define their rights and responsibilities pursuant to said act and this Agreement.

<sup>2</sup> All statutory references are to the Nebraska Revised Statutes unless otherwise stated.

NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. **PURPOSE OF AGREEMENT.** The purpose of this agreement is to enable the parties hereto to deliver necessary governmental services to their citizens and taxpayers at the lowest possible cost.
2. **DURATION OF AGREEMENT.** This Agreement shall become effective upon the passage by each local governing body a resolution authorizing the public body to become a party to this Agreement and to authorize its Mayor or Chairperson to execute this Agreement on behalf of the governing body. Either party may terminate its participation in this Agreement by delivering to the other party written notice of its intention to terminate, not less than 30 days prior to the effective date of the termination.
3. **NO SEPARATE LEGAL ENTITY CREATED.** This Agreement does not create a separate legal entity to exercise any power authorized by section 13-804(6).
4. **SHARING OF RESOURCES.** Each party shall make available to the other party, equipment and resources, including personnel, in order for the requesting party to discharge its obligation to provide governmental services to its citizens and taxpayers at the lowest possible cost. This agreement shall not obligate any party hereto to provide either equipment or personnel when, due to its own requirements or emergencies, it is unable to respond without jeopardizing its ability to provide governmental services to its own residents and taxpayers.
5. **SHARING OF EMPLOYEES.** Each party hereto agrees to make available upon request, its employees to any other party in order for the requesting party to respond to an emergency or otherwise complete a project it could not otherwise complete with its own employees. If a responding party has qualified employees available to do the requested work, they shall notify the requesting party when such employees can be available for work. The requesting party shall compensate the responding party by paying to the responding party one hundred ten percent (110%) of the Gross Payroll Cost for each employee responding to the request for assistance for the time incurred plus travel time. "Gross Payroll Cost" means: (i) in the case of annual salaried employees, responding parties employee's salary computed to an hourly basis, (ii) in the case of an hourly employee, responding parties employee's hourly rate, (iii) payroll costs for fringe benefits, (iv) workers compensation premiums on a per hour basis, and (v) mileage pursuant to the amount authorized by the Internal Revenue Service in effect at the time for each vehicle which is necessary to respond to the request for assistance.

The requesting party shall pay Gross Payroll Cost within 30 days from the date the requesting party received the billing.

6. **NEBRASKA CERTIFIED BACKUP WATER AND WASTEWATER OPERATORS.** If a Nebraska Certified Water or Wastewater Operator is unavailable for a party, each party agrees to make available, upon request, its employees holding a valid and current Nebraska Certified Water or Wastewater Operator Certificate, in order for the requesting party to respond to an emergency requiring the presence of certified personnel. The responding Water or Wastewater Operator shall hold a Certificate Grade commensurate with the requesting party requirements. If a party needs Extended Certified Backup

Services (i.e. employees on vacation or leave), the requesting party shall notify the responding party at least 30 days in advance for mutual consent.

7. **IDENTITY OF EMPLOYEES.** The parties shall not construe anything provided herein to cause an employee of a responding party to become an employee of the requesting party while providing assistance pursuant to this Agreement. If a work related injury to a responding party's employee, the responding party shall turn in a workers compensation claim to the responding party's workers compensation carrier. While providing assistance to a requesting party, a responding party's employee will act on behalf of his or her employer during the scope of his or her employment.
8. **LIABILITY.** Each party shall perform all work at the direction and under the specific supervision of the requesting party. The party requesting assistance in terms of machinery and personnel shall be fully responsible for any injuries or damages caused to any person not a party to this Agreement, including death, suffered in connection with the project for which assistance is being provided, except as provided in Paragraph 9. Each party agrees to notify its workers' compensation and liability insurance carrier in regard to the duties and responsibilities pursuant to the Interlocal Cooperation Act.
9. **SHARING OF INVENTORY.** If a party to this Agreement is out of inventory necessary to discharge governmental obligations and there would be delays from obtaining said inventory from a commercial supplier, it may request the inventory item from the other party to this Agreement. If supplying such a request does not cause a hardship in supplying the requested inventory item, the supplying party may supply said item to the requesting party and the requesting party shall reimburse the requesting party for one hundred ten percent (110%) of the inventory cost.
10. **MACHINERY LIST.** Each party shall make a detailed list of machinery and equipment which it will make available for the use and benefit from time to time of the other party and provide a list to each party. The machinery and equipment list shall specify the hourly charge for the use of the machinery and equipment for use by a requesting party. The responding party shall also provide an operator for the equipment. No employee of a requesting party, other than an employee of the party owning the equipment, shall operate any requested equipment. If equipment needs repair while responding to a request for assistance, the party owning the equipment shall be responsible for making necessary repairs and maintenance to the equipment.
11. **BIDDING PROCEDURES.** To the extent possible, each party shall notify the other party to this agreement at least six (6) months in advance of advertising for bids for any construction of municipal improvements as required in section 17-568.01. If the parties plan to complete similar work at approximately the same time, the parties may coordinate the letting of bids for the construction of major municipal improvements at the same time in order to attract the lowest possible bid for both parties.
12. **PURCHASING OF EQUIPMENT.** The parties may, by a majority vote of its governing body, elect to purchase and own machinery and equipment necessary to discharge its governmental obligation upon a joint basis. The parties shall own the machinery and equipment as tenants in common on an equal basis. Each party shall be required to contribute to the maintenance and operation expense of the purchased machinery and equipment, including cost of insurance, on an equal basis. Prior to the purchase of

machinery or equipment, the governing bodies of the parties shall mutually agree upon the scheduling of the use of the equipment, the storage of the equipment when not in use, and other factors incidental thereto.

13. DISPUTE RESOLUTION COMMITTEE. If disputes arise under this Agreement, a committee of all parties shall settle all disputes. Each party hereto shall designate a person to be a representative on the committee in addition to the Mayor and/or Chairperson of each party. A majority of the committee shall constitute a quorum. In order to resolve the complaint or dispute, which shall be binding upon the parties, the committee will require a two-thirds vote of the quorum.
14. AMENDMENTS. The parties may modify this Agreement only by written amendment, duly executed by Mayor and/or Chairperson of the party. The parties agree that any alteration or variation of the terms and conditions of this Agreement are invalid unless in writing and signed by the parties hereto. Every amendment shall specify the date on which its provisions shall be effective.
15. MULTIPLE COUNTERPARTS. The Parties may execute this Agreement in multiple counterparts, each of which may bear the signatures of less than all of the Parties hereto, and it shall be in full force and effect even if so executed.
16. RELEASE AND INDEMNITY. Each party shall assume all risk of loss, indemnify the other against loss, and hold the others, its employees, agents, assignees, and legal representatives harmless from all liabilities, demands, claims, suits, losses, causes of action, fines, settlements or judgments and all expenses incident thereto, including, but not limited to, legal fees, for injuries to persons and for loss of damage to, or destruction of property, arising out of or in connection with this Agreement and proximately caused by the indemnifying party's negligent acts or omissions or those of its officers, employees or agents, and assigns, for any losses caused by failure of the indemnifying party to comply with terms and conditions of the Agreement. The Indemnified party shall cooperate in the defense or settlement negotiation of such claim, suit, demand or cause of action. The provisions of this section shall survive expiration or termination of this Agreement. This section does not waive a party's sovereign immunity. The Nebraska Political Subdivision Tort Claims Act, or other applicable provisions of law, governs and limits each party's liability.
17. DRUG FREE POLICY. Each party assures the other that it has established and maintains a drug free workplace policy.
18. NEW EMPLOYEE WORK ELIGIBILITY STATUS. The parties shall use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program authorized by the illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. section 1324a, known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee.

19. PUBLIC BENEFITS. With regard to sections 4-108 through 4-113, no party is an individual or sole proprietorship. Therefore, no party is subject to the public benefits attestation and related requirements of sections 4-108 through 4-113.
20. ASSIGNMENT AND DELEGATION. This Agreement is exclusive to the parties and rights may not be assigned nor duties delegated by either party except by prior written consent of the other party. Any attempted assignment or delegation without such approval shall be void and shall constitute a material breach of contract. If the parties approve to assign or delegate this Agreement, all covenants, stipulations, and agreements herein shall inure to the benefit of the parties and extend to and bind the legal representatives, successors, and assigns of the parties.
21. ENTIRE AGREEMENT. This Agreement contains the entire agreement of the parties. Any party may not explain, supplement, or qualify the provisions of this Agreement through evidence of trade usage or prior course of dealings. No party made or relied upon any representations by any party, other than those that are expressly set forth herein. No agent, employee or other representative of either party is empowered to alter any of the terms hereof except as provided herein.

IN WITNESS WHEREOF, the parties hereunto executed this Agreement as of the 26<sup>th</sup> day of July, 2023.

CITY OF DAVID CITY, NEBRASKA

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

ATTEST:

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

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

IN WITNESS WHEREOF, the parties hereunto executed this Agreement as of the \_\_\_\_\_ day of \_\_\_\_\_, 2023.

VILLAGE OF ABIE, NEBRASKA

\_\_\_\_\_  
Chairperson

ATTEST:

\_\_\_\_\_  
Village Clerk

Council member Keith Marvin made a motion to approve the Change Order No. 1 with Rutjens Construction - Arps Sewer Service Connection. 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: Abstain (Without Conflict)

Yea: 5, Nay: 0, Abstain (Without Conflict): 1

(This space left intentionally blank)



**CHANGE ORDER NO.: 1**

Owner: **City of David City** Owner's Project No.:  
 Engineer: **JEO Consulting Group, Inc.** Engineer's Project No.: **221276.00**  
 Contractor: **Rutjens Construction, Inc.** Contractor's Project No.:  
 Project: **2023 Water Main Improvements North Loop**  
 Contract Name:  
 Date Issued: **7/17/2023** Effective Date of Change Order: **Date Signed by Owner**

The Contract is modified as follows upon execution of this Change Order:


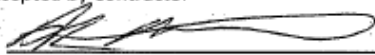
Description:

**This change order is for the addition of Sanitary Sewer Service Improvements to the project that will provide sewer service to ARPS Red-E-Mix.**

Attachments:

**Unit Price Work; Sanitary Sewer Service Improvements Plans; Project Specifications**

Change in Contract Price	Change in Contract Times
Original Contract Price: \$ <u>3,521,576.00</u>	Original Contract Times: Substantial Completion: <u>September 1, 2024</u> Ready for final payment: <u>November 1, 2024</u>
<b>Net change</b> from previously approved Change Orders: \$ <u>0.00</u>	<b>Net change</b> from previously approved Change Orders: Substantial Completion: <u>N/A</u> Ready for final payment: <u>N/A</u>
Contract Price prior to this Change Order: \$ <u>3,521,576.00</u>	Contract Times prior to this Change Order: Substantial Completion: _____ Ready for final payment: _____
<b>Net change</b> for this Change Order: \$ <u>83,231.00</u>	<b>Net change</b> for this Change Order: Substantial Completion: <u>N/A</u> Ready for final payment: <u>N/A</u>
Contract Price incorporating this Change Order: \$ <u>3,604,807.00</u>	Contract Times with all approved Change Orders: Substantial Completion: <u>September 1, 2024</u> Ready for final payment: <u>November 1, 2024</u>

Recommended by Engineer (if required) By: <u></u> Title: <u>Project Engineer</u> Date: <u>7/19/2023</u> Accepted by Contractor By: <u></u> Title: <u>V. PRESIDENT</u> Date: <u>7/18/23</u>	Authorized by Owner _____ _____ Approved by Funding Agency (if applicable) _____ _____
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Change Order Estimate - Unit Price Work					
JEO Project Name: <b>2023 Water Main Improvements North Loop</b>			JEO Project Number: <b>221276.00</b>		
Owner: <b>City of David City</b>			Change Order Number: <b>1</b>		
Contractor: <b>Rutjens Construction, Inc.</b>			Effective Date: <b>Date Signed by Owner</b>		
Item		Change Order Information			
Bid Item No.	Description	Item Quantity	Units	Unit Price	Total Value of Item (\$)
1	Mobilization	1	EA	\$1,500.00	\$1,500.00
2	Bonding and Insurance	1	LS	\$500.00	\$500.00
3	1.5" HDPE Force Main, SDR 11	3784	LF	\$19.00	\$71,896.00
4	1.5" HDPE Force Main, SDR 11, Directionally Bored	130	LF	\$26.00	\$3,380.00
5	1.25" Uni-Lateral Valve with Curb Stop Box	1	EA	\$955.00	\$955.00
6	Connect to Existing Manhole	1	EA	\$1,000.00	\$1,000.00
7	Seeding, Fertilizer, and Mulch	1	LS	\$4,000.00	\$4,000.00
<b>Total:</b>					<b>\$83,231.00</b>

Council member Tom Kobus made a motion to approve the engineering agreement with JEO for relining well #10. 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



AGREEMENT  
BETWEEN OWNER AND ENGINEER  
FOR  
PROFESSIONAL SERVICES

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

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

David City Well #10 Relining ("Project").

JEO Project Number: 231289.00

Owner and Engineer further agree as follows:

**ARTICLE 1 - SERVICES OF ENGINEER**

---

**1.01 Scope**

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

**ARTICLE 2 - OWNER'S RESPONSIBILITIES**

---

**2.01 Owner Responsibilities**

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

**ARTICLE 3 - COMPENSATION**

---

**3.01 Compensation**

- A. Owner shall pay Engineer as set forth in Exhibit A and per the terms in Exhibit B.
- B. The fee for the Project is:

Project Management	\$ 1,500.00	Lump Sum
New Well Site Identification	\$ 5,500.00	Lump Sum
Well #10 Relining Design	\$17,500.00	Lump Sum
Bidding and Negotiation	\$ 4,000.00	Lump Sum
Construction Administration	\$ 4,500.00	Lump Sum
Resident Project Representation:	\$ 3,500.00*	Hourly [25 Hours Estimated]
<b>Total Estimated Fee:</b>	<b>\$36,500.00</b>	

\*Engineer's estimate of the amount that will become payable are only estimates for planning purposes, are not binding on the parties, and are not the minimum or maximum amounts payable to Engineer under the Agreement.

When nearing estimated compensation amounts stated herein and it subsequently becomes apparent to Engineer that the total compensation amount estimated will be exceeded, Engineer shall give Owner written notice thereof. Should the Owner determine services shall be reduced or concluded to keep budget close to the estimate, Owner shall notify Engineer and Engineer shall reduce or conclude services accordingly. If Engineer exceeds the total estimated amount before Owner notifies the Engineer, the Engineer shall be paid for all services rendered up to being notified.

- C. The Standard Hourly Rates Schedule shall be adjusted annually (as of approximately January 1st) to reflect equitable changes in the compensation payable to Engineer. The current hourly rate schedule can be provided upon request.

**ARTICLE 4 - EXHIBITS AND SPECIAL PROVISIONS**

---

**4.01 Exhibits**

Exhibit A – Scope of Services  
Exhibit B – General Conditions

**4.02 Total Agreement**

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

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

Owner: City of David City, Nebraska

Engineer: JEO Consulting Group, Inc.

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

  
\_\_\_\_\_

By: Ethan E. Joy, PE

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

Title: Branch Manager

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

Date Signed: July 20, 2023

Address for giving notices:

Address for giving notices:

490 E. Street

JEO Consulting Group, Inc.

David City, NE 68632

1909 Dakota Avenue

\_\_\_\_\_

South Sioux City, NE 68776

Exhibit A

JEO Consulting Group, Inc.  
SCOPE OF SERVICES

PROJECT DESCRIPTION:

The project includes the design and construction of the relining of Well #10 for the City of David City along with services to select a future well site. In the summer of 2023, the city discovered that the existing well casing was in poor condition. In order to improve the well, the existing 16" diameter well will be relined. The design will include the following:

- Cleaning, chemical treatment, and evaluation of the existing well screen and casing.
- Installation of a new 12" nominal diameter stainless steel screen and casing inside the existing 16" diameter well.
- Placement of new gravel pack around the new screened areas and bentonite seal in the remaining annular spaces.
- Modification of the existing well pedestal to accommodate the smaller casing.
- Removal, cleaning, and reinstallation of the existing vertical turbine well pump and motor.
- Existing electrical and controls systems will remain.
- No topographic survey will be required.

The project also includes work necessary to identify a new well site for future construction of a municipal well. It is assumed the new well site will be along 35 ½ road, east of Well #10. Project is site selection and coordination with NDEE to allow for preliminary regulatory approval of a selected site. Survey research of the proposed site along with preparation of an acquisition plat is included to allow the Owner to purchase the future well site. Test well drilling and design/construction of a new well is not included in this scope.

The work to be performed by the Engineer shall generally include the development of front-end contract documents, drawings, and technical specifications detailing the work. The improvements will be completed by a Contractor under a separate construction contract with the Owner, which will be awarded through a formal bidding process. It is anticipated the Owner will use local or ARPA funds for the project and no other funding sources will be used.

BASIC SCOPE OF SERVICES

**PROJECT MANAGEMENT**

- A. Provide project management oversight over all facets and phases of the project. Project management shall include the following services:
  1. Coordinate design disciplines including facilitating communication and transfer of documents between disciplines to minimize errors in the plans and specifications as well as ensure a timely project design.
  2. Provide timely and coordinated communication to and from the Owner for requests for information, providing progress updates, scheduling meetings, and receiving and providing feedback.
  3. Provide oversight, monitor staff, and ensure proper staffing levels are maintained to ensure scope of services and schedule are met. Review billed hours by design team and prepare invoice statements for the Owner.

Exhibit A

JEO Consulting Group, Inc.  
SCOPE OF SERVICES

**NEW WELL SITE IDENTIFICATION PHASE**

New Well Site Identification Process:

- A. Prepare a well site application (EE 127) and submit to NDEE for the proposed future well site as selected by the Owner.
- B. Attend one (1) meeting with NDEE staff for the well site survey.
- C. Upon approval of the well site by NDEE, surveyors to perform legal research necessary for documenting existing property line locations and develop the purchase plat of the proposed future well site.

**WELL #10 RELINING DESIGN**

Preliminary Design:

- A. Attend and facilitate one (1) project Initiation/Kickoff meeting with Owner/Owner's representatives. Meeting review to include:
  - 1. Review the scope, schedule, and project requirements.
  - 2. Review the proposed well relining details.
  - 3. Engineer will also ask for any specific requirements or concerns from the Owner about the project.
- B. Collect existing data from historical drawings, plans, specifications, operational data, public documents, or other readily available information.
- C. Review information provided by the Owner showing the Well #10 infrastructure.
- D. Review existing well screen and casing condition and size based upon inspection and video provided by Sargent Drilling.
- E. Create a 30% set of drawings that includes:
  - 1. Title sheet
  - 2. Abbreviation sheet
  - 3. Location sheet
  - 4. Preliminary Civil sheets
- F. Prepare a 30% complete preliminary set of plans and conduct a plan-in-hand review in the field to confirm the proposed layout, if necessary.
- G. Perform an internal quality assurance/quality control (QA/QC) review of the 30% complete plans.
- H. Submit 30% plans to the Owner to review electronically.
- I. Revise design documents following receipt of 30% review comments from internal QA/QC and comments from Owner's representatives.

Final Design:

- A. Prepare 90% plans, specifications, and design summary of the well improvements.
- B. Compile preliminary list of quantities and permit requirements.
- C. Prepare standard details to illustrate the installation of various features and construction items needed for the project.
- D. Prepare 90% complete plans. Plans sheets to include:
  - 1. Title sheet
  - 2. Abbreviation sheet
  - 3. Location sheet

Exhibit A

JEO Consulting Group, Inc.  
SCOPE OF SERVICES

- 4. Demolition sheets
- 5. Civil design sheets
- E. Develop technical specifications for project specific equipment and procedures.
- F. Conduct an internal 90% QA/QC of the plan set.
- G. Submit 90% plans to the Owner to review electronically.
- H. Prepare final plans for construction drawings.
- I. Prepare final plans and details.
- J. Perform a final 90% QA/QC Review.
- K. Make any revision to final plans upon QA/QC Review comments.
- L. Attend one (1) council meeting to present the final plans and specifications.
- M. Create final plan and specification set to be signed and sealed by engineers and a coordinating professional all to be registered in the State of Nebraska.
- N. Prepare a final engineer's opinion of probable cost.
- O. Submit final plans and specifications to Nebraska Department Environment and Energy (NDEE) for review and approval and issuance of a construction permit. Owner to pay all permit fees.
- P. Incorporate regulatory agency comments into final design plans and specifications with revised documents or prepare addendum as appropriate.

**BIDDING AND NEGOTIATION PHASE:**

- A. Provide assistance with authorizing the advertisement for bids and setting the bid date, location, and time. It is expected that there will be one (1) bid opening for up to one (1) construction contract.
- B. Furnish copies of the plans, specifications, and contract documents of the project to prospective bidders, materials suppliers, and other interested parties upon their request and payment of the purchase cost established for the documents.
- C. Supply the Invitation to Bidders to the Owner for publication in the official media outlet(s).
- D. Respond to inquiries from prospective bidders, prepare any addenda required.
- E. Attend one (1) meeting with the Owner to assist at the Bid Opening, assist the Owner with receipt and tabulation of bids.
- F. Attend one (1) meeting to review bids received and make a formal recommendation of award to the Owner.
- G. Prepare Contract Documents for execution by the Prime Contractor and the Owner; provide cursory reviews of all insurance and bond submittals and present to Owner's legal and insurance counsel for approval; then advise the Owner to proceed with execution of all documents.
- H. Provide copies of all executed Contract Documents to the Owner and Prime Contractor.
- I. Furnish Bid Tabulation to interested parties.

**CONSTRUCTION ADMINISTRATION PHASE:**

- A. Provide interpretation of the plans and specifications to the Owner and Contractor.
- B. Review shop drawings and related data supplied by the Contractor.
- C. Review Contractor's payment estimates and provide to Owner for review and approval.
- D. Review change orders, if necessary, and provide to Owner for review and approval.
- E. Consult with and advise Owner during construction.
- F. Conduct a final inspection of project with the Contractor and Owner.
- G. Provide assistance during the final inspection with NDEE, if necessary.
- H. Compile record drawings and submit to NDEE along with notice of completion.

Exhibit A

JEO Consulting Group, Inc.  
SCOPE OF SERVICES

- I. Recommend to the Owner the acceptance of the project and complete the necessary certificates.

**CONSTRUCTION OBSERVATION [RPR] PHASE:**

- A. JEO will furnish a part-time Resident Project Representative (RPR) to observe construction progress and quality of the work. (Estimated at 25 hours).
- B. The duties and responsibilities of the RPR are described as follows:
  1. Review of contractors work for general compliance with the plans and specifications.
  2. Complete Construction Observation Reports when on site.
  3. Coordinate pay quantities with Contractor and Engineer.
  4. Review of materials delivered to the site for specification compliance.
  5. Assist the Engineer in interpretation of the plans and specifications to the Contractor.
  6. Review and coordinate materials testing by assigned testing firm.
  7. Attend progress meetings.
  8. Compile records for use in preparing record drawings.

**MEETINGS INCLUDED WITHIN SCOPE OF SERVICES:**

- A. New Well Site Identification Phase
  1. NDEE Well Site Survey (1 meeting)
- B. Design Phase:
  1. Project Initiation / Kickoff Meeting (1 meeting)
  2. City Council Final Plan Approval (1 meetings)
- C. Bidding and Negotiation Phase:
  1. Bid Opening (1 meeting)
  2. City Council Award of Contracts (1 meeting)
- D. Construction Phase:
  1. Final Inspection (1 meeting)

**ADDITIONAL SERVICES [NOT INCLUDED, BUT CAN BE INCLUDED VIA AMENDMENT UPON REQUEST]:**

- A. Services to evaluate additional alternatives.
- B. Test well coordination.
- C. Design and Construction phase services for the construction of a new well.
- D. Attendance at any additional meetings not identified above.
- E. Preparation of grant or loan applications in connection with the project.
- F. Preparation of environmental assessments, impact studies or similar studies.
- G. Geotechnical investigation, report, and soils evaluation services.
- H. Construction materials testing.
- I. Zoning regulations review or modifications necessary for the proposed improvements included in this project.
- J. Preparation of easement or land purchase documents.
- K. Floodplain, USACE 404, USACE 408, SWPPP, or any other permitting not outlined in the scope of services.
- L. Payment of review and permitting fees.
- M. Any other item not outlined in the scope of services.
- N. As with any well, JEO does not guarantee final well capacity or quality of the water.



Exhibit A

JEO Consulting Group, Inc.  
SCOPE OF SERVICES

**ESTIMATED TIME FRAME:**

- A. Design Phase: 90 days from effective date of agreement
- B. Bidding Phase: 45 days from Owner authorization to bid the project
- C. Construction Administration and RPR: Concurrent with construction

**JEO CONSULTING GROUP INC** □ **JEO ARCHITECTURE INC**

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

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

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

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

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

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

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

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

**6. STANDARD OF CARE:** The standard of care for all services performed or furnished by JEO under the agreement

shall be the care and skill ordinarily used by members of JEO's profession practicing under similar circumstances at the same time and in the same locality. JEO makes no warranties, express or implied, under this agreement or otherwise, in connection with JEO's services.

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

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

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

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

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

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

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

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

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

**10. INDEMNIFICATION:** To the fullest extent permitted by law, JEO and the owner shall indemnify and hold each other

**JEO CONSULTING GROUP INC □ JEO ARCHITECTURE INC**

harmless and their respective officers, directors, partners, employees, and consultants from and against any and all claims, losses, damages, and expenses (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) to the extent such claims, losses, damages, or expenses are caused by the indemnifying parties' negligent acts, errors, or omissions. In the event claims, losses, damages, or expenses are caused by the joint or concurrent negligence of JEO and the owner, they shall be borne by each party in proportion to its negligence.

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

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

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

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

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

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

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

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

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

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

Mayor Jessica Miller stated that the next item on the agenda was a presentation by K-Tech Services for Building Inspection services as necessary due to conflicts of interest.

Mayor Miller pointed out that the Council adopted a Conflict-of-Interest Policy at a previous Council meeting, and this would be a part of that for the Building Inspector.

Randy Kirkpatrick, President of K-Tech Services, introduced himself and explained that these services would only be used if requested by the City. He explained that they have the ability to review design documents and they have a team assembled to do that.

After some discussion, it was decided to review this item further.

Council member Kevin Woita made a motion to table the agreement with K-Tech Services for building inspection services as necessary due to conflicts of interest. 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 pass and adopt Resolution No. 31-2023 commencing condemnation for parcel #120008568 424 "O" Street, parcel #120008358 498 "O" Street, parcel #120008351 606 "O" Street, parcel #120007336 1495 5th Street, parcel #120008357 528 "O" Street, parcel #120008353 632 "O" Street, #120007245 675 "O" Street, parcel #120007126 875 "O" Street, parcel #120007084 148510th Street, parcel #120008365 1084 "O" Street. 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. 31-2023**

**A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF DAVID CITY, NEBRASKA, FINDING THAT THE ACQUISITION AND DEVELOPMENT OF CERTAIN REAL PROPERTY IS NECESSARY AND ESSENTIAL TO STREET IMPROVEMENT DISTRICT 2022-1 AND APPROVING LEGAL ACTION BY THE CITY OF DAVID CITY, NEBRASKA TO ACQUIRE SUCH PROPERTY THROUGH CONDEMNATION.**

WHEREAS, the Mayor and City Council of the City of David City, Nebraska, a municipal corporation and city of the second class ("City"), previously adopted and created Street Improvement District 2022-1 through Ordinance 1386 to "remov[e] existing surfaces, pav[e], grad[e], resurface[e] or relay[] existing pavement, construct[] or reconstruct[] curbs, gutters, sidewalks, lighting systems, signage and any necessary improvements"; and

WHEREAS, the City previously adopted Resolution No. 6-2022, thereby confirming the Street Improvement District No. 2022-1 and granting authority to proceed with the improvement and construction of O Street; and

WHEREAS, Nebraska Revised Statutes section 18-1705 provides that the City may improve, maintain or change any road, street, alley or other public highway, regardless of whether the land is contiguous or noncontiguous to such road, street, alley or highway; and

WHEREAS, Nebraska Revised Statutes, Chapter 76, Article 7, provides general authority and procedures for a political subdivision, such as the City, to condemn private property for public purposes such as the O Street improvements; and

WHEREAS, Nebraska Revised Statutes section 18-1705 empowers the City to commence eminent domain proceedings pursuant to Nebraska Revised Statutes sections 76-701 through 76-726; and

WHEREAS, the City deems the acquisition of the real property described herein necessary for Street Improvement District 2022-1 and in the best interests of the public and the City to acquire said real property through condemnation, many attempts at direct acquisition by contract having been unsuccessful.

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

Section 1. RESOLVED, the City finds that the following described real property is located within the limits of the City; that easements on said real property are a necessary part of Street Improvement District 2022-1:

more commonly known as 424, 498, 606, 528, 632, 675, 875, and 1084 O Street, David City, Nebraska 68632; 1495 5th Street, David City, Nebraska; and 1485 and 1470 10th Street, David City, Nebraska.

Section 2. That portion of the above reference property are necessary for the improvement and expansion of the Street Improvement District 2022-1. The real property lies within the "O" Street project area which makes the easements necessary for the City to achieve the public purpose of improving the O Street corridor and its purpose is in the public interest.

Section 3. The City has previously authorized and directed the City Manager of the City, or his or her designee, to acquire said real property, on behalf of the City, through good faith negotiation with the property owner and that such good faith negotiations have failed due to a lack of response or inability to agree on a valuation from the property owner within the time given.

Section 4. The City hereby resolves to acquire easements on said real property through eminent domain proceedings because, after a reasonable period of time, said good faith negotiations to acquire the real property have been unsuccessful.

Section 5. All resolutions, orders and parts thereof in conflict herewith are hereby repealed to the extent of such conflict. This Resolution shall take effect upon approval. The

provisions of this Resolution are separable, and invalidity of any phrase, clause or part of this Resolution, shall not affect the validity of effectiveness of the remainder of this Resolution.

PASSED AND APPROVED this 26th day of July, 2023.

THE CITY OF DAVID CITY

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Mayor Jessica Miller

ATTEST:

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City Clerk Tami Comte

Council member Kevin Woita made a motion to recess the City Council meeting. Council Member Jim Angell seconded the motion. The motion carried and Mayor Jessica Miller declared the Council meeting in recess at 7:51 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 reconvene the City Council meeting at 7:55 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

Council member Bruce Meysenburg made a motion to go into closed session to discuss personnel. 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 Miller stated, "Now, at 7:55 p.m., we are going into closed session to discuss personnel and litigation. Mayor Miller, all of the Council members, and Interim City Administrator Tami Comte went into closed session at 7:55 p.m.

Council member Keith Marvin made a motion to reconvene in open session. Council Member Bruce Meysenburg seconded the motion. The motion carried and the Mayor declared the meeting back in open session at 8:36 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 Tom Kobus seconded the motion. The motion carried and Mayor Jessica Miller declared the meeting adjourned at 8:37 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  
July 26, 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 July 26, 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.

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Tami Comte, City Clerk