

## CITY COUNCIL PROCEEDINGS

March 1, 2004

The Mayor and City Council of the City of David City, Nebraska met in open public session in the meeting room of the City Office, 557 4th Street, David City, Nebraska. Notice of the meeting was published in the February 26, 2004 issue of the Banner-Press. 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 Agenda was kept continuously current in the office of the City Clerk and was available for public inspection during regular office hours. No new items were added to the agenda during the twenty-four hours immediately prior to the opening of the Council meeting.

The meeting opened with the Pledge of Allegiance.

Present for the meeting were: Mayor Stephen Smith, Council members Gary Kroesing, Ted Lukassen, Bill Schatz, Gary Smith, and Mark Kirby, City Administrator Jeff Fiegenschuh, Water/Sewer Supervisor Jim Kruse, Police Chief Stephen Sunday, Street Superintendent Jim McDonald, Electric Supervisor Tim Kovar, City Attorney Jim Egr, Larry Peirce of the Banner Press, Roger Helgoth and Jeff Forney of Jacobson Helgoth Consultants, John Olsson of Olsson Associates, and City Clerk Joan E. Kovar. Council member Hein was absent.

Council member Kroesing introduced Ordinance No. 969. Council member Lukassen made a motion to suspend the statutory rule that requires an Ordinance be read on three separate days. Council member Schatz seconded the motion. Voting YEA: Council members Smith, Kirby, Kroesing, Schatz, and Lukassen. Voting NAY: None. Council member Hein was absent. The motion carried.

Council member Kroesing made a motion to pass and adopt Ordinance No. 969 on the third and final reading. Council member Smith seconded the motion. Voting YEA: Council members Kirby, Lukassen, Schatz, Smith, and Kroesing. Voting NAY: None. Council member Hein was absent. The motion carried and Ordinance No. 969 was passed and adopted as follows:

### **ORDINANCE NO. 969**

AN ORDINANCE OF THE CITY OF DAVID CITY, NEBRASKA, AUTHORIZING THE ISSUANCE OF A WATER REVENUE BOND, SERIES 2004, IN THE PRINCIPAL AMOUNT OF \$700,000, IN THE FORM OF A PROMISSORY NOTE ISSUED TO EVIDENCE INDEBTEDNESS TO THE NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY AND CONFIRMING THE TERMS FOR THE ISSUANCE OF WATER REVENUE REFUNDING BONDS OF THE CITY OF DAVID CITY, NEBRASKA, SERIES 2003, IN THE PRINCIPAL AMOUNT OF NINE HUNDRED NINETY THOUSAND DOLLARS AND THE TERMS AND CONDITIONS FOR THE ISSUANCE OF ADDITIONAL WATER REVENUE BONDS ON A PARITY WITH SAID SERIES 2003 BONDS; ACKNOWLEDGING THE REQUIREMENTS FOR THE ISSUANCE OF ADDITIONAL PARITY BONDS AND PROVIDING FOR PUBLICATION OF THIS ORDINANCE IN PAMPHLET FORM.

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

Section 1. The Mayor and Council of the City of David City, Nebraska, hereby find and determine that (a) the City owns and operates water works facilities and a water system

which constitutes a revenue producing facility and undertaking within the meaning of such terms as set forth in Sections 18-1803 to 18-1805 Reissue Revised Statutes of Nebraska, as amended; that said water works facilities and water system, taken together with all additions and improvements thereto hereafter acquired or constructed are herein referred to as the "Water System;" that there is presently no outstanding indebtedness of the City, bonded or otherwise, except for the Outstanding Bond described in this Section 1, for which the revenue of the Water System have been pledged or hypothecated in any manner; and (b) that there have been heretofore issued and are now outstanding and unpaid a valid and interest bearing bond of the City of David City, Nebraska, consisting of its Water Revenue Refunding Bonds, Series 2003 of the total unpaid and outstanding principal amount of \$990,000 as follows:

<u>Principal Amount</u>	<u>Maturing August 1</u>	<u>Interest Rate</u>
\$45,000	2004	1.30%
45,000	2005	1.75
45,000	2006	2.20
50,000	2007	2.60
50,000	2008	3.00
50,000	2009	3.40
55,000	2010	3.75
55,000	2011	4.00
55,000	2012	4.15
60,000	2013	4.30
60,000	2014	4.40
135,000	2016	4.65
140,000	2018	4.85
70,000	2019	4.90
75,000	2020	5.00

Section 2. Reference is herein made to the definitions contained in Ordinance No. 938; authorizing the said Series 2003 Bonds as above described and are incorporated herein by reference.

(a) the term "revenues" shall mean all of the rates, rentals, fees and charges, earnings and other monies, including investment income, from any source derived by the City of David City, Nebraska, through its ownership and operation of the Water System.

(b) the term "Additional Bonds" shall mean any and all bonds hereafter issued by the City pursuant to the terms of Ordinance No. 938 which are equal in lien to the Series 2003 Bonds, including all such bonds issued pursuant to Ordinance No. 938 and refunding bonds issued pursuant to Ordinance No. 938.

(c) the term "Average Annual Debt Service Requirements" shall mean that number computed by adding all of the principal and interest due when computed to the absolute maturity of the bonds for which such computation is required and dividing by the number of years remaining that the longest bond of any issue for which such computation is required has to run to maturity. In making such computation, the principal of any bonds for which mandatory

redemptions are scheduled shall be treated as maturing in accordance with such schedule of mandatory redemptions.

(d) the term "Deposit Securities" shall mean obligations of the United States of America, direct or unconditionally guaranteed, including any such obligations issued in book entry form.

(e) the term "Net Revenues" shall mean the revenues derived by the City from the ownership or operation of the Water System, including investment income, but not including any income from the sale or other disposition of any property belonging to or forming a part of the Water System, less the ordinary expenses for operating and maintaining the Water System payable from the Operation and Maintenance Account described in Ordinance No. 938. Operation and Maintenance expenses for purposes of determining "Net Revenues" shall not include depreciation, amortization of financing expenses or interest on any bonds or other indebtedness. Net Revenues for all purposes of Ordinance No. 938 shall be shown by an audit for the fiscal year in question as conducted by an independent certified public accountant or firm of such accountants.

(f) the term "Paying Agent and Registrar" shall mean Treasurer of the City of David City, David City, Nebraska, as appointed to act as paying agent and registrar for the Series 2003 Bonds or any successor thereto.

Section 3. Ordinance No. 938 contains the following text governing the use and application of revenues (reference is made to said Ordinance No. 938 for the full definitions and terms upon which additional bond may be issued):

*"Section 11. For the payment of the 2003 Bonds, both principal and interest, together with any Additional Bonds, both principal and interest, the City hereby pledges and hypothecates the entire revenues and earnings of the Water System of the City as a first and prior pledge and encumbrance of such revenues, in accordance with the terms of this Ordinance.*

*Section 12. The City hereby agrees that it will impose and maintain and shall revise from time to time when necessary and shall collect such rentals, rates, fees and charges for the use and services of the Water System which in the aggregate shall be sufficient at all times to enable the City to pay the principal and interest on the 2003 Bonds and any Additional Bonds as the same become due.*

*Section 13. The City will maintain and collect rates and charges for all services furnished from its Water System adequate to produce revenues and earnings sufficient at all times:*

- (a) to pay all reasonable costs of operation and maintenance of the Water System, including adequate insurance as provided by this ordinance and to pay for the necessary and reasonable repairs, replacements and extensions of said Water System;*
- (b) to provide for the payment of interest on and principal of the 2003 Bonds and any Additional Bonds as such interest and principal become due; and*
- (c) to establish and maintain the 2002 Debt Service*

*Reserve Account as hereinafter set forth and any debt service reserves account for additional bonds.*

Section 14. *The revenues and earnings of the Water System (including any and all additions and improvements thereto hereafter acquired) are hereby pledged and hypothecated for the payment of the 2003 Bonds and any Additional Bonds as authorized by this Ordinance and interest on such 2003 Bonds and Additional Bonds and the City does hereby agree with the holders of said 2003 Bonds as follows:*

(a) **DAVID CITY WATER FUND** - *The entire gross revenues and income derived from the operation of the Water System shall be set aside as collected and deposited in a separate fund which is hereby ordered established to be designated as the "David City Water Fund." For purposes of allocating the monies in the David City Water Fund, the City shall maintain the following accounts: (1) Operation and Maintenance Account; (2) Bond Payment Account; (3) 2003 Debt Service Reserve Account; and (4) Surplus Account.*

(b) **OPERATION AND MAINTENANCE ACCOUNT** - *Out of the David City Water Fund there shall be monthly credited into the Operation and Maintenance Account such amounts as the City shall from time to time determine to be necessary to pay the reasonable and necessary expenses of operating and maintaining the Water System, and the City may withdraw funds credited to the Operation and Maintenance Account as necessary from time to time to pay such expenses.*

(c) **BOND PAYMENT ACCOUNT** - *Out of the David City Water Fund there shall be credited monthly on or before the first day of each month to the Bond Payment Account, starting with the month of November 2003, the following amounts:*

- (1) *For the period from November 1, 2003 through February 1, 2004, an amount equal to 1/4th of the next maturing semiannual interest payment on the 2003 Bonds, and for the period from March 1, 2004 until the 2003 Bonds have been paid in full, an amount equal to 1/6th of the next maturing semiannual interest payment on the 2003 Bonds*
- (2) *For the period from November 1, 2003, through August 1, 2004 an amount equal to 1/10 of the next maturing principal payment on the 2003 Bonds and from September 1, 2004, until the 2003 Bonds have been paid in full, an amount equal to 1/12th of the next maturing principal payment for the 2003 Bonds.*

*The City Treasurer is hereby authorized and directed, without further authorization, to withdraw monies credited to the Bond Payment Account, or if the monies in such Account are insufficient, then from the Debt Service Reserve Account and next from the Surplus Account, in an amount sufficient to pay, when due, the principal of and interest on the 2003 Bonds or any Additional Bonds and to transfer such amounts due to the Paying Agent and Registrar (or other paying agent for Additional Bonds) on or before each principal and interest payment date. Upon the issuance of any Additional Bonds pursuant to this Ordinance appropriate additional credits to the Bond Payment Account shall be provided sufficient to pay principal and interest on said Additional Bonds.*

(d) **2003 DEBT SERVICE RESERVE ACCOUNT** - *The City agrees that it shall transfer concurrently with the settlement of the Bonds \$80,000 from its Debt Service Reserve Account held for the called and redeemed Series 1980 Bond for a total of \$80,000 as the amount required to be*

*maintained as a debt service reserve attributable to the 2003 Bonds. Monies credited to the 2003 Debt Service Reserve Account may be withdrawn, as needed to provide funds to pay, when due, the principal and interest on the 2003 Bonds issued pursuant to this Ordinance, if the Bond Payment Account contains insufficient funds for that purpose, and the City Treasurer is hereby authorized and directed to make such withdrawal if and when needed. In the event of a withdrawal from the 2003 Debt Service Reserve Account, there shall be credited to the 2003 Debt Service Reserve Account in the month following such withdrawal all monies in the David City Water Fund remaining after making the payments required to be made in such month to the Operation and Maintenance Account and Bond Payment Account and each month thereafter all such remaining monies shall be credited to the 2003 Debt Service Reserve Account until such account has been restored to the 2003 Reserve Requirement. Upon the issuance of any Additional Bonds a separate debt service reserve account shall be established and any such separate debt service reserve account shall have the right to share, in the event of drawings upon the 2003 Debt Service Reserve Account and such reserve account for Additional Bonds, in revenues available in the David City Water Fund upon a pro rata basis in accordance with the respective outstanding principal amounts or each such issue. Anything in this Subsection 14(d) to the contrary notwithstanding, the amount required to be maintained in the 2002 Debt Service Reserve Account with respect to the 2003 Bonds or in any debt service reserve account for any issue of Additional Bonds shall not be required to exceed at any time the maximum amount permitted to be invested without yield restriction under Section 103(b) and 148 of the Internal Revenue Code of 1986, as amended, and applicable regulations of the United States Treasury Department.*

**(e) SURPLUS ACCOUNT** - *Monies from the David City Water Fund remaining after the credits required in the foregoing Subsections 14(b), 14(c) and 14(d) shall be credited to the Surplus Account. Monies in the Surplus Account may be used to make up any deficiencies in the preceding Accounts, to retire any of the 2003 Bonds, or any Additional Bonds prior to their maturity, to pay principal of and interest on any junior lien indebtedness incurred with respect to the Water System, to provide for replacements or improvements for the Water System or to provide for any other lawful purpose of the City determined upon by the Mayor and Council.*

*The provisions of this Section shall require the City to maintain a set of books and records in accordance with such accounting methods and procedures as are generally applicable to a municipal utility enterprise, which books and records shall show credits to and expenditures from the several Accounts required by this Section. Monies credited to the David City Water Fund or any of the Accounts therein as established by this Ordinance shall be deposited or invested separate and apart from other City funds. Except as specified below for the 2003 Debt Service Reserve Account and any reserve account for Additional Bonds, the City shall not be required to establish separate bank or investment accounts for the Accounts described in Subsection 14(b), 14(c), 14(d) and 14(e). Monies credited to the 2003 Debt Service Reserve Account or any reserve account for Additional Bonds (unless otherwise directed in their authorizing ordinance) shall, if maintained in a demand or time deposit account, be kept in a separate account and not commingled with other Water Funds or accounts. If invested, monies credited to the 2003 Debt Service Reserve Account or any reserve account established for Additional Bonds may be commingled with other Water Funds or accounts so long as the City maintains books and records clearly identifying the specific investments, or portions thereof, which belong to the 2003 Debt Service Reserve Account or reserve account for Additional Bonds.*

**Section 15.** *So long as any of the 2003 Bonds and any Additional Bonds issued pursuant to this Ordinance shall remain outstanding and unpaid, the City covenants and agrees to establish, revise, from time to time as necessary, and collect such rates and charges for the service furnished from the Water System adequate to produce revenues and earnings sufficient at all times:*

*(a) To pay all proper and necessary costs of operation and maintenance of the Water System and to pay for the necessary and proper repairs, replacements, enlargements, extensions and improvements to the Water System.*

*(b) To provide funds to pay, when due, the principal of and interest on the 2003 Bonds and any Additional Bonds issued pursuant to this Ordinance.*

*(c) To provide funds sufficient to make the credits into the Accounts and at the times and in the amounts required by Section 14 of this Ordinance.*

*Section 16. To provide funds for any purpose related to the Water System, the City may issue Additional Bonds, except for Additional Bonds issued for refunding purposes which are governed by Section 22 of this Ordinance, payable from the revenues of the Water System having equal priority and on a parity with the 2003 Bonds and any Additional Bonds then outstanding, only upon compliance with the following conditions:*

*(a) Such Additional Bonds shall be issued only pursuant to an ordinance which shall provide for an increase in the monthly credits into the Bond Payment Account in amounts sufficient to pay, when due, the principal of and interest on the 2003 Bonds, any Additional Bonds then outstanding and the proposed Additional Bonds and for a separate debt service reserve account for Additional Bonds, if deemed appropriate by the Mayor and Council, for which the required amount shall not exceed the amounts prescribed by the then current Internal Revenue Code.*

*(b) The City shall have complied with one or the other of the two following requirements:*

- (1) The Net Revenues derived by the City from its Water System for the fiscal year next preceding the issuance of the Additional Bonds shall have been at least equal to 1.25 times the Average Annual Debt Service Requirements of the 2003 Bonds and any Additional Bonds, all as then outstanding, and of the proposed Additional Bonds; or*
- (2) The City shall have received a projection made by a consulting engineer or firm of consulting engineers, recognized as having experience and expertise in municipal utility systems, projecting that the Net Revenues of the Water System in each of the three full fiscal years after the issuance of such Additional Bonds will be at least equal to 1.25 times the Average Annual Debt Service Requirements of the 2003 Bonds and any Additional Bonds, all as then outstanding, and of the proposed Additional Bonds. In making such projection, the consulting engineer shall use as a basis the Net Revenues of the Water System during the last year for which an independent audit has been prepared and shall adjust such Net Revenues as follows: (A) to reflect changes in rates which have gone into effect since the beginning of the year for which the audit was made, (B) to reflect such engineer's estimate of the net increase over or net decrease under the Net Revenues of the Water System for the year which the audit was made by reason of: (i) changes of amounts payable under existing contracts for service; (ii) additional general income from sales or charges to customers under existing rate schedules for*

*various classes of customers or as such schedules may be revised under a program of changes which has been adopted by the Mayor and Council of the City; (iii) projected revisions in costs for labor, wages, salaries, machinery, equipment, supplies and other operational items; (iv) revisions in the amount of service to be supplied and any related administrative or other costs associated with such increases due to increased supply from the acquisition of any new facility; and (v) such other factors affecting the projections or revenues and expenses as the consulting engineer deems reasonable and proper. Annual debt service on any proposed Additional Bonds to be issued may be estimated by the consulting engineer in projecting Average Annual Debt Service Requirements, but no Additional Bonds shall be issued requiring any annual debt service payment in excess of the amount so estimated by the consulting engineer.*

*The City hereby covenants and agrees that so long as any of the 2003 Bonds and any Additional Bonds are outstanding, it will not issue any bonds or notes payable from the revenues of the Water System except in accordance with the provisions of this Ordinance, provided, however, the City reserves the right to issue bonds or notes which are junior in lien to the 2003 Bonds and any such Additional Bonds with the principal and interest on such bonds or notes to be payable from monies credited to the Surplus Account as provided in Subsection 14(e)."*

Section 4. The City has the right and ability to issue its additional water revenue bonds pledging the earnings of the Water System as long as the terms and conditions of Ordinance No. 938 and any other ordinance adopted for the issuance of additional bonds or refunding bonds in concert with Ordinance No. 938 and on a parity with the Series 2003 Bonds and any subsequent bonds is fully complied with. Any additional bonds issued pursuant to the terms and conditions as set out in Ordinance No. 938 shall be on a parity with the Series 2003 Bond issued pursuant to Ordinance No. 938 and shall be entitled to all the rights and privileges and to an equal lien and the earning of and the assets of the Water System. The City has the right to issue its bonds or notes including borrowings made through the Nebraska Department of Environmental Quality as long as the City is in full compliance with all terms and conditions as set out in Ordinance No. 938.

Section 5. To provide for the payment of the costs of the 2004 Water Improvement Project, there shall be and there is hereby ordered issued the city's water revenue bond, series 2004, in the form of and evidenced by a single promissory note in the principal amount of \$700,000, to be substantially in such form and to have such payment terming as are set forth in Exhibit A to this ordinance, which exhibit is by such reference incorporated herein as if fully set forth.

Section 6. Nothing herein contained, nor nothing contained in Ordinance No. 938 authorizing the outstanding Series 2003 Bonds, shall prevent the City from issuing bonds, revenue notes, or other forms of indebtedness, the payment of the principal and interest of which is a charge upon all or a portion of the revenues of the Water System, junior or inferior to the 2003 Bonds and any Additional Bonds and to the payments to be made into the Operation and Maintenance Account, Bond Payment Account and the Debt Service Reserve Account, as described herein, and the City shall have the right to pay interest thereon and the principal thereof, as long as no deficiency exists in the payments into such accounts, from funds available

for improvements and enlargements to the Water System of the City or from other funds which are available for such debt service.

Section 7. This ordinance shall be published in pamphlet form and shall be in force and effect from and after its passage as provided by law.

PASSED AND APPROVED this 1<sup>st</sup> day of March, 2004.

Mayor Stephen Smith

ATTEST:

City Clerk Joan E. Kovar

Council member Kroesing introduced Resolution No. 8 - 2004 and moved for its passage and adoption. Council member Kirby seconded the motion. Voting YEA: Council members Lukassen, Schatz, Smith, Kirby, and Kroesing. Voting NAY: None. Council member Hein was absent. The motion carried and Resolution No. 8 - 2004 was passed and adopted as follows:

**RESOLUTION NO. 8 - 2004**

WHEREAS, the City of David City, Nebraska recognizes that a properly functioning public water supply system is necessary to the health and welfare of the citizens of the City; and

WHEREAS, the Mayor and City Council have determined that portions of the City public water supply system are in need of significant repair and improvement; and

WHEREAS, funding for the cost of the repair and improvement of portions of the City public water supply may be obtained by loan from the Nebraska Department of Environmental Quality, subject to certain requirements and obligations;

NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of David City, Nebraska that they should execute the contract for loan between the Nebraska Department of Environmental Quality and the City of David City, Nebraska designated as Project No. D311169, incorporated by reference into this Resolution as if fully set forth; and



BE IT FURTHER RESOLVED, Mayor Stephen Smith is hereby directed to execute the contract and all other documents necessary to facilitate the loan between the Nebraska Department of Environmental Quality and the City of David City, Nebraska for the purpose of repairing and improving the City public water supply system; and

BE IT FURTHER RESOLVED, that Joan Kovar, City Clerk/Treasurer, be authorized and directed to sign all necessary documents, to furnish such assurances to the State of Nebraska as may be required by law or regulations, and to receive payment on behalf of the applicant.

PASSED AND APPROVED this 1<sup>st</sup> day of March, 2004.

Mayor Stephen Smith

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 1<sup>st</sup> day of March, 2004.

City Clerk of David City, Nebraska Joan E. Kovar

Council member Kroesing made a motion to authorize Jacobson Helgoth Consultants to advertise for bids for the water tower and well project contingent upon the Economic Development Administrations' approval of the bid. Council member Smith seconded the motion. Voting YEA: Council members Kirby, Lukassen, Schatz, Smith, and Kroesing. Voting NAY: None. Council member Hein was absent. The motion carried.

Council member Kirby made a motion to go into executive session to discuss a personnel matter concerning the police department. Council member Lukassen seconded the motion. Voting YEA: Council members Smith, Kroesing, Schatz, Kirby, and Lukassen. Voting NAY: None. Council member Hein was absent. The motion carried. The Council, Mayor Smith, Attorney Egr, Police Chief Sunday, and City Clerk Joan Kovar went into executive session at 6:10 p.m..

Council member Kirby excused himself from the meeting at 6:34 p.m. for a trouble call since he was on call for Butler Public Power.

Council member Lukassen made a motion to come out of executive session. Council member Schatz seconded the motion. Voting YEA: Council members Smith, Kroesing, Schatz, and Lukassen. Voting NAY: none. Council members Hein and Kirby were absent. The motion carried and the Council came out of executive session at 6:35 p.m..

There being no further business to come before the Council, Council member Kroesing made a motion to adjourn. Council member Smith seconded the motion. Voting YEA: Council members Schatz, Lukassen, Smith, and Kroesing. Voting NAY: None. Council members Hein and Kirby were absent. The motion carried and Mayor Smith declared the meeting adjourned at 6:38 p.m..

Mayor Stephen Smith

City Clerk Joan E. Kovar



CERTIFICATION OF MINUTES  
March 1, 2004

I, Joan E. Kovar, duly qualified and acting City Clerk for the City of David City, Nebraska, do hereby certify with regard to all proceedings of March 1, 2004; 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.

City Clerk Joan E. Kovar