

CITY COUNCIL PROCEEDINGS

March 9, 2005

The 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. The Public had been advised of the meeting by publication of notice in The Banner-Press on March 3, 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 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.

Present for the meeting were: Mayor Stephen Smith, Council members Ted Lukassen, Mark Kirby, Gary Smith, Nick Hein, and Bill Schatz, City Administrator Jeff Fiegenschuh, City Attorney Jim Egr, Electric Supervisor Tim Kovar, Police Chief Stephen Sunday, Planning Commission members James Masek, James Vandenberg, and Keith Marvin, Zoning Administrator Roger Kotil, Jodi Prochaska, CPA of Scow, Rief, Kruse, & Schumacher, Mort Hough & Mary Plettner, representing Nebraska Public Power District, Gary Meister representing Castle Construction, Matt Rief of Olsson Associates, Mark & Willow Holoubek, Dan & Jan Sypal, Erik & Diane Peterson, Richard Ronkar, Larry J. Sabata, Sergeant Brian Jones of the State Patrol, Sheriff Bill Burgess of Filmore County, Police Chief Dennis Wagner of Central City, Margaret Richards, Norm Liebrecht, Jerry Kosch, Dr. Jack Kaufmann, Gina Barlean, Leo Meister, Banner Press Editor Larry Peirce, and City Clerk-Treasurer Joan E. Kovar. Council member Kroesing was absent.

The meeting opened with the Pledge of Allegiance.

The minutes of the February 9, 2005 meeting of the Mayor and City Council were approved upon a motion by Council member Smith and seconded by Council member Hein. Voting AYE: Council members Kirby, Schatz, Lukassen, Smith, and Hein. Voting NAY: None. Council member Kroesing was absent. The motion carried.

Mayor Smith asked for Petitions, Communications and Citizens' Concerns in addition to those contained in the Agenda packets. There were no petitions, communications, or citizens' concerns.

Mayor Smith asked for consideration of claims. Council member Lukassen made a motion to authorize the payment of claims. Council member Smith seconded the motion. Voting AYE: Council members Schatz, Hein, Kirby, Smith, and Lukassen. Voting NAY: None. Council member Kroesing was absent. The motion carried.

Council member Kirby made a motion to advance to agenda item #25 - Consideration of the bids received for Street Improvements CDBG No. 04-PW-019. Council member Smith seconded the motion. All of the Council members present vote AYE, and the motion carried.

Matt Rief of Olsson Associates presented the tabulation of bids received for Street Improvements CDBG No. 04-PW-109 as follows:

Castle Construction Inc.,	Columbus, NE	Concrete	\$507,418.67
		Asphalt	No bid

A & R Construction,	Plainview, NE	Concrete	\$566,134.06
		Asphalt	No bid
Paulsen, Inc.	Cozad, NE	Concrete	\$595,175.95
		Asphalt	No bid
M.E. Collins Contracting	Wahoo, NE	Concrete	\$624,184.16
		Ashpalt	\$648,518.56
Werner Construction Co.	Hastings, NE	Concrete	\$651,178.86
		Asphalt	No bid
Pavers, Inc.	Waverly, NE	Concrete	\$847,356.70
		Asphalt	\$647,540.60

Council member Schatz made a motion to accept the low bid of Castle Construction in the amount of \$507,418.67 for concrete Street Improvements CDBG No. 04-PW-109. Council member Hein seconded the motion. Voting AYE: Council members Kirby, Smith, Lukassen, Hein, and Schatz. Voting NAY: None. Council member Kroesing was absent. The motion carried.

Mayor Smith called for Committee and Officers' Reports in addition to those written reports contained in the Agenda packet. Since presentation of the Audit, and consideration of Police Chief Sunday continuing as the grant administrator for the Rural Apprehension Program (RAP) were not listed on the agenda, Mayor Smith asked City Attorney Egr if those issues could be addressed under Committee and Officers' Reports. City Attorney Egr stated "yes".

Jodi Prochaska, CPA for Scow, Rief, Kruse, & Schumacher presented the Audit for the year ended September 30, 2004. Jodi reported that the Audit may look different this year as required by the provisions of Governmental Accounting Standards Board (GASB) Statement No. 34, Basic Financial Statements –and Management's Discussion and Analysis - for State and Local Governments, as of October 1, 2003. Jodi stated that City Administrator Fiegenschuh wrote the Management's Discussion and Analysis and did an exceptional job. Jodi reported that the audit report states "The City has inadequate control over cash transactions. This situation exists because there is inadequate segregation of duties due to limited personnel." Jodi explained that almost every municipality they audit has this statement, except for Columbus who has more employees. David City has three office workers and so those three have to do everything. Jodi reminded the Council that if the City receives over \$500,000 in Federal Funds a single audit is required.

Council member Lukassen made a motion to accept the Audit as presented for the year ended September 30, 2004. Council member Smith seconded the motion. Voting AYE: Council members Kirby, Schatz, Hein, Smith, and Lukassen. Voting NAY: None. Council member Kroesing was absent. The motion carried.

Police Chief Sunday introduced Sergeant Brian Jones of the NE State Patrol, Sheriff Bill Burgess of Filmore County, and Police Chief Dennis Wagner of Central City. They reported that Sunday does the paperwork for the Rural Apprehension Program which makes the job much easier with Sunday's experience. They requested that Sunday continue for one more year as the grant administrator. Mayor Smith stated that Sunday has been the grant administrator for several years already and felt that someone else needed to be trained to replace him. Discussion followed it which it was noted that this may be the last year for RAP due to financial cuts. Therefore, Council member Kirby made a motion to authorize Police Chief Stephen Sunday to continue as the grant administrator, and David City as the grantee, for RAP for one more year. Council member Smith seconded the motion. Voting AYE: Council

members Hein, Schatz, Lukassen, Smith, and Kirby. Voting NAY: None. Council member Kroesing was absent. The motion carried.

As there were Public Hearing notices to address, Mayor Smith stated that he was going to proceed to the Public Hearings and then come back to Committee and Officers' Reports.

Mayor Smith declared the Public Hearing open at 7:40 p.m. to consider striking the following sections that contain the words "comparable" and "compatible" from the General Plan: Downtown Commercial: Section 413.4, Item 2; Highway Commercial: Section 414.4, Item 6; and Light Industrial: Section 415.4, Item 4. The Planning Commission met on January 22, 2005 and are recommending that these sections be deleted from the General Plan. Planning Commission member Keith Marvin stated that after discussions with Dave Scribner concerning storage units, there is a difference on interpretation as to what is "comparable" and "compatible" which causes problems. Therefore, the Planning Commission would like these sections deleted before other problems arise. There being no further comments, Mayor Smith declared the Public Hearing closed at 7:43 p.m..

Council member Schatz introduced Ordinance No. 992. Council member Schatz made a motion to suspend the statutory rule that requires an Ordinance be read on three separate days. Council member Smith seconded the motion. Voting AYE: Council members Kirby, Hein, Lukassen, Smith, and Schatz. Voting NAY: None. Council member Kroesing was absent. The motion carried.

Council member Schatz made a motion to pass and adopt Ordinance No. 992 on the third and final reading. Council member Lukassen seconded the motion. Voting AYE: Council members Kirby, Smith, Hein, Lukassen, and Schatz. Voting NAY: None. Council member Kroesing was absent. The motion carried and Ordinance No. 992 was passed and adopted as follows:

ORDINANCE NO. 992

AN ORDINANCE OF THE CITY OF DAVID CITY, NEBRASKA, TO AMEND ZONING ORDINANCE NO. 616, BY DELETING THE FOLLOWING: DOWNTOWN COMMERCIAL: SECTION 413.4, ITEM 2; HIGHWAY COMMERCIAL: SECTION 414.4, ITEM 6; AND LIGHT INDUSTRIAL: SECTION 415.4, ITEM 4; IN THE GENERAL PLAN CONTAINING THE WORDS "COMPARABLE" AND "COMPATIBLE"; REPEALING CONFLICTING ORDINANCES AND SECTIONS; PROVIDING AN EFFECTIVE DATE; AND PROVIDING FOR PUBLICATION OF THE ORDINANCE IN PAMPHLET FORM.

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

Section 1. That Ordinance No. 616 be amended by deleting the following from the General Plan:

Downtown Commercial: Section 413.4, Item 2. Other retail business and service uses comparable and compatible to those set forth in this Section.

Highway Commercial: Section 414.4, Item 6. Other uses comparable to those permitted in this Section and compatible with the intent of this district. Retail sales of goods and services/uses other than those permitted in this section are not

considered comparable and compatible.

Light Industrial: Section 415.4, Item 4. Other uses comparable with those permitted in the Section and compatible with the intent of this district.

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

Section 3. This ordinance shall be published in pamphlet form and shall be in full force and effect from and after its passage, approval, and publication as provided by law.

Passed and approved this 9th day of March, 2005.

ATTEST:

Mayor Stephen Smith

City Clerk Joan E. Kovar

Mayor Smith declared the Public Hearing open at 7:45 p.m. to consider amending the Land Use Plan Map to change property located in Outlot 2 in part of the W ½ SW ¼ containing 4.86 acres more or less, and the West Addition, Section 19-15-3, part of the W ½ SW ¼ containing 1.5 acres more or less in the West Addition, from Mobile Home Residential to High Density Residential as requested by Mark & Willow Holoubek - located between 1st Street and Road "M" and south of the Union Pacific Railroad. Mark Holoubek stated that they are requesting that this be re-zoned as they are proposing an addition for homes. Council member Lukassen questioned why they are requesting that it be re-zoned High Density Residential versus Low Density Residential as the lot sizes are large enough to accommodate LDR. Planning Commission Chairman Jim Masek stated that the neighboring residential property is zoned High Density Residential and re-zoning it as LDR might appear as spot zoning. Mayor Smith asked why the Land Use Plan is amended prior to actually re-zoning the property. Keith Marvin explained that the land use plan map is your policy - case law says the land use plan map must be amended prior to re-zoning the actual property. There being no additional comments, Mayor Smith declared the Public Hearing closed at 7:51 p.m..

Council member Schatz introduced Ordinance No. 993. Council member Schatz made a motion to suspend the statutory rule that requires an Ordinance be read on three separate days. Council member Kirby seconded the motion. Voting AYE: Council members Smith, Hein, Lukassen, Kirby, and Schatz. Voting NAY: None. Council member Kroesing was absent. The motion carried.

Council member Schatz made a motion to pass and adopt Ordinance No. 993 on the third and final reading. Council member Kirby seconded the motion. Voting AYE: Council members

Smith, Hein, Lukassen, Kirby, and Schatz. Voting NAY: None. Council member Kroesing was absent. The motion carried and Ordinance No. 993 was passed and adopted as follows:

ORDINANCE NO. 993

AN ORDINANCE TO AMEND THE LAND USE PLAN MAP BY CHANGING THE ZONING CLASSIFICATION OF REAL ESTATE DESCRIBED FROM MOBILE HOME RESIDENTIAL (MHR) TO HIGH DENSITY RESIDENTIAL (HDR).

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

Section 1. That the Land Use Plan Map be amended as requested by Mark R. & Willow A. Holoubek as follows:

a. To amend the following property from Mobile Home Residential to High Density Residential:

1. Property located in Outlot 2 in part of the W $\frac{1}{2}$ SW $\frac{1}{4}$ containing 4.86 acres more or less, and the West Addition, Section 19-15-3, part of the W $\frac{1}{2}$ SW $\frac{1}{4}$ containing 1.5 acres more or less in the West Addition, from Mobile Home Residential to High Density Residential;
(located between 1st Street and Road "M" and south of the Union Pacific Railroad);

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

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

Passed and adopted this 9th day of March, 2005.

Mayor Stephen Smith

City Clerk Joan E. Kovar

Since it was not time for the next Public Hearing, Mayor Smith went back to Committee and Officers' reports.

Mort Hough & Mary Plettner, representing Nebraska Public Power District, presented the City with an award for outstanding economic development efforts during 2004. The award was given for "successful business and industry retention, expansion or attraction." NPPD recognized David City for assisting Timpte Manufacturing, Henningsen Foods, and Fargo Assembly in their

business retention projects. Selection for the award is based on project announcements made in the past 12 months, the number of new jobs created, electric load growth and total new investment. Mary Plettner said that "David City has consistently demonstrated its dedication to expanding, retaining or attracting business to the area; To have a community dedicated to helping businesses survive and thrive is a big advantage and a key factor in today's economic development arena."

Council member Hein questioned why there isn't a spotlight on the American flag in front of the Auditorium. Electric Supervisor Kovar reported that they installed a light for the flag but perhaps it had burned out. Kovar will check on this. Hein also stated it is nice to see the street sweeper out and about.

Council member Schatz thanked Tim Kovar and the electric crew for taking down the old cable from the north substation to the power plant, saving the City a considerable amount of money.

Once again, Mayor Smith stated that he was going to proceed to the Public Hearings and then come back to Committee and Officers' Reports.

Mayor Smith declared the Public Hearing open at 8:04 p.m. to consider re-zoning the property (amending the Official Zoning Map) located in Outlot 2 in part of the W ½ SW ¼ containing 4.86 acres more or less, and the West Addition, Section 19-15-3, part of the W ½ SW ¼ containing 1.5 acres more or less in the West Addition, from Mobile Home Residential to High Density Residential as requested by Mark & Willow Holoubek - located between 1st Street and Road "M" and south of the Union Pacific Railroad. There being no comments, Mayor Smith declared the Public Hearing closed at 8:05 p.m..

Council member Schatz introduced Ordinance No. 994. Council member Schatz made a motion to suspend the statutory rule that requires an Ordinance be read on three separate days. Council member Smith seconded the motion. Voting AYE: Council members Hein, Kirby, Lukassen, Smith, and Schatz. Voting NAY: None. Council member Kroesing was absent. The motion carried.

Council member Schatz made a motion to pass and adopt Ordinance No. 994 on the third and final reading. Council member Kirby seconded the motion. Voting AYE: Council members Hein, Lukassen, Smith, Kirby, and Schatz. Voting NAY: None. Council member Kroesing was absent. The motion carried and Ordinance No. 994 was passed and adopted as follows:

ORDINANCE NO. 994

AN ORDINANCE TO AMEND THE OFFICIAL ZONING MAP BY CHANGING THE ZONING CLASSIFICATION OF REAL ESTATE DESCRIBED FROM MOBILE HOME RESIDENTIAL (MHR) TO HIGH DENSITY RESIDENTIAL (HDR).

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

Section 1. That the Official Zoning Map be amended as requested by Mark R. & Willow A. Holoubek as follows:

- a. To amend the following property from Mobile Home Residential to High Density Residential:

2. Property located in Outlot 2 in part of the W ½ SW ¼ containing 4.86 acres more or less, and the West Addition, Section 19-15-3, part of the W ½ SW ¼ containing 1.5 acres more or less in the West Addition, from Mobile Home Residential to High Density Residential;
(located between 1st Street and Road "M" and south of the Union Pacific Railroad);

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

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

Passed and adopted this 9th day of March, 2005.

Mayor Stephen Smith

City Clerk Joan E. Kovar

Since it was not time for the next Public Hearing, Mayor Smith went back to Committee and Officer's reports.

City Administrator Jeff Fiegenschuh reported the following:

- The pool committee is recommending Rachelle Robbins for the Swimming Pool Manager position, and Jill Stara and Michelle Moravec for Assistant Managers;
- A drainage report (northwest drainage project) will be given on Wednesday, March 16, 2005 at 4:00 p.m. concerning the proposed plat for Secluded Pines;
- The Finance Committee will meet on Wednesday, March 16, 2005, at 6:00 p.m.

Mayor Smith scheduled a Committee of the Whole meeting for Monday, March 28, 2005 at 6:00 p.m. in the City Office meeting room.

Council member Kirby made a motion to accept the Committee and Officers' Reports as presented. Council member Smith seconded the motion. Voting YEA: Council members Schatz, Lukassen, Hein, Smith, and Kirby. Voting NAY: None. Council member Kroesing was absent. The motion carried.

Council member Kirby made a motion to advance to agenda item #24 - Consideration of Resolution No. 4 - 2005 establishing two youth representatives on the City Council. Council member Lukassen seconded the motion. Voting YEA: Council members Schatz, Hein, Smith, Lukassen, and Kirby. Voting NAY: None. Council member Kroesing was absent. The motion carried.

Council member Hein made a motion to pass Resolution No. 4-2005 establishing two youth representatives on the City Council. Council member Kirby seconded the motion. Fiegenschuh reported that the youth representatives will be selected from the Junior classes. Voting YEA: Council members Schatz, Smith, Lukassen, Kirby, and Hein. Voting NAY: None. Council member Kroesing was absent. The motion carried and Resolution No. 4 - 2005 was passed and adopted as follows:

RESOLUTION NO. 4 - 2005

WHEREAS, the Mayor and City Council of the City of David City, Nebraska, may establish two youth council members, and,

WHEREAS, the two youth council members will be comprised of one student from David City Public High School and one student from St. Thomas Aquinas High School, and,

WHEREAS, each youth council member will be required to attend all city council meetings and the committee of the whole meeting as designated by the mayor and city council, and,

WHEREAS, each youth council member will be able to give input on issues of importance to the City of David City, but will not be allowed to vote on any issues and will not be allowed to take part in executive sessions, and,

WHEREAS, each youth council member will serve a term of one year from April through March of the following year before being replaced by a new youth council member.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF DAVID CITY, NEBRASKA, that the two youth council member positions are now created.

Dated this 9th day of March, 2005.

Mayor Stephen Smith

City Clerk Joan E. Kovar

Mayor Smith declared the Public Hearing open at 8:22 p.m. to consider the request of Mark & Willow Holoubek for a preliminary plat referred to as "Dove West Addition", located in Outlot 2 in part of the W ½ SW ¼ containing 4.86 acres more or less, and the West Addition, Section 19-15-3, part of the W ½ SW ¼ containing 1.5 acres more or less in the West Addition - located between 1st Street and Road "M" and south of the Union Pacific Railroad). There were many concerns expressed regarding the natural drainage ditch through this property. City Attorney Egr stated that he was working on a rough draft of a drainage easement. Mark & Willow Holoubek didn't see the need for a drainage easement; they stated they could include that in a covenant. The follow recording took place:

Mark Holoubek: The water plumb full is to the top of the drainage way. We're not restricting any water, it's going through there now. We intend for it to go through there. There is a very deep large capacity for water.

Council member Kirby: I've seen the water back up from where the street is all the way up to where that old existing road goes. It's a pond in there; you could put boats in there.

Mark Holoubek: And that's why there's only one lot in this entire area.

Willow Holoubek: All the built houses will sit higher than the house I live in right now, and the second thing is I have taken your tires - those are kind of hard to get rid of, I've taken your 10 pound bowling balls - my kids have enjoyed that one, Ok, and they have all been on the other side of "M" road. We clean out every time we get a big rain, I take all the City's trash, and I take it because I live there.

Council member Kirby - I live by a ditch too and I've got peoples trash all the time.

Willow - I do too

Mayor Stephen Smith - I'm not disputing your words exactly, but I'm sure that Don Zima did the same thing and whoever lived there before him did the same thing.

Willow - And we're willing to do that.

Mayor - And I'll be honest with you my stance on this is simple, I support you people, I think it's great that you want to develop property, I have no problems with that, but Mr. Egr and I have known each other for years, I accept his advise as our City Attorney. I think to protect you folks, to protect us, because 10 years from now I'm not going to be sitting here, I want you to be protected regardless if you own the property for 100 years or you don't, and we're protected, and the best way to do that, to me, is to have it down in writing.

Mark Holoubek - May I ask what Federal law that is?

Mayor Stephen Smith: Mark, I have no clue on that. I'm talking just basic - working something out - so we have something written down. I'm just talking us here in David City, I'm not talking Federal or State. I just care about protecting you people, protecting the city, and following the advise of our attorney.

Mark Holoubek - My question is this, if I can ask the attorney, These are federal water ways and you can't stop the natural flow of water, isn't that regulated by Federal Law?

City Attorney Egr - What I am trying to avoid for the City, that's what I am hired to do from the City's standpoint, is to avoid these prescriptive easements, to clear up those kind of things, and put it in writing. Yes, you can't block it, it's case law in Nebraska that says if its a natural drainage way you can't obstruct it, but from the standpoint of being able to maintain that drainage way, I think the City has some concerns to make sure it has the ability to maintain that drainage. I think we can sit down and work out something from that standpoint, between a person from the Planning Commission, a person from the City Council, and yourselves, and if you have legal counsel, and myself as City Attorney, but as City Attorney I just cannot recommend to the City when we have a development going there, that we don't get it done right now and not have a problem come up down the line in 15 or 20 years from now. I won't be here at that time so it won't bother me, but I don't think I'd be doing my job in representing the City, unless when we have something like this come up we get it taken care of, because we've just had other problems in the past with these kinds of things and people not remembering this was done this way, or not even knowing that there were utilities and different things. This is the time to get it done, now while the people involved are here, while everybody has a good understanding of what's going on before you have development there and then you create a problem. We have a drainage problem, we want to avoid those kinds of problems, and the minute you start putting concrete up there you're going to have increased problems and this is what the City's been trying to avoid in having a controlled role, if you want to use that term, in where these things go so we don't add to existing water problems.

Willow Holoubek - So as not to drag out the meeting any longer, you said you have a preliminary easement for this.

Egr - It's just a simple one and I can't really go over it at this time until we have the map and then we can sit down and say "Ok this is how wide you folks can stand with it and this is how wide the City can stand with it" and then what things you may want to see done with it to make sure that your protected; I mean that was the recommendation of the Planning Commission that the preliminary is conditioned upon getting those things; and I would say that if the City Council passes a motion saying we accept the preliminary, not a final a preliminary, depending upon these conditions being taken care of, that this thing will go through. I think then we sit down and get things figured out.

Council member Hein asked: "Covenants are an agreement between who and who?"

City Attorney Egr: "Covenants are between the people who are selling the property (the developer) and those who are buying the property. The City is not involved in those covenants. Covenants are strictly between the developer and the buyer. The City of David City has nothing to do with covenants - enforcement does not involve the City.

Planning Commission member Jim Vandenberg: I think if this easement is done properly it should help Mark, it should help the property owners, and it should help the people that are going to buy the lots. That was our intent, it was not to complicate things, we like developing lots - property - we just want to protect everyone involved. If the easement is there the developer does not need to enforce a covenant to make people keep this drainage open.

Egr: And then when people buy the property it appears on the title insurance that there is an easement in favor of the City of David City and these are the terms and conditions of that easement.

Kirby: I'm all for the houses going in there as long as the water continues to drain; that's the outlet for all the water from 4th Street and "O" Street.

Surveyor Dick Ronkar: There is a build-able area on every lot that is more than a foot higher than "M" Road , so that, in the event of a big rain, and those two 48" culverts can't handle it and water backs up and overflows "M" Road those build-able areas are still more than a foot above M Road. What I am getting at is that they shouldn't have any water problems in those houses. Now these build-able areas aren't real big in some cases, but he has some houses in mind that could fit. There are build-able places on every lot that are more than a foot higher than M Road.

Mayor Smith declared the Public Hearing closed at 8:46 p.m..

Council member Kirby made a motion to accept the preliminary plat of Mark & Willow Holoubek referred to as "Dove West Addition" located in Outlot 2 in part of the W ½ SW ¼ containing 4.86 acres more or less, and the West Addition, Section 19-15-3, part of the W½ SW

¼ containing 1.5 acres more or less in the West Addition (located between 1st Street and Road "M" and south of the Union Pacific Railroad) provided that the Final Plat reflects additional easements as requested or needed by the Utility Supervisors, and a drainage easement is provided in conjunction with the Subdivision Agreement. Council member Schatz seconded the motion. Voting AYE: Council members Lukassen, Smith, Schatz, and Kirby. Voting NAY: Council member Hein. Council member Kroesing was absent. The motion carried.

Mayor Smith declared a recess at 8:46 p.m.. The meeting resumed at 9:00 p.m..

Mayor Smith declared the Public Hearing open at 9:02 p.m. to consider the request of Larry Sabata, owner, for Phase 2 of Sabata's Addition to David City, a tract of land located in the N ½ of the NE ¼ of Section 20, T15N, R3E of the 6th P.M. in Butler County, Nebraska, described as follows: Beginning at the northwest corner of the N ½ of the NW ¼ of Section 20, T15N, R3E of the 6th P.M. in Butler County, Nebraska, and assuming the north line of said N ½ of the NW ¼ to have a bearing of N 90_00'00" E; thence N 90_00'00" E and on said north line, 333.00 feet; thence S 00_56'47" E and parallel with the west line of said N ½ of the NE ¼, 1,150.20 feet; thence N 89_59'46" W and parallel with the south line of said N ½ of the NW ¼, 180.00 feet, to the east line of Larry J. Sabata First Addition to the City of David City, Butler County, Nebraska; thence N 00_56'47" W on said east line, 599.00 feet, to the northeast corner of said addition; thence N 89_59'46" W and on the north line of said addition, 153.00 feet, to the west line of said N ½ of the NW ¼; thence N 00_56'47" W and on said west line, 551.18 feet, to the point of beginning, containing 6.91 acres, more or less. Planning Commission member Jim Vandenberg reported that Larry Sabata agreed to move the front setback 2' further back (22' instead of 20') on Lots 16 thru 20 along 11th Street. Vandenberg explained that the property line is correct but the City Street (11th Street) is further east than it should be, a surveying problem that happened years ago, which makes the front yards appear to be smaller. Council member Hein asked if the Final Plat is approved what the additional cost will be to the City Utilities concerning Phase 2. Fiegenschuh stated that Lots 16 through 20 have access to water on the west side of "O" Street, the electric and sewer lines will need to be extended. The sewer extension is estimated at \$7,000 - \$9,000. The developer is responsible for the cost of the street with an 80/20 split on curb & gutter if they want curb and gutter. Traditionally, inside City limits the City would pay for the blacktop. Fiegenschuh continued that the way he understood it the sewer can be extended in the easement area for Lots 15 through 6, however a 10' separation is required between the water and sewer lines, so the water line would have to run from Lot #16 over to #15 and tie it and tee it off and run it all the way down to Lot #6 and tee it off to Lot #5 and loop it in, at a significant expense. Council member Hein questioned how significant. Fiegenschuh estimated \$50,000 - \$90,000 depending on the size of the line put in. Mayor Smith declared the Public Hearing closed at 9:15 p.m..

Comment [COMMENT1]:

Council member Kirby introduced Ordinance No. 995. Council member Kirby made a motion to accept Phase 2 of Sabata's Addition, legally described above, on the first reading only. Council member Schatz seconded the motion. Schatz stated that he supports accepting Phase 2 on "first" reading but he is concerned about the costs of extending the water line and wished that Water Supervisor Jim Kruse was present to give the Council more information. Mayor Smith stated that they support what Larry Sabata is trying to do but there are several issues that need to be clarified before the next meeting. Voting AYE: Council members Hein, Smith, Lukassen, Schatz, and Kirby. Voting NAY: None. Council member Kroesing was absent. The motion carried.

ORDINANCE NO. 995

AN ORDINANCE ACCEPTING AND APPROVING THE FINAL PLAT DESIGNATED AS "PHASE 2 OF SABATA'S ADDITION"; REPEALING CONFLICTING ORDINANCES AND SECTIONS; PROVIDING AN EFFECTIVE DATE; AND PROVIDING FOR PUBLICATION OF THE ORDINANCE IN PAMPHLET FORM.

WHEREAS, Larry J. Sabata, owner of a tract of land legally described as:

a tract of land located in the N ½ of the NE ¼ of Section 20, T15N, R3E of the 6th P.M. in Butler County, Nebraska, described as follows: Beginning at the northwest corner of the N ½ of the NW ¼ of Section 20, T15N, R3E of the 6th P.M. in Butler County, Nebraska, and assuming the north line of said N ½ of the NW ¼ to have a bearing of N 90_00'00" E; thence N 90_00'00" E and on said north line, 333.00 feet; thence S 00_56'47" E and parallel with the west line of said N ½ of the NE ¼, 1,150.20 feet; thence N 89_59'46" W and parallel with the south line of said N ½ of the NW ¼, 180.00 feet, to the east line of Larry J. Sabata First Addition to the City of David City, Butler County, Nebraska; thence N 00_56'47" W on said east line, 599.00 feet, to the northeast corner of said addition; thence N 89_59'46" W and on the north line of said addition, 153.00 feet, to the west line of said N ½ of the NW ¼; thence N 00_56'47" W and on said west line, 551.18 feet, to the point of beginning, containing 6.91 acres, more or less,

Comment [COMMENT2]:

has filed said Plat with the City of David City, Nebraska, and has requested that said Plat be approved and accepted, and

WHEREAS, the Planning Commission of the City of David City, Nebraska, has given their acceptance and approval at their February 19, 2005, meeting.

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

Section 1. That the Final Plat for Phase 2 of Sabata's Addition to David City, as filed in the City Office of the City of David City, Nebraska, is hereby accepted and approved and said owner is hereby given the right to plat said Addition to the City of David City, Nebraska.

Section 2. The Subdivider, Larry J. Sabata, shall record the final plat with the Office of the County Assessor and County Clerk of Butler County, Nebraska, pay all recording fees and provide (1) copy of such recorded final plat to the City.

Section 3. This Ordinance shall be published in pamphlet form and shall be in full force and effect from and after its passage and approval as provided by law and city ordinance.

PASSED AND APPROVED this _____ day of _____, 2005.

Passed on 1st reading only 3-09-05
Mayor Stephen Smith

Passed on 1st reading only 3-09-05
City Clerk Joan E. Kovar

Mayor Smith declared the Public Hearing open at 9:32 p.m. to consider annexing Phase 2 of Sabata's Addition to David City, legally described as a tract of land located in the N ½ of the NE ¼ of Section 20, T15N, R3E of the 6th P.M. in Butler County, Nebraska, described as follows: Beginning at the northwest corner of the N ½ of the NW ¼ of Section 20, T15N, R3E of the 6th P.M. in Butler County, Nebraska, and assuming the north line of said N ½ of the NW ¼ to have a bearing of N 90_00'00" E; thence N 90_00'00" E and on said north line, 333.00 feet; thence S 00_56'47" E and parallel with the west line of said N ½ of the NE ¼, 1,150.20 feet; thence N 89_59'46" W and parallel with the south line of said N ½ of the NW ¼, 180.00 feet, to the east line of Larry J. Sabata First Addition to the City of David City, Butler County, Nebraska; thence N 00_56'47" W on said east line, 599.00 feet, to the northeast corner of said addition; thence N 89_59'46" W and on the north line of said addition, 153.00 feet, to the west line of said N ½ of the NW ¼; thence N 00_56'47" W and on said west line, 551.18 feet, to the point of beginning, containing 6.91 acres, more or less. Council member Hein made a motion to continue the Public Hearing to consider annexing Phase 2 of Sabata's Addition to David City legally described above, to the April 13th Council meeting. Council member Lukassen seconded the motion. Voting AYE: Council members Smith, Schatz, Kirby, Lukassen, and Hein. Voting NAY: None. Council member Kroesing was absent. The motion carried.

Comment [COMMENT3]:

Council member Hein made a motion to table consideration of an ordinance annexing Phase 2 of Sabata's Addition, legally described above, to the April 13th Council meeting. Council member Lukassen seconded the motion. Voting YEA: Council members Smith, Kirby, Schatz, Lukassen, and Hein. Voting NAY: None. Council member Kroesing was absent. The motion carried.

ORDINANCE NO.

AN ORDINANCE PROVIDING FOR THE ANNEXATION OF PHASE 2 OF SABATA'S ADDITION, LEGALLY DESCRIBED BELOW, REPEALING ANY ORDINANCES IN CONFLICT HEREWITH; DESCRIBING THE TIME WHEN THIS ORDINANCE SHALL BE IN FULL FORCE AND EFFECT, AND PROVIDING FOR PUBLICATION OF THE ORDINANCE IN PAMPHLET FORM.

WHEREAS, a majority of the City Council of the City of David City, Nebraska, favors the annexation of the following described real property and the extension of the city limits to include said property, as follows:

- 1) a tract of land located in the N ½ of the NE ¼ of Section 20, T15N, R3E of the 6th P.M. in Butler County, Nebraska, described as follows: Beginning at the northwest corner of the N ½ of the NW ¼ of Section 20, T15N, R3E of the 6th P.M. in Butler County, Nebraska, and assuming the north line of said N ½ of the NW ¼ to have a bearing of N 90_00'00" E; thence N 90_00'00" E and on said north line, 333.00 feet; thence S 00_56'47" E and parallel with the west line of said N ½ of the NE ¼, 1,150.20 feet; thence N 89_59'46" W and parallel with the south line of said N ½ of the NW ¼, 180.00 feet, to the east line of Larry J. Sabata First Addition to the City of David City, Butler County, Nebraska; thence N 00_56'47" W on said east line, 599.00 feet, to the northeast corner of said addition; thence N 89_59'46" W and on the north line of said addition, 153.00 feet, to the west line of said N ½ of the NW ¼; thence N 00_56'47" W and on said west line, 551.18 feet, to the point of beginning, containing 6.91 acres, more or

Comment [COMMENT4]:

Section 1. Chapter 7: Fire Regulations of the David City Municipal Code Book be amended to read as follows:

Chapter 7
FIRE REGULATIONS

Article 1. Fire Prevention

§7-101 FIRE PREVENTION; ADOPTION OF UNIFORM FIRE CODE. There is hereby adopted by the City of David City, Nebraska, for the purpose of prescribing regulations governing conditions hazardous to life and property from fire or explosion that certain Code and Standards known as the Uniform Fire Code Standards which Code makes reference to the National Fire Code, published by Western Fire Chiefs' Association and the International Conference of Building Officials, being the current editions thereof and the whole thereof, except such portions as are hereinafter deleted, modified or amended by this Chapter, of said Code and Standards. One (1) copy is on file with the City Clerk of the City of David City, Nebraska. These Codes are hereby adopted and incorporated as fully as if set out at length, herein, and from the date on which this Chapter shall take effect, the provisions of these Codes shall be controlling within the limits of the City of David City, Nebraska. (Ref. 18-132, 19-902, 19-92.)

§7-102 FIRE PREVENTION; DEFINITIONS.

- a. The word "jurisdiction" used in the Uniform Fire Code, means the zoning jurisdiction of the City of David City.
- b. The term "Municipal official" means all elected and appointed officials of the City of David City.

§7-103 FIRE PREVENTION; OFFICERS RESPONSIBLE FOR CODE ENFORCEMENT.

- a. Inspection under the Uniform Fire Code shall be accomplished principally by the Zoning Administrator, the Fire Chief, Police Chief, and the Police Officers.
- b. For special or unusual situations the Zoning Administrator or the Fire Chief may recommend to the City of David City the employment of special technical inspectors to improve the enforcement of these codes.

§7-104 FIRE PREVENTION; FIRE LIMITS DEFINED. The following described territory in the Municipality shall be and constitute the fire limits:

The corporate limits of the City of David City, Nebraska
as they exist from time to time

§7-104.01 FIRE PREVENTION; STORAGE OF FLAMMABLE OR COMBUSTIBLE LIQUIDS PROHIBITED. The storage of flammable or combustible liquids in outside aboveground tanks of any size is prohibited within the Residential, Public, Semi-Public and Park areas. (Ref. 17-137 RS Neb.) (Fritz questioned what size tanks?)

§7-104.02 FIRE PREVENTION; STORAGE OF LIQUEFIED PETROLEUM RESTRICTED. In the zones where storage of liquefied petroleum is permitted, the provision of the Uniform Fire

Code shall govern. Liquefied petroleum may be stored in areas that are zoned ~~I-2, I-1, and B-2~~
Industrial and Downtown Commercial. (Ref 17-137 RS Neb.)

§7-104.03 FIRE PREVENTION; STORAGE OF EXPLOSIVES AND BLASTING AGENTS PROHIBITED. No areas are zoned to permit the storage of explosives and blasting agents except as regulated in Section 77.106(b) of the Uniform Fire Code. (Ref. 17-137 RS Neb.)

§7-105 FIRE PREVENTION; PERMIT FOR HAZARDOUS MATERIALS. Hazardous materials may be stored within the Commercial and Industrial zones referred to in Section 7-104 provided that all such materials are identified as to kind, amount, location and other data concerning said materials in "Application to Store Hazardous Material" made annually on August 1, or on the date when such materials are initially placed in the City, to the Fire Chief and the Zoning Administrator, which application must be made by the person in control of such materials. "Application to Store Hazardous Materials" shall be made in duplicate to the Fire Chief and Zoning Administrator on forms supplied by the City and kept on file in the Fire Department. (Ref. 17-137 RS Neb.)

§7-106 FIRE PREVENTION; BURNING REGULATIONS WITHIN FIRE LIMITS. Within the prescribed fire limits, burning is allowed in incinerators that conform to the standards hereinafter set forth. An approved City permit must be issued for the incinerator prior to its use. Barrels, steel cans, masonry boxes, whether covered or not, are not classified as incinerators. Boilers and wood burning stoves may be used as outside commercial incinerators only if they substantially meet the requirements hereinafter set forth specifically including the requirements of spark arresters and foundations. Incinerators to be used inside buildings shall conform to the standards as specified in the Codes adopted in Section 7-101. Outside commercial incinerators for use in the fire limits shall, as a minimum, be constructed of steel plate not less than three-sixteenths (3/16) inches in thickness. The base or burning area of the incinerator may not exceed sixteen (16) square feet in area. All joints and seams of the incinerator must be welded together, except for access doors. There be no more than two (2) access doors for each incinerator. The base walls or burning area of the incinerator must have at least six (6), but not more than ten (10) ventilation holes in each wall of the incinerator base. The holes shall not be greater than one (1") inch in diameter. The base or burning area of the incinerator must be covered with a chimney with an opening not to exceed one (1) square foot in diameter. Chimneys shall be connected to the incinerator base or burning area as noted above. The terminating point of the chimney shall extend above the incinerator base or burning area the same distance as the height of the incinerator base or burning area. The chimney must terminate in a steel, or substantially constructed, spark arrester having mesh openings of not more than one half (1/2") inch in diameter or one-quarter (1/4") inch mesh. Spark arresters must cover the entire chimney opening. Incinerators may have a hole, not to exceed nine (9) square inches, in the bottom of the incinerator base. Outside commercial incinerators must meet the location standards of Section 7-107.02. Inside incinerators shall be approved by an independent testing or rating agency and must conform to the Codes adopted in Section 7-101. All incinerators must meet the standards of the Department of Environmental Quality. (Ref. 17-549, 17-556.)

§7-107 FIRE PREVENTION; BURNING AND FIRES PROHIBITED; EXCEPTION AND REGULATIONS. All open burning and open fires in the City are prohibited, except; in barbecues, outdoor fireplaces or with written permission of the Fire Chief for a particular event. Approved containers may be used for burning of materials that do not give off toxic gases or fumes, offensive or foul odors, or dirty or oily smoke. Permitted materials to be burned include paper without ink, cardboard, wood, etc. Prohibited materials include feathers, meat, tires, oil or other noxious material including household garbage and newspapers. **David City Residents must pay a yearly \$20 application fee and file a yearly burn barrel permit with the City Office. All open burning containers must first be inspected and approved by the David City Fire Chief before they can be used. A first offense will result in a written warning from the police department. A second offense will result in a year long suspension of the burn permit. A third offense will result in a permanent revocation of the burn permit.** *(Fritz thought this should also require council approval) (Ref. 17-549, 17-556.)*

§7-107.01 FIRE PREVENTION; DESIGN OF CONTAINERS FOR AREAS OTHER THAN THE FIRE LIMITS. For areas other than the fire limits, steel containers, as hereinafter defined, shall be used. Steel containers for burning in areas other than the fire limits are defined as follows: A steel container used for burning must have a volume of at least thirty (30) gallons and not more than sixty (60) gallons. The container must be held above the ground at least 4" to 6" by steel, concrete or masonry material in a stable, plumb manner. It must have six (6) but not more than ten (10) holes in the walls, the diameter of which shall be not more than one (1") inch, all located in the lowest ten (10%) per cent of the sidewalls. There must be a woven or punched metal cover over the top of the container with opening not more than one half (½") inch by one half (½") inch. The cover must be larger in area than the top of the container and must be secured to the container by chains, hinges, or other suitable device. The cover must be visible for inspection to ensure compliance with these provisions. *(Ref. 17-549, 17-556.),*
(Fritz thought this could be a liability issue)

§7-107.02 FIRE PREVENTION; LOCATION OF CONTAINERS. Containers used for burning must be placed on the property where the user resides and may not be located in a public alley, street, or right-of-way. Containers shall be placed on steel, concrete, or masonry support four (4") inches to six (6") inches high in a plumb manner and on a site where all vegetation and/or combustible material is removed in all directions for a distance of four feet (4') measured from the edge of the container; at least ten feet (10') from any building, garage or shed; at least six feet (6') distance from any utility pole, ground-level transformer or telephone pedestal; a distance of twenty feet (20') measured at the closest point, away from any overhead utility wires or cables; a distance of at least twenty feet (20') from the branches of any tree; and in general; in a manner so as to provide protection to other properties. *(Ref. 17-549, 17-55.)*

§7-107.03 FIRE PREVENTION; HOURS PERMITTED. Burning is permitted from seven o'clock (7:00) a.m. to six o'clock (6:00) p.m. from Monday through and including Saturday. No burning is permitted on Sunday. *(Ref. 17-556, 81-520.01 RS Neb.)*

Article 2. Fires

§7-201 FIRES; AUTHORITY OF FIRE CHIEF. When there is a fire, the Fire Chief or the designated Firemen in charge, shall have the authority to do all things that are, in his judgment, necessary to protect life and property in the area adjacent to the fire. *(Ref. 17-147 RS Neb.)*

§7-201 FIRES; ASSISTANCE. It shall be unlawful for any person to refuse, after receiving a command of the Fire Chief or Assistant Fire Chief, to aid in extinguishing a fire or to assist in the removal and protection of property. (Ref. 28-908 RS Neb.)

§7-203 FIRES; SPECTATORS. (1) **A person commits the offense of interfering with a fireman if at any time and place where any fireman is discharging or attempting to discharge any official duties, he willfully:**

- (d) Resists or interferes with the lawful efforts of any fireman in the discharge or attempt to discharge an official duty; or
- (e) Disobeys the lawful orders given by any fireman while performing his duties; or
- (f) Engages in any disorderly conduct with delays or prevents a fire from being extinguished within a reasonable time; or
- (g) Forbids or prevents others from assisting or extinguishing a fire or exhorts another person, as to whom he has no legal right or obligation to protect or control, not to assist in extinguishing a fire.

(2) **As used in this section, fireman shall mean any person who is an officer, employee, or member of a fire department or fire-protection or firefighting agency of the Federal Government, the State of Nebraska, the City of David City, County of Butler County, rural fire district, or other public or municipal corporation or political subdivision of the state, whether such person is a volunteer, partly paid, or fully paid, while he is actually engaged in firefighting, fire supervision, fire suppression, fire prevention, or fire investigation.**

(3) **Interference with a fireman on official duty is a Class I misdemeanor.** (Ref. 28-908 RS Neb.) (*Fritz suggested adopting language directly from the State Statute*)

§7-204 FIRES; TRAFFIC. No vehicle, except by the specific direction of the Fire Chief or Assistant Fire Chief, shall follow, approach, or park closer than five hundred feet (500') to any fire vehicle, or to any fire hydrant to which a hose is connected. Nothing herein shall be construed to apply to vehicles carrying doctors, members of the Fire Department, or emergency vehicles. (Ref. 39-753 RS Neb.)

§7-205 FIRES; PEDESTRIANS. It shall be unlawful for any pedestrian to enter upon or remain in any street or roadway within a distance of three hundred feet (300') from a fire when fire fighting vehicles are approaching or are present at the scene of a fire.

§7-206 FIRES; FALSE ALARMS. It shall be unlawful for any person to intentionally and without good and reasonable cause raise any false alarm of fire. (Ref. 28-907 RS Neb.)

§7-207 FIRES; DROP CEILINGS; REMOVAL OF TIN CEILING COVERINGS; UNLAWFUL INSTALLATION. It shall be unlawful to install a drop ceiling in a room or rooms of a commercial building within the City limits with a tin and/or metal ceiling covering without:

1. First removing such tin and/or metal ceiling covering before installation of the drop ceiling; or
2. Installing a fire sprinkler system. All sprinkler systems installed, from this date, shall comply with the **State Fire Marshal codes.**

- a. Having a static flow test to determine the water pressure;
- b. Determining the minimum number of heads required, with each head covering the square footage specified in the 1990 Factory Mutual System pocket guide to automatic sprinklers;
- c. Installing a back-flow device;
- d. Placing the sprinkler heads below the suspended ceiling;
- e. Sprinkler heads shall also be installed in basements when the building is being remodeled by at least fifty percent (50%) of its assessed value;
- f. Having a pre-approved plan.

Article 3. Penal Provision

§7-301 VIOLATION; PENALTY. Any person who shall violate or refuse to comply with the enforcement of any of the provisions of this Chapter, set forth at full length herein or incorporated by reference shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be fined not more than one hundred dollars (\$100.00) for each offense. A new violation shall be deemed to have been committed every twenty-four (24) hours of such failure to comply.

Section 2. Any other ordinance or section passed and approved prior to passage, approval, and publication or posting of this ordinance and in conflict with its provisions is repealed.

Section 3. This ordinance shall be published in pamphlet form and shall be in full force and effect from and after its passage as provided by law.

Passed and approved this _____ day of _____, _____.

Passed on 2nd reading only - 03-09-05
Mayor Stephen Smith

Passed on 2nd reading only 03/09/05
City Clerk Joan E. Kovar

Council member Schatz made a motion to pass and adopt Resolution No. 5-2005 incorporating an occupation fee on all city utility rates. Council member Lukassen seconded the motion. Council member Schatz stated that the occupation fee will be used primarily to build up the reserves for the non-generating city departments and then hopefully to start a capital improvement program. Voting YEA: Council members Smith, Kirby, Hein, Lukassen, and Schatz. Voting NAY: None. Council member Kroesing was absent. The motion carried and Resolution No. 5-2005 was passed and adopted as follows:

RESOLUTION NO. 5 - 2005

WHEREAS, The City of David City, Nebraska, has conducted budget committee meetings, and,

WHEREAS, it has been determined that an occupation fee of 3% on all utility rates would be conducive in balancing the budget and building the City's reserves.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF DAVID CITY, NEBRASKA, that a 3% occupation fee be charged on all utility (electric, water, and sewer) rates effective October 1, 2005.

PASSED AND APPROVED this 9th day of March, 2005.

Mayor Stephen Smith

City Clerk Joan E. Kovar

Ordinance No. 990 was passed on 1st reading on February 9, 2005. Council member Schatz made a motion to suspend the statutory rule that requires an Ordinance be read on three separate days. Council member Kirby seconded the motion. Voting AYE: Council members Hein, Lukassen, Smith, Kirby, and Schatz. Voting NAY: None. Council member Kroesing was absent. The motion carried.

Council member Kirby made a motion to pass and adopt Ordinance No. 990 on the third and final reading. Council member Schatz seconded the motion. It was explained that the City hired Olsson Associates to perform an electric rate study. The City is passing on their rate increases from Western Area Power Association (WAPA) and Nebraska Public Power District (NPPD). Voting AYE: Council members Hein, Smith, Lukassen, Schatz, and Kirby. Voting NAY: None. Council member Kroesing was absent. The motion carried and Ordinance No. 990 was passed and adopted as follows:

ORDINANCE NO. 990

AN ORDINANCE RELATING TO ELECTRIC SERVICE RATES AND MINIMUM CHARGES, TO PROVIDE A NEW SCHEDULE OF ELECTRIC RATES, MINIMUM CHARGES, AND CUSTOMER SERVICE CHARGES, TO DISTINGUISH RESIDENTIAL RATES, COMMERCIAL RATES, INDUSTRIAL RATES, OFF-PEAK INDUSTRIAL RATES, AND IRRIGATION RATES, TO SET AVAILABILITY RATING; TO REPEAL ALL PARTS OF THE CODE, RESOLUTIONS AND ORDINANCES IN CONFLICT HEREWITH; TO PROVIDE WHEN THE ORDINANCE SHALL TAKE EFFECT; AND TO PROVIDE FOR PUBLICATION OF THE ORDINANCE IN PAMPHLET FORM.

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

Section 1. NEW SCHEDULE: Relating to electric service and minimum charges, to provide a schedule of electric rates, minimum charges, and customer service charges, to distinguish residential rates, commercial rates, industrial rates, off-peak industrial rates, and irrigation rates; to set availability rating; to provide and establish the following tariff of rates to consumers of electric service from the electric distribution system of the City of David City, Nebraska.

RESIDENTIAL SERVICE

Available

To residential customers in the established service area of David City.

Applicable

To single-family residences and individually metered apartments for all domestic purposes when all service is supplied through a single meter. It is not applicable to residences where a commercial enterprise is conducted.

Character of Service

A.C. 60 Hertz, Single-Phase 120 volt, 2 wire or 120/240 volts, 3 wire.

Rate

Customer Service Charge - \$7.40 per month (or partial month)

Summer	Winter	
\$0.0765	\$0.0753	per kilowatt-hour for the first 500 kilowatt-hours used per month
\$0.0686	\$0.0519	per kilowatt-hour for the next 500 kilowatt-hours used
\$0.0607	\$0.0343	per kilowatt-hour for all additional use.

**Subject to Application of Production Cost Adjustment
(PCA)**

Minimum Bill

Customer Service Charge

RESIDENTIAL SUMMER CONTROLS

Applicable

To residential consumers who have allowed the Utility Department to install, and operate, such devices as would be required to cycle central air conditioning units during periods of peak electrical demand and imposed upon the electrical system. Window air conditioning units, on a separate electric circuit can be included in this rate.

Rate

Customer Service Charge - \$7.40 per month

Summer	Winter	
\$0.0765	\$0.0753	per kilowatt-hour for the first 500 kilowatt-hours used per month
\$0.0633	\$0.0519	per kilowatt-hour for the next 500 kilowatt-hours used
\$0.0580	\$0.0343	per kilowatt-hour for all additional use.

Subject to Application of Production Cost Adjustment

(PCA)

Minimum Bill
Customer Service Charge

Seasonal Billing Periods

Summer - Summer period is for the meter readings obtained during the four month period of June through September.

Winter - Winter period is for the meter readings obtained during the eight month period of October through May.

Terms of Payment

Utility bills are mailed on approximately the 25th day of each month and are payable upon receipt. They become due the 1st day of each month and become delinquent if not received in the City Office by 5:00 p.m. on the 10th day of the month. If the 10th of the month falls on a week-end, customers will be given the following regular business day. A ten percent (10%) penalty is imposed on all delinquent bills.

COMMERCIAL SERVICE

Available

To any non residential consumer in the established service area of David City.

Applicable

To any non-residential consumer for lighting, heating and power purposes where the customer's billing demand does not exceed 35 Kw or 10,000 Kwh for three consecutive months.

Character of Service

A.C. 60 Hertz, single-phase or three-phase at any of the Cities standard voltages.

Single Phase Rate

Customer Service Charge - \$7.40 per month (or partial month)

Summer	Winter	
\$0.0853	\$0.0837	per kilowatt-hour for the first 1000 kilowatt-hours used per month
\$0.0666	\$0.0586	per kilowatt-hour for the next 1000 kilowatt-hours used
\$0.0666	\$0.0471	per kilowatt-hour for all additional use.

Subject to Application of Production Cost Adjustment

(PCA)

Minimum Bill

Customer Service Charge, or \$1.75 per month per horsepower for the first 10 horsepower and \$1.00 per horsepower of connected load thereafter, or whichever is the largest.

Three Phase Rate
Customer Service Charge - \$14.80 per month (or partial month)

Summer	Winter	
\$0.0853	\$0.0837	per kilowatt-hour for the first 1000 kilowatt-hours used per month
\$0.0666	\$0.0586	per kilowatt-hour for the next 1000 kilowatt-hours used
\$0.0666	\$0.0471	per kilowatt-hour for all additional use.
Subject to Application of Production Cost Adjustment (PCA)		

Minimum Bill

Customer Service Charge or \$1.75 per month per horsepower for the first 10 horsepower and \$1.00 per horsepower of connected load thereafter, or whichever is the largest.

Seasonal Billing Periods

- Summer - Summer period is for the meter readings obtained during the four month period of June through September.
- Winter - Winter period is for the meter readings obtained during the eight month period of October through May.

Terms of Payment

Utility bills are mailed on approximately the 25th day of each month and are payable upon receipt. They become due the 1st day of each month and become delinquent if not received in the City Office by 5:00 p.m. on the 10th day of the month. If the 10th of the month falls on a week-end, customers will be given the following regular business day. A ten percent (10%) penalty is imposed on all delinquent bills.

Power Factor Adjustment

The rates set forth in this schedule are based on the maintenance by the customer of a power factor of not less than 90% leading or lagging at all times. If it is determined by test that the power factor at the time of the Customer's peak load is less than 90%, the Utility Department, at its option, may correct the power factor of the Customer's load at the expense of the Customer.

INDUSTRIAL SERVICE

Available

To any non residential consumer in the established service area of David City.

Applicable

To any consumer whose monthly consumption equals or exceeds 10,000 Kwh and whose monthly peak demand equals or exceeds 35 Kw for three consecutive months.

Character of Service

A.C. 60 Hertz, single-phase or three-phase at any of the Cities standard voltages.

Rate

Demand Charge

Summer	\$15.50 per kilowatt of maximum billing demand
Winter	\$12.10 per kilowatt of maximum billing demand

Energy Charge

Summer	\$0.0319 per kilowatt-hour used
Winter	\$0.0262 per kilowatt-hour used

Subject to Application of Production Cost Adjustment

(PCA)

Minimum Bill

The minimum bill shall be \$292.00 per month, or the billing demand charge, whichever is greater.

Determination of Billing Demand

The maximum demand for any billing period shall be the larger of: The highest integrated kilowatt load registered on the meter during any thirty (30) minute period occurring in the billing period; or fifty four percent (54%) of the highest kilowatt demand registered on the meter during the preceding months of June, July, August, or September.

Seasonal Billing Periods

Summer - Summer period is for the meter readings obtained during the four month period of June through September.

Winter - Winter period is for the meter readings obtained during the eight month period of October through May.

Terms of Payment

Utility bills are mailed on approximately the 25th day of each month and are payable upon receipt. They become due the 1st day of each month and become delinquent if not received in the City Office by 5:00 p.m. on the 10th day of the month. If the 10th of the month falls on a week-end, customers will be given the following regular business day. A ten percent (10%) penalty is imposed on all delinquent bills.

Power Factor Adjustment

The rates set forth in this schedule are based on the maintenance by the customer of a power factor of not less than 90% leading or lagging at all times. If it is determined by test that the power factor at the time of the Customer's peak load is less than 90%, the Utility Department, at its option, may correct the power factor of the Customer's load at the expense of the Customer.

Fluctuating Loads

Customers operating equipment having a highly fluctuating or large instantaneous demand, such as welders and X-ray machines, shall be required to isolate these loads from the

balance of the electric system if they unduly interfere with service on the lines. The customer shall be required to pay all nonbetterment costs for corrective equipment to eliminate the interference.

OFF-PEAK INDUSTRIAL SERVICE

Available

To any non residential consumer in the established service area of David City.

Applicable

To any consumer whose monthly consumption equals or exceeds 10,000 Kwh and whose monthly peak demand equals or exceeds 35 Kw for three consecutive months and whose peak demand during the winter season exceeds the peak demand experienced during the preceding summer season.

Character of Service

A.C. 60 Hertz, single-phase or three-phase at any of the Cities standard voltages.

Rate

Demand Charge

**Summer
Winter**

**\$15.50 per kilowatt of maximum billing demand
\$ 7.90 per kilowatt of maximum billing demand**

Energy Charge

**Summer
Winter**

**\$0.0319 per kilowatt-hour used
\$0.0262 per kilowatt-hour used
Subject to Application of Production Cost Adjustment**

(PCA)

Minimum Bill

The minimum bill per month shall be **\$266.00** during the winter months, or the billing demand charge, whichever is greater.

The minimum bill per month shall be **\$292.00** during the summer months, or whichever is the greater between the billing demand or the summer/winter minimum.

Determination of Billing Demand

The maximum demand for any billing period shall be the larger of: The highest integrated kilowatt load registered on the meter during any thirty (30) minute period occurring in the billing period; or fifty four percent (54%) of the highest kilowatt demand registered on the meter during the preceding months of June, July, August, or September.

Seasonal Billing Periods

Summer - Summer period is for the meter readings obtained during the four month period of June through September.

Winter - Winter period is for the meter readings obtained during the eight month period of October through May.

Terms of Payment

Utility bills are mailed on approximately the 25th day of each month and are payable upon receipt. They become due the 1st day of each month and become delinquent if not received in the City Office by 5:00 p.m. on the 10th day of the month. If the 10th of the month falls on a week-end, customers will be given the following regular business day. A ten percent (10%) penalty is imposed on all delinquent bills.

Power Factor Adjustment

The rates set forth in this schedule are based on the maintenance by the customer of a power factor of not less than 90% leading or lagging at all times. If it is determined by test that the power factor at the time of the Customer's peak load is less than 90%, the Utility Department, at its option, may correct the power factor of the Customer's load at the expense of the Customer.

Fluctuating Loads

Customers operating equipment having a highly fluctuating or large instantaneous demand, such as welders and X-ray machines, shall be required to isolate these loads from the balance of the electric system if they unduly interfere with service on the lines. The customer shall be required to pay all non-betterment costs for corrective equipment to eliminate the interference.

IRRIGATION SERVICE

Available

To irrigation customers in the established service area of David City.

Applicable

Applicable: **Off-Peak:** During the irrigation season, the utility may interrupt pump service during the peak hours. The peak hours shall be between 10:30 a.m. and 9:30 p.m. (Central Daylight Savings Time), Monday thru Saturday, excluding holidays. The City, at their sole discretion may change the period of interruptible hours.

Rate: On-peak irrigation (Firm)

\$37.20 per Horsepower connected per year. Energy consumed shall be billed at the rate of 5.74¢ per kilowatt hour per month, payable as used.

Rate: Off-peak irrigation (Non-Firm)

\$15.90 per Horsepower connected per year. Energy consumed shall be billed at the rate of 3.61¢ per kilowatt hour per month, payable as used.

Minimum Bill

The minimum bill shall be the Horse Power Charge

Determination of Connected Load

The connected load in horsepower shall be taken from the name plates of the motors or from an actual measurement of horsepower input to the motor, or motors, operating under maximum load conditions. The City reserves the right at any time to check the customer's load for recalculation of the connected load.

Terms of Payment

The total horsepower charge shall be billed on approximately April 25th of each year and total amount payable upon receipt. It shall become due the first day of May each year and

become delinquent at 5:00 p.m. on the 10th day of May. A ten percent (10%) penalty is imposed on all delinquent bills.

Bills for the kwh usage are mailed on approximately the 25th day of each month and are payable upon receipt. They become due the 1st day of each month and become delinquent at 5:00 p.m. on the 10th day of each month. A ten percent (10%) penalty is imposed on all delinquent bills.

Power Factor Adjustment

The rates set forth in this schedule are based on the maintenance by the customer of a power factor of not less than 90% whether leading or lagging at all times. Power factor adjustments will be made in the horsepower billing, when the power factor, as determined by test, at the time of the maximum use is less than 90%. The measured maximum horsepower will be multiplied by 90 percent and divided by the customer's power factor expressed in percent.

FLUCTUATING LOADS

Customers operating equipment having a highly fluctuating or large instantaneous demand, such as welders and X-ray machines, will be charged \$1.58 per month per KVA of such nameplate rating of such equipment or other equipment for energy used, and such charges will be in addition to the bill determined by the kilowatt hours recorded by the meter and billed at scheduled rates. It will be added to the minimum bill for services in the event the energy for other services does not equal the amount of a minimum bill for such other services.

Section 2. **RATE MODIFICATION**: Whereas the rates offered to the customer by the City is based upon the current rate being paid by the City to its wholesale supplier, the City shall reserve the right, during the term of the rates, to adjust said rates to the consumer by an amount not to exceed two (2) mills per kilowatt hour greater than the adjustment to the City by its wholesale supplier.

Section 4. That all rates in Ordinances and Resolutions in conflict herewith are hereby repealed.

Section 5. This ordinance shall be published in pamphlet form and all rates included in this Ordinance shall be effective as of April 1, 2005.

PASSED AND ADOPTED this 9th day of March, 2005

Mayor Stephen Smith

City Clerk Joan E. Kovar

Ordinance No. 991 was passed on 1st reading on February 9, 2005. 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 AYE: Council members Hein, Smith, Kirby, Schatz, and Lukassen. Voting NAY: None. Council member Kroesing was absent. The motion carried.

Council member Schatz made a motion to pass and adopt Ordinance No. 991 on the third and final reading. Council member Hein seconded the motion. It was noted that §3-1003A, Section (a) states: The developer(s) is responsible for 100 percent of all costs associated with the installation of all transformers and electrical lines "beyond" the plat line of the subdivision(s). The Council stated this should be amended to read "inside" the plat line instead of "beyond". Voting AYE: Council members Smith, Lukassen, Kirby, Hein, and Schatz. Voting NAY: None. Council member Kroesing was absent. The motion carried and Ordinance No. 991 was passed and adopted as follows:

ORDINANCE NO. 991

AN ORDINANCE RELATING TO UTILITY ASSESSMENTS FOR UTILITY INSTALLATION AND UPGRADES FOR ALL NEW SUBDIVISIONS AND HOUSING DEVELOPMENTS LOCATED WITHIN THE CITY'S CORPORATE LIMITS AND WITHIN THE CITY'S ZONING JURISDICTION; TO REPEAL ALL PARTS OF THE CODE, RESOLUTIONS AND ORDINANCES IN CONFLICT HEREWITH; TO PROVIDE AN EFFECTIVE DATE; AND TO PROVIDE FOR PUBLICATION OF THE ORDINANCE IN PAMPHLET FORM.

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

Section 1. DEFINITIONS: "Utility" means any municipally owned enterprise function such as electric distribution system, water distribution system, and sewer distribution system.

Section 2. That Chapter 3 of the Municipal Code of David City, Nebraska, Article 1 Water Department, §3-104A is adopted to read as follows:

§3-104A MUNICIPAL WATER DEPARTMENT; NEW SUBDIVISIONS AND HOUSING DEVELOPMENTS:

To defray the costs and expenses of utility installation/upgrades, as may be authorized by law, the Governing Body shall have the power and authority to require that all developers, petitioning the municipality for utility installation/upgrades, shall pay the following expenses:

- (a) The developer(s) is responsible for 100 percent of all costs associated with the development of new water lines installed inside the plat line and connecting subdivision(s).
- (b) The developer(s) is responsible for 100 percent of all costs associated with the installation of new water mains installed inside the plat line and connecting subdivisions.
- (c) Engineering Fees: The developer(s) is responsible for 100 percent of all costs associated with the services provided by the selected engineer.
- (d) Before final plat approval is granted by the Governing Body, the developer(s) shall have completed or paid their full share of the project costs.

- (e) The arrangement, character, extent, size, and location of all utilities within all subdivisions and housing developments shall conform to the standards of the Comprehensive Plan of current adoption and the Zoning Ordinances of the City. All required improvements and installations should be constructed or installed to conform to the provisions of this Ordinance and the standard specifications of the City.
- (f) All developers wishing to locate new subdivisions, or who have existing subdivisions and housing developments located within the City limits and within the City's zoning jurisdiction, are required to obtain and use an engineer that is approved by the municipality.

Section 3. That Chapter 3 of the Municipal Code of David City, Nebraska, Article 2 Sewer Department, §3-205A is adopted to read as follows:

§3-205A MUNICIPAL SEWER DEPARTMENT; NEW SUBDIVISIONS AND HOUSING DEVELOPMENTS:

To defray the costs and expenses of utility installation/upgrades, as may be authorized by law, the Governing Body shall have the power and authority to require that all developers, petitioning the municipality for utility installation/upgrades, shall pay the following expenses:

- (a) The developer(s) is responsible for 100 percent of all costs associated with the development of new sewer lines installed inside the plat line and connecting subdivision(s).
- (b) The developer(s) is responsible for 100 percent of all costs associated with the installation of new sewer mains installed inside the plat line and connecting subdivisions.
- (c) Sewer Lift Stations: The developer(s) is responsible for 100 percent of all costs associated with the installation of any sewer lift station.
- (d) Engineering Fees: The developer(s) is responsible for 100 percent of all costs associated with the services provided by the selected engineer.
- (e) Before final plat approval is granted by the Governing Body, the developer(s) shall have completed or paid their full share of the project costs.
- (f) The arrangement, character, extent, size, and location of all utilities within all subdivisions and housing developments shall conform to the standards of the Comprehensive Plan of current adoption and the Zoning Ordinances of the City. All required improvements and installations should be constructed or installed to conform to the provisions of this Ordinance and the standard specifications of the City.
- (g) All developers wishing to locate new subdivisions, or who have existing subdivisions and housing developments located within the City limits and within the City's zoning jurisdiction, are required to obtain and use an engineer that is approved by the municipality.

Section 4. That Chapter 3 of the Municipal Code of David City, Nebraska, Article 10 Electrical System, §3-1003A is adopted to read as follows:

§3-1003A MUNICIPAL ELECTRICAL SYSTEM; NEW SUBDIVISIONS AND HOUSING DEVELOPMENTS:

To defray the costs and expenses of utility installation/upgrades, as may be authorized by law, the Governing Body shall have the power and authority to require that all developers, petitioning the municipality for utility installation/upgrades, shall pay the following expenses:

- (a) Installation of Electric Lines and Transformers: The developer(s) is responsible for 100 percent of all costs associated with the installation of all transformers and electrical lines inside the plat line of the subdivision(s).
- (b) Engineering Fees: The developer(s) is responsible for 100 percent of all costs associated with the services provided by the selected engineer.
- (c) Before final plat approval is granted by the Governing Body, the developer(s) shall have completed or paid their full share of the project costs.
- (d) The arrangement, character, extent, size, and location of all utilities within all subdivisions and housing developments shall conform to the standards of the Comprehensive Plan of current adoption and the Zoning Ordinances of the City. All required improvements and installations should be constructed or installed to conform to the provisions of this Ordinance and the standard specifications of the City.
- (e) All developers wishing to locate new subdivisions, or who have existing subdivisions and housing developments located within the City limits and within the City's zoning jurisdiction, are required to obtain and use an engineer that is approved by the municipality.

Section 5. Any other ordinance or section passed and approved prior to passage, approval, and publication or posting of this ordinance and in conflict with its provisions is repealed.

Section 6. This ordinance shall be published in pamphlet form and shall be in full force and effect from and after its passage as provided by law.

Passed and approved this 9th day of March, 2005.

(Seal)

Mayor Stephen Smith

City Clerk Joan E. Kovar

Council member Schatz made a motion to approve an interlocal agreement between Rising City, Bellwood, and David City to enable the parties mentioned to deliver necessary governmental services to its citizens and taxpayers at the lowest possible cost. Council member Smith seconded the motion. Voting AYE: Council members Kirby, Lukassen, Hein, Smith, and Schatz. Voting NAY: None. Council member Kroesing was absent. The motion carried.

INTERLOCAL AGREEMENT

THIS AGREEMENT is made and entered into this ____day of _____, 2005, by and between the VILLAGE OF RISING CITY, THE VILLAGE OF BELLWOOD, and the CITY OF DAVID CITY, all MUNICIPAL CORPORATIONS, organized and existing under Nebraska Law.

WHEREAS the Nebraska Legislature has adopted the Interlocal Cooperation Act at 13-801 to 13-827 R.R.S. 1943, as amended, and

WHEREAS the purpose of the Interlocal Cooperation Act is to permit local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to form of governmental organization that will accord best with geographic, economic, population and other factors influencing the needs and development of local communities, and

WHEREAS the parties wish to enter into such an agreement authorized by 13-804 R.R.S. 1943, as amended to define their rights and responsibilities pursuant to said act and agreement.

NOW THEREFORE in consideration of the mutual covenants and agreements contained herein, it is hereby agreed by and between the parties here to as follows, to wit:

1. **PURPOSE OF AGREEMENT.** The purpose of this agreement is to enable the parties hereto to deliver necessary governmental services to its 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 of a resolution authorizing the public body to become a party to the Interlocal Agreement and to authorize its mayor or chairman to execute the agreement on behalf of the governing body. Any party may terminate its participation pursuant to this agreement by delivering to the non-terminating parties written notice of its intention to terminate, not less than 30 days prior to the effective date of termination. In such case, the non-terminating parties shall become the successor parties and shall continue to be bound by this agreement until such time as only one party shall remain, in which case the agreement shall become terminated in its entirety.
3. **NO SEPARATE LEGAL ENTITY CREATED.** This agreement does not and shall not be construed to create a separate legal entity to exercise any power that may be exercised by the parties hereto that is authorized pursuant to 13-804(6) R.R.S., 1943, as amended.
4. **SHARING OF RESOURCES.** In order to further the purpose of this agreement, each party to this agreement shall make available to all other parties to this agreement, 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 110 percent of the gross payroll cost for each employee responding to the request for assistance for the time incurred plus travel time. The gross payroll cost shall be defined as the responding parties employee's salary computed to an hourly basis in case of annual salaried employees and will also include payroll costs for fringe benefits and workers compensation premiums on a per hour basis.

The amount shall be paid within 30 days from the date responding billing is received by requesting party. In addition, the responding party shall be paid 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.

6. **NEBRASKA CERTIFIED BACKUP WATER & WASTEWATER OPERATORS.** In the event a Nebraska Certified Water or Wastewater Operator is unavailable, for said party, each party hereto 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. In the event 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. Nothing contained herein shall be construed to cause an employee of a responding party to become an employee of the requesting party while providing assistance pursuant to this agreement. In the event of a work related injury to a responding party's employee, the responding party shall be required to turn in a workers compensation claim to the responding party's workers compensation carrier. A responding party's employee will be considered to be acting on behalf of his or her employer during the scope of his or her employment while providing assistance to a requesting party pursuant to this agreement.

8. LIABILITY. All work done pursuant to this agreement shall be done at the direction and under the specific supervision of the party requesting assistance. 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 hereto agrees to notify its workers compensation and liability insurance carrier in regard to the duties and responsibilities pursuant to this Interlocal Cooperation Act.

9. SHARING OF INVENTORY. In the event 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 any other party to this agreement. In the event a responding party will not be caused a hardship in supplying the requested inventory item, it may supply .said item to the requesting party and shall be reimbursed by the requesting party for 110 percent of the inventory cost.

10. MACHINERY LIST. Each party to this agreement 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 parties to this agreement and a provide the list to all parties hereto. 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. In no event shall the equipment be operated other than by an employee of the city- or village owning the equipment. In the event of equipment breakdown needing 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 to this agreement shall notify all other parties to this agreement at least six (6) months in advance of advertising for bids for any construction of municipal improvements as required in 17-568.01 R.R.S. 1943, as amended. The intent for this provision is to enable the parties to this agreement to 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 in the event that similar work may be planned for another party to this agreement at approximately the same time.

12. PURCHASING OF EQUIPMENT. Any two or more parties to this agreement 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. In such case, the machinery and equipment so purchased shall be owned as tenants in common with the other parties electing to purchase 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. The scheduling of the use of the equipment, the storage of the equipment when not in use, and other factors incidental thereto shall be mutually agreed upon by the governing bodies so electing to purchase the machinery and equipment prior to the purchase thereof..

13. DISPUTE RESOLUTION COMMITTEE. In the event of disputes concerning this agreement, such disputes shall be submitted to a committee of all parties to this agreement. Each party hereto shall designate a person to be a representative on the committee in addition to the mayor of each party. A majority of the committee shall be required in order to constitute a quorum. A two-thirds vote of the quorum shall be necessary in order to make a decision on the complaint or dispute, which shall be binding upon the parties.

14. AMENDMENTS. This agreement may not be modified or amended, except upon the expressed written agreement of each party hereto.

VILLAGE OF RISING CITY,

