

CITY COUNCIL PROCEEDINGS

May 9, 2001

The Mayor and City Council of the City of David City, Nebraska met in open public session at 7:00 p.m. on May 9, 2001 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 May 3, 2001 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 notices 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, Gary Kroesing, Bill Schatz, Gary Smith, Nick Hein, and Mark Kirby, City Administrator Andrew Brannen, City Attorney Jim Egr, Water/Sewer Supervisor Gene Divis, Police Chief Stephen Sunday, Electric Supervisor Tim Kovar, Fire Chief Mike Hiatt, and City Clerk Joan E. Kovar.

Also present were: Jack & Betty Tarr, Jackie Horan, Joyce Smith, Cleo Pope, Bill Magargal, Marie Spodek, Dr. Jack Kaufmann, Ryan & Connie Comte, Claire & Lucille Brannen, David Wiebe, Katie Kadavy, Roger Kotil, Mr. & Mrs. Kent Longenecker, Dean Buresh, Dorothy Byers, Don & Shawn Matulka, Janis Cameron, Tony Weiland, Bob Palik, Father Brian Connor, Ed Sieck and son, Kelly Danielson, Kim Shore, Banner-Press Managing Editor Sherri Nun, and Mike Bruster of Kirkpatrick Pettis.

The minutes of the April 11 and April 24, 2001 meetings of the Mayor and City Council were approved upon a motion by Council member Kroesing and seconded by Council member Lukassen. Voting YEA: Council members Smith, Schatz, Hein, Lukassen, and Kroesing. Voting NAY: None. Council member Kirby was absent. The motion carried.

Stephen Smith asked for Petitions, Communications and Citizens' Concerns in addition to those contained in the Agenda packets.

Ryan Comte presented additional petitions against the proposed zoning change from High Density Residential to Commercial of Lots 1 and 4, Block 10, Original Town of David City. (Petitions had also been present at the Planning Commission meeting on May 4).

City Clerk Kovar read a "thank you" from Joe and Dorothy Bohaty addressed to Mayor Smith, Chief Sunday, and City Council for the efforts and enforcement for the clean-up of their neighbors (Barb Vogl) property at 1070 N 8th Street.

Council member Kirby arrived at 7:05 p.m.

Dr. Jack Kaufmann stated that David City has been a beautiful town for many years and when people realize that he is from David City they always comment what a beautiful, clean town David City is. Dr. Kaufmann suggested using the recently vacant lot on the west side of 4th Street between "D" and "E" Streets for a garden area for public use with a few chairs, benches, shrubs, and flowers. Dr. Kaufmann said the City should experiment - try it for two years. Dr. Kaufmann stated that he would be willing to pick up trash everyday in the garden area if needed.

(The City acquired the theater building at 481 4th Street, and recently demolished the building resulting in the vacant lot).

Tony Weiland, who resides at 150 West E Street, stated that "E" Street between 1st and Oak Street is a dangerous street. Tony stated "I have children ages 7 and 3 and people drive by there going 50 - 55 miles per hour. E Street is a dead end at Oak Street, however, some people drive straight through the Grubaugh Auction Lot. Others tear around the curve at such high speeds they almost lose control of their vehicles. Even the City snow plows don't slow down in this area." Tony visited with Dennis Romshek about closing the road to the Grubaugh sale lot. Tony said that Dennis seemed agreeable but wanted to discuss this with his Grandfather Dick Grubaugh. Police Chief Sunday stated that the police officers will patrol this area and check on traffic. Sunday will study the situation and make possible recommendations for traffic signs.

Tony Weiland also asked if the fire sirens had to blow. Tony stated "The fire siren is blown every time the fire department needs an "Alka-Selzer" or a 6-pak of beer". Fire Chief Mike Hiatt reported that the sirens are activated to get a response from the volunteer firemen. The siren also serves as a warning to the general public to be watchful for an approaching rescue unit or fire truck. This concern will be referred to committee for discussion.

Council member Hein made a motion to advance ahead to agenda item #18 - Consideration of the Planning Commission's recommendation concerning the rezoning of the southwest corner of 4th and G Streets. Council member Kroesing seconded the motion. All of the Council members were present, all voted YEA, and the motion carried.

Don Matulka, the owner of Lots 1 and 4, Block 10, Original Town of David City, and his son Shawn, stated that they wanted the property zoned Highway Commercial so that they could operate a small used car lot. In order for them to obtain a dealers permit, they need to have room for at least 10 cars, but aren't required to have 10 cars. They would probably have less than 10 cars at a time.

Several citizens in attendance expressed opposition as follows:

- Bill Magargal stated the City should not compound mistakes. Rather than spot zoning perhaps changes to the zoning regulations should be considered;
- Dr. Kaufmann said the car lot would detract from the beauty of the City. David City has a beautiful highway, wide streets, and beautiful yards; a car lot in the middle of a Residential area would detract from the beauty;
- Jackie Horan reported that Attorney Dave Ptak conducted a four hour meeting with the Council, Planning Commission, and Board of Zoning Adjustment which dealt with planning and zoning issues. We have designated Commercial areas located on the north edge of town, the south edge of town, and the main Downtown Commercial area. Car lots do not belong in High Density Residential areas. Jackie received an anonymous phone call in which a lady berated Jackie for expressing her opinion. Jackie felt that the anonymous caller thought that Jackie had initiated the protests and selected her as the "chosen one".
- Marie Spodek stated that it is a fact that businesses grouped 2 or 3 together do much better than one business isolated by itself. Zoning was done to make this a special town, this is not accomplished with spot zoning. Marie said it is a big

mistake for the City to get involved with one business at a time - this would be unwise;

Council member Schatz questioned what the Matulka's planned to do with the existing rental house. Don Matulka stated that the cars would probably be located on the south side of the house and the house would either remain a rental house or be used as a business office. Schatz asked if the property consisted of two separate lots, or if Lots 1 and 4 had been combined to form one lot. Matulka stated that they are two separate lots.



Council member Schatz presented the following: Potential Conflicts with Highway Commercial (HC) zoning ordinance :

- §414.1 Intent : This district is established to provide for highway-oriented business uses.....which are too land extensive for location in the downtown business district. (Provisions regarding minimum land and lot area are then provided).
- §414.6 Minimum Lot Area: The minimum lot area shall be twenty thousand (20,000) square feet.
- §414.7 Minimum lot width and frontage: The minimum lot width and frontage shall be one hundred (100) feet.

Conflict: If the house is on lot one and the car lot is on lot two (four) the 100 feet frontage requirement of §414.7 would be violated. Even if the house is removed and the two lots are joined as one, the square footage would be 14,000 sq. ft., in violation of the minimum lot area of 20,000 sq. ft. required in §414.6. If the house remains and the two lots are joined, the square footage would be in violation of §414.6 square footage requirements and further, there would be an issue of compliance with §414.5 Prohibited Structures and §414.3 Permitted Structures.

- §414.8 Minimum Yard Requirements:
 - (2) Side Yard: Zero feet where the lot line abuts other business or industrial district lot lines.
 - (3) Rear Yard: Zero feet where the lot line abuts other business or industrial district lot lines.

Conflict: All adjoining properties are residential, not business or industrial.

Exception:

- (4) Transitional Yard: In any instance where a side or rear lot line abuts a residential district, the minimum yard [unoccupied open space (definitions 303.114)] shall be twenty (20) feet. In addition, a landscape screen.....shall be provided. Such landscape screen shall be located no closer than ten (10) feet to any residential structure.

Conflict: If the residential house remains on Lot 1 and the used car lot is located on Lot 4, that would leave only 30 feet of usable frontage because of the 20 foot side yard buffer required.

If the two lots are joined and landscape screening is required on both sides of the side lot lines and the rear lot line, that would leave only 60 feet frontage because of the 40 foot side yard buffers. The remaining frontage would compromise the intent of §414.7 requiring a minimum of 100 feet frontage, which seems to be the basis for the 20,000 sq. ft. requirement in §414.6. Further, there may be an issue with the landscape screen 10 feet distance requirement and the existing residence because of current proximity to the street.

- §414.5 PROHIBITED USES AND STRUCTURES

All other uses and structures which are not permitted or not permissible as exceptions shall be prohibited from this zoning district.

Exception:

- §414.3 PERMITTED ACCESSORY USES AND STRUCTURES:

(2) Residence for owners, guests or caretakers in existence at the time

Ordinance 616

Conflict: If the current residential house remains on the lot(s) zoned HC, and IF it is interpreted as being a permitted accessory in existence at the time the General Plan was adopted, it can only be used by owners, guests or caretakers as a primary residence (not as a rental as a residence). It must also comply with all lot and yard requirements of HDR §411.8. IF it is interpreted that the residential house was not in existence at the time of the adoption of the General Plan because it was not at that time in HC, it would be in violation of §414.5 as a prohibited structure.

If the request for rezoning from HDR to HC is granted, the following HC sections would be at issue and require amendments or complete revision:

If the residential house remains on Lot one or on joined Lot one and two:

- §414.6 Minimum Lot Area
- §414.7 Minimum Lot Width and Frontage
- §414.8 Minimum Yard Requirements
- §414.5 Prohibited Uses and Structures
- §414.3 Permitted Uses and Structures

If the residential house is removed and the lots are joined:

- §414.6 Minimum Lot Area
- §414.7 Minimum Lot Width and Frontage
- §414.6 Minimum Yard requirements



Council member Schatz made a motion to accept and concur with the Planning Commission's recommendation to deny the application to re-zone Lots 1 and 4, Block 10, Original Town of David City from High Density Residential to Highway Commercial on the basis of the number of written citizen protests and citizen testimony before the planning commission and the city council objecting the rezoning; the apparent inconsistency with the intent language of the Highway Commercial Zoning Ordinance; and the potential conflicts with the current Highway Commercial

Zoning ordinances and resulting need to dramatically amend or revise the entire Highway Commercial Section. Council member Kroesing seconded the motion. Voting YEA: Council members Hein, Lukassen, Kirby, Kroesing, and Schatz. Voting NAY: None. Council member Smith abstained. The motion carried.

Mayor Smith asked for consideration of claims. Council member Kroesing made a motion to authorize the payment of claims. Council member Smith seconded the motion. All of the council members were present, all voted YEA, and the motion carried.

Council member Hein made a motion to advance ahead to agenda item #9 - Consideration of Resolution No. 13-2001 calling for 1995 combined utility revenue bonds. Council member Kirby seconded the motion. All of the Council members were present, all voted YEA, and the motion carried.

Mike Bruster, Public Finance, representing the firm of Kirkpatrick Pettis, presented an illustration of Electric Revenue Refunding Bonds for Issuance - Series 2001. Bruster explained that the average coupon rate is 5.593972 for our existing bonds - Series 1995. If we would re-issue bonds - Series 2001, the average coupon rate would be 4.868529. This would cut approximately 75 basis points off the average interest rate. The rule of thumb is if you can obtain over a 3% savings, it is recommended that you refinance. The new bond issue would result in an 88,000-89,000 cumulative savings over the next 15 years, or approximately 3.5%.

Council member Hein introduced Resolution No. 13 - 2001 and moved for its passage and adoption. Council member Lukassen seconded the motion. All of the Council members were present and all voted YEA. The motion carried and Resolution No. 13 - 2001 was passed and adopted as follows:

**RESOLUTION NO. 13 - 2001
CALLING ELECTRIC REVENUE
BONDS FOR REDEMPTION**

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

Section 1. That the following bonds are hereby called for redemption at par plus accrued interest on June 11, 2001 after which date said bonds shall cease to bear interest:

Electric Revenue Bonds, Series 1995, Dated December 15, 1995, in the remaining principal amount of \$1,390,000, becoming due November 15, 2001 through November 15, 2014, both inclusive, issued by the City for the purpose of providing funds to construct additions and improvements to the City's Electric System, to provide for creation of debt service reserves and to pay for the costs of issuance of said bonds.

Section 2. Said bonds are payable at the office of Treasurer of the City of David City, in David City, Nebraska as Paying Agent and Registrar.

Section 3. A copy of this Resolution shall be filed at least 30 days prior to the date of call with the Nebraska State Auditor of Public Accounts and with the Treasurer of the City of David City, as Paying Agent and Registrar and said Paying Agent and Registrar is hereby instructed to

give notice of redemption in the manner provided for in the ordinance authorizing said bonds.

PASSED AND APPROVED this 9th day of May, 2001.

ATTEST:

Mayor

City Clerk

Council member Kroesing made a motion to advance ahead to agenda item #10 - Consideration of Ordinance No. 907 authorizing the issuance of combined utility revenue refund bonds series 2001. Council member Hein seconded the motion. All of the Council members were present, all voted YEA, and the motion carried.

Council member Hein introduced Ordinance No. 907. Council member Kroesing made a motion to suspend the statutory rule that requires an Ordinance be read on three separate days. Council member Kirby seconded the motion. All of the Council members were present, all voted YEA, and the motion carried.

Council member Kroesing made a motion to pass and adopt Ordinance No. 907 on the third and final reading. Council member Hein seconded the motion. All of the Council members were present, all voted YEA, and the motion carried. Ordinance No. 907 was passed and adopted as follows:

ORDINANCE NO. 907

AN ORDINANCE OF THE CITY OF DAVID CITY, NEBRASKA, AUTHORIZING THE ISSUANCE OF ELECTRIC REVENUE REFUNDING BONDS OF THE CITY OF DAVID CITY, NEBRASKA, IN THE PRINCIPAL AMOUNT ONE MILLION THREE HUNDRED SEVENTY-FIVE THOUSAND DOLLARS (\$1,375,000), FOR THE PURPOSE OF REFUNDING, TOGETHER WITH CASH ON HAND, \$1,390,000 OF OUTSTANDING ELECTRIC REVENUE BONDS, SERIES 1995; PROVIDING FOR NECESSARY RESERVE FUNDS AND PAYING COSTS OF ISSUANCE OF SAID BONDS; PRESCRIBING THE FORM, TERMS AND DETAILS OF SAID BONDS; PLEDGING AND HYPOTHECATING THE REVENUE AND EARNINGS OF THE ELECTRIC PLANT AND DISTRIBUTION SYSTEM OF SAID CITY FOR THE PAYMENT OF SAID BONDS AND INTEREST THEREON; PROVIDING FOR THE COLLECTION, SEGREGATION AND APPLICATION OF THE REVENUE OF SAID ELECTRIC SYSTEM; ENTERING INTO A CONTRACT ON BEHALF OF THE CITY WITH THE HOLDERS OF SAID BONDS; REPEALING ANY CONFLICTING ORDINANCES AND PROVIDING FOR PUBLICATION OF THE 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 an electric plant and distribution system which constitutes a revenue producing facility and undertaking within the meaning of such term as set forth in Sections 18-1803 to 18-1805 R.R.S. Neb. 1943; that said electric plant, system and facilities, taken together with all additions and improvements thereto hereafter acquired or constructed are herein referred to as the "Electric System;" that there is presently no outstanding indebtedness of the City, bonded or otherwise, except for the Outstanding Bonds described in this Section 1, for which the revenues of the Electric System have been pledged or hypothecated in any manner; and (b) that there have been heretofore issued and are now outstanding and unpaid valid and interest bearing bonds of the City of David City, Nebraska, consisting of Electric Revenue Bonds, Series 1995 of the total principal amount of \$1,390,000 as follows:

<u>Principal Amount</u>	<u>Maturing November 15</u>	<u>Interest Rate</u>
\$60,000	2001	4.50%
\$65,000	2002	4.60
\$65,000	2003	4.75
\$70,000	2004	4.90
\$75,000	2005	5.00
\$75,000	2006	5.15
\$80,000	2007	5.25
\$85,000	2008	5.35
\$90,000	2009	5.45
\$95,000	2010	5.55
\$100,000	2011	5.65
\$110,000	2012	5.70
\$120,000	2013	5.75
\$150,000	2014	5.80
\$150,000	2015	5.80

The Series 1995 Bonds maturing on or after November 15, 2000 became callable on November 15, 1999 or anytime thereafter, at par and accrued interest to the date fixed for redemption and that portion of said bonds, as set out above, maturing on and after November 15, 2001 are ordered called in accordance with their call provisions on May 14, 2001.

Said bonds are herein referred to as the "Outstanding Bonds." The Outstanding Bonds are valid, interest bearing obligations of the City, that the City has or will have monies on hand

to pay interest accruing on the bonds to May 14, 2001 and the Outstanding Bonds maturing on and after November 15, 2001 have been and hereby are called for redemption on May 14, 2001. Since the Outstanding Bonds were issued, the rates of interest available in the market have so declined that by taking up and paying off said bonds on said call date, a substantial savings in the amount of yearly running interest will be made to the City. For the purpose of making said redemption on the date of call of said Outstanding Bonds as set out above, it is in the best interest of the City to apply certain monies on hand from earnings of the City's Electric System and to issue electric revenue refunding bonds of the City in the principal amount of \$1,375,000. The City has on hand no debt service or sinking fund monies available to pay the Outstanding Bonds. All conditions, acts and things required to exist or to be done precedent to the issuance of electric revenue refunding bonds of the City of David City, Nebraska, in the principal amount of One Million Three Hundred Seventy-five Thousand Dollars (\$1,375,000) pursuant to Sections 18-1803 to 18-1805, R.R.S. Neb. 1997, do exist and have been done as required by law.

Section 2. In addition to the definitions provided in parentheses elsewhere in this Ordinance, the following definitions of terms shall apply, unless the context shall clearly indicate otherwise:

(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 Electric System.

(b) the term "Additional Bonds" shall mean any and all bonds hereafter issued by the City pursuant to the terms of this Ordinance which are equal in lien to the Series 2001 Bonds, including all such bonds issued pursuant to Section 15 and refunding bonds issued pursuant to Section 21.

(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 Electric 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 Electric System, less the ordinary expenses for operating and maintaining the Electric System payable from the Operation and Maintenance Account described in Section 13 of this Ordinance. 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 this Ordinance 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 2001 Bonds pursuant to Section 4 hereof, or any successor thereto.

Section 3. To provide, together with cash available therefor, for the refunding of the Outstanding Bonds as described in Section 1 hereof, including costs of issuance hereof, there shall be and there are hereby ordered issued negotiable bonds of the City of David City, Nebraska, to be designated as "Electric Revenue Refunding Bonds, Series 2001" (the "2001 Bonds") in the aggregate principal amount of One Million Three Hundred Seventy-five Thousand Dollars (\$1,375,000), with said bonds bearing interest at the rates per annum and to become due on November 15 of the year as indicated below:

<u>Principal Amount</u>	<u>Maturing November 15</u>	<u>Interest Rate</u>
\$105,000	2002	3.70%
150,000	2004	4.00
85,000	2005	4.10
85,000	2006	4.20
85,000	2007	4.35
95,000	2008	4.50
95,000	2009	4.65
100,000	2010	4.75
105,000	2011	4.85
110,000	2012	5.00
115,000	2013	5.10
120,000	2014	5.25
125,000	2015	5.35

Provided, however, bonds maturing November 15, 2002 and November 15, 2004 shall be subject to call for redemption through application of a mandatory sinking fund payment, said bonds being callable by lot in the amount and on the dates as set out below at par plus accrued interest to the date of such call:

\$105,000 Principal Maturing November 15, 2002

\$30,000 To Be Called November 15, 2001

\$75,000 Maturing November 15, 2002

\$150,000 Principal Maturing November 15, 2004

\$75,000 To Be Called November 15, 2003

\$75,000 Maturing November 15, 2004

The 2001 Bonds shall be issued in fully registered form in the denomination of \$5,000 or any integral multiple thereof. The date of original issue of the 2001 Bonds shall be May 1, 2001. Interest on the 2001 Bonds, at the respective rate for each maturity, shall be payable on November 15,

2001, and semiannually thereafter on May 15 and November 15 of each year (each an "Interest Payment date"), and the 2001 Bonds shall bear such interest from the date of original issue or the most recent Interest Payment Date, whichever is later. Interest shall be computed on the basis of a 360-day year consisting of twelve 30-day months. The interest due on each Interest Payment Date shall be payable to the registered owners of record as of the fifteenth day immediately preceding the Interest Payment Date (the "Record Date"), subject to the provisions of Section 5 hereof. The 2001 Bonds shall be numbered from 1 upwards in the order of their issuance. No 2001 Bond shall be issued originally or upon transfer or partial redemption having more than one principal maturity. The initial bond numbering and principal amounts for each of the 2001 Bonds issued shall be as directed by the initial purchaser thereof. Payments of interest due on the 2001 Bonds prior to maturity or earlier redemption shall be made by the Paying Agent and Registrar as designated pursuant to Section 4 hereof, by mailing a check or draft in the amount due for such interest on each Interest Payment Date to the registered owner of each 2001 Bond, as of the Record Date for such Interest Payment Date, to such owner's registered address as shown on the books of registration as required to be maintained in Section 4 hereof. Payments of principal due at maturity or at any date fixed for redemption prior to maturity together with any unpaid interest accrued thereon shall be made by the Paying Agent and Registrar to the registered owners upon presentation and surrender of the 2001 Bonds to the Paying Agent and Registrar. The City and the Paying Agent and Registrar may treat the registered owner of any 2001 Bond as the absolute owner of such 2001 Bond for the purpose of making payments thereon and for all other purposes and neither the City nor the Paying Agent and Registrar shall be affected by any notice or knowledge to the contrary whether such 2001 Bond or any installment of interest due thereon shall be overdue or not. All payments on account of interest or principal made to the registered owner of any 2001 Bond in accordance with the terms of this Ordinance shall be valid and effectual and shall be a discharge of the City and the Paying Agent and Registrar, in respect of the liability upon the 2001 Bonds or claims for interest to the extent of the sum or sums so paid.

Section 4. The Treasurer of the City of David City, David City, Nebraska is hereby designated to serve as Paying Agent and Registrar for the 2001 Bonds. Said Paying Agent and Registrar shall serve in such capacities under such terms and conditions as shall be established by the Mayor and City Clerk, but with such changes as they shall deem appropriate or necessary. The Paying Agent and Registrar shall keep and maintain for the City books for the registration and transfer of the 2001 Bonds at its office. The names and registered addresses of the registered owner or owners of the 2001 Bonds shall at all times be recorded in such books. Any 2001 Bond may be transferred pursuant to its provisions at the office of said Paying Agent and Registrar by surrender of such 2001 Bond for cancellation, accompanied by a written instrument of transfer, in form satisfactory to said Paying Agent and Registrar, duly executed by the registered owner in person or by such owner's duly authorized agent, and thereupon the Paying Agent and Registrar, on behalf of the City, will deliver at its office (or send by registered mail to the transferee owner or owners thereof at such transferee owner's or owners' risk and expense), registered in the name of the transferee owner or owners, a new 2001 Bond or 2001 Bonds of the same series, interest rate, aggregate principal amount and maturity. To the extent of the denominations authorized for the 2001 Bonds by this ordinance, one 2001 Bond may be transferred for several such 2001 Bonds of the same series, interest rate and maturity, and for a like aggregate principal amount, and several such 2001 Bonds may be transferred for one or several such 2001 Bonds, respectively, of the same series, interest rate and maturity and for a like aggregate principal amount. In every case of transfer of a 2001 Bond, the surrendered 2001 Bond shall be canceled and destroyed. All 2001 Bonds issued upon transfer of the bonds so surrendered shall be valid obligations of the City

evidencing the same obligation as the 2001 Bonds surrendered and shall be entitled to all the benefits and protection of this ordinance to the same extent as the 2001 Bonds upon transfer of which they were delivered. The City and said Paying Agent and Registrar shall not be required to transfer any 2001 Bond during any period from any Record Date until its immediately following Interest Payment Date or to transfer any 2001 Bond called for redemption for a period of 30 days next preceding the date fixed for redemption.

Section 5. In the event that payments of interest due on the 2001 Bonds on an Interest Payment Date are not timely made, such interest shall cease to be payable to the registered owners as of the Record Date for such Interest Payment Date and shall be payable to the registered owners of the 2001 Bonds as of a special date of record for payment of such defaulted interest as shall be designated by the Paying Agent and Registrar whenever monies for the purpose of paying such defaulted interest become available.

Section 6. The 2001 Bonds maturing on or after November 15, 2006, shall be subject to redemption, in whole or in part, prior to maturity on June 1, 2006, or at any time thereafter, at the principal amount thereof together with accrued interest on the principal amount redeemed to the date fixed for redemption. Such redemption shall be made from time to time as shall be directed by the Mayor and Council of the City. The City may select the 2001 Bonds for redemption in its sole discretion. The 2001 Bonds shall be redeemed only in amounts of \$5,000 or integral multiples thereof. Any 2001 Bond redeemed in part only shall be surrendered to said Paying Agent and Registrar in exchange for a new 2001 Bond evidencing the unredeemed principal thereof. Notice of redemption of any 2001 Bond called for redemption shall be given, at the direction of the City by said Paying Agent and Registrar by mail not less than 30 days prior to the date fixed for redemption, first class, postage prepaid, sent to the registered owner of such 2001 Bond at said owner's registered address. Such notice shall designate the 2001 Bond or 2001 Bonds to be redeemed by maturity or otherwise, the date of original issue and the date fixed for redemption and shall state that such 2001 Bond or 2001 Bonds are to be presented for prepayment at the principal corporate trust office of said Paying Agent and Registrar. In case of any 2001 Bond partially redeemed, such notice shall specify the portion of the principal amount of such 2001 Bond to be redeemed. No defect in the mailing of notice for any 2001 Bond shall affect the sufficiency of the proceedings of the City designating the 2001 Bonds called for redemption or the effectiveness of such call for the 2001 Bonds for which notice by mail has been properly given and the City shall have the right to direct further notice of redemption for any such 2001 Bond for which defective notice has been given.

Section 7. If the date for payment of the principal of or interest on the 2001 Bonds shall be a Saturday, Sunday, legal holiday or a day on which the banking institutions in the City of David City, Nebraska, are authorized by law or executive order to close, then the date for such payment shall be the next succeeding day which is not a Saturday, Sunday, legal holiday or a day on which such banking institutions are authorized to close, and payment on such date shall have the same force and effect as if made on the nominal date of payment.

Section 8. The 2001 Bonds shall be in substantially the following form:

UNITED STATES OF AMERICA
STATE OF NEBRASKA
COUNTY OF BUTLER

CITY OF DAVID CITY

ELECTRIC REVENUE REFUNDING BOND
SERIES 2001

No. _____ \$ _____

<u>Interest Rate</u>	<u>Maturity Date</u>	<u>Date of Original Issue</u>	<u>CUSIP</u>
_____%	November 15,	June 1, 2001	

Registered Owner:

Principal Amount:

KNOW ALL PERSONS BY THESE PRESENTS: That the City of David City, in the County of Butler, in the State of Nebraska, hereby acknowledges itself to owe and for value received promises to pay, but only from the special sources hereinafter described, to the registered owner specified above, or registered assigns, the principal amount specified above in lawful money of the United States of America on the date of maturity specified above with interest thereon to maturity (or earlier redemption) from the date of original issue or most recent Interest Payment Date, whichever is later, at the rate per annum specified above, payable November 15, 2001, and semiannually thereafter on May 15 and November 15 of each year (each, an "Interest Payment Date"). Such interest shall be computed on the basis of a 360-day year consisting of twelve 30-day months. The principal of this bond together with interest thereon unpaid and accrued at maturity (or earlier redemption) is payable upon presentation and surrender of this bond at the principal corporate trust office of Treasurer of the City of David City, David City, Nebraska, as Paying Agent and Registrar. Interest on this bond due prior to maturity or earlier redemption will be paid on each Interest Payment Date by a check or draft mailed by the Paying Agent and Registrar to the registered owner of this bond, as shown on the books of record maintained by the Paying Agent and Registrar, at the close of business on the fifteenth day immediately preceding the Interest Payment Date, to such owner's address as shown on such books and records. Any interest not so timely paid shall cease to be payable to the person entitled thereto as of the record date such interest was payable, and shall be payable to the person who is the registered owner of this bond (or of one or more predecessor bonds hereto) on such special record date for payment of such defaulted interest as shall be fixed by the Paying Agent and Registrar whenever monies for such purpose become available.

Bonds of this issue are subject to call for redemption through application of a mandatory sinking fund payment, said bonds being callable by lot in the amount and on the dates as set out below at par plus accrued interest to the date of such call:

\$105,000 Principal Maturing November 15, 2002
\$30,000 To Be Called November 15, 2001

\$75,000 Maturing November 15, 2002

\$150,000 Principal Maturing November 15, 2004

\$75,000 To Be Called November 15, 2003

\$75,000 Maturing November 15, 2004

This bond is one of an issue of fully registered bonds of the total principal amount of One Million Three Hundred Seventy-five Thousand Dollars (\$1,375,000) of even date and like tenor, except as to the date of maturity, rate of interest and denomination (the "Series 2001 Bonds"), which were issued by the City for the purpose of refunding and defeasing, together with cash available therefor, the City's previously issued and outstanding Electric Revenue Bonds, Series 1995, date of original issue – May 15, 1995, of the principal amount of \$3,920,000 and to pay costs of issuance thereof, and is issued pursuant to the terms of an ordinance (the "Ordinance") passed and approved by the Mayor and Council of said City in accordance with and under the provisions of Sections 18-1803 to 18-1805, R.R.S. Neb. 1997.

In addition to the above described mandatory sinking fund payments, any or all of the bonds of said issue maturing on or after November 15, 2006, are subject to redemption at the option of the City, in whole or in part, on June 15, 2006, or at any time thereafter, at the principal amount thereof together with accrued interest on the principal amount redeemed to the date fixed for redemption. Such redemption shall be made from time to time as shall be directed by the Mayor and Council of the City. The City may select the Series 2001 Bonds for redemption in its sole discretion. Notice of redemption shall be given by mail to the registered owner of any Series 2001 Bond called for redemption in the manner specified in the Ordinance authorizing said issue of bonds. Individual bonds may be redeemed in part but only in the amount of \$5,000 or integral multiples thereof.

This bond is transferable by the registered owner or such owner's attorney duly authorized in writing at the office of the Paying Agent and Registrar upon surrender and cancellation of this bond, and thereupon a new bond or bonds of the same aggregate principal amount, interest rate and maturity will be issued to the transferee as provided in the Ordinance, subject to the limitations therein prescribed. The City, the Paying Agent and Registrar and any other person may treat the person in whose name this bond is registered as the absolute owner hereof for the purpose of receiving payment due hereunder and for all other purposes and shall not be affected by any notice to the contrary, whether this bond be overdue or not.

If the day for payment of the principal of or interest on this bond shall be a Saturday, Sunday, legal holiday or a day on which banking institutions in the City of David City, Nebraska, are authorized by law or executive order to close, then the date for such payment shall be the next succeeding day which is not a Saturday, Sunday, legal holiday or a day on which such banking institutions are authorized to close, and payment on such date shall have the same force and effect as if made on the nominal date of payment.

The revenues and earnings of the electric system of the City, including all improvements and additions thereto hereafter constructed or acquired (the "Electric System"), are pledged and hypothecated by the City for the payment of this bond and the other Series 2001 Bonds and for the payment of any additional bonds of equal priority issued in accordance with the terms of the Ordinance authorizing the Series 2001 Bonds. The Series 2001 Bonds are a lien only upon said revenues and earnings and are not general obligations of the City of David City,

Nebraska.

The Ordinance authorizing the 2001 Bonds sets forth the covenants and obligations of the City with respect to the Electric System and the applications of the revenues and earnings thereof, which revenues and earnings under the terms of the Ordinance are required to be deposited to the "David City Electric Fund" as established under the Ordinance and disbursed to pay costs of operation and maintenance of the Electric System, make payments of principal and interest on the Series 2001 Bonds and any additional bonds of equal priority with said Series 2001 Bonds and other payments as specified in the Ordinance authorizing the Series 2001 Bonds. The Ordinance authorizing the Series 2001 Bonds also designate the terms and conditions under which additional bonds of equal priority with the Series 2001 Bonds may be issued. The Ordinance also designates the terms and conditions upon which this bond shall cease to be entitled to any lien, benefit or security under the Ordinance and all covenants, agreements and obligations of the City under the Ordinance may be discharged and satisfied at or prior to the maturity or redemption of this bond or bonds of equal lien if monies or certain specified securities shall have been deposited with a trustee bank. In the Ordinance authorizing the Series 2001 Bonds, the City also reserves the right to issue bonds or notes junior in lien to the Series 2001 Bonds and any additional bonds of equal priority to the Series 2001 Bonds, the principal and interest of which shall be payable from monies in the "Surplus Account" of the David City Electric Fund as described in the Ordinance authorizing the 2001 Bonds.

IT IS HEREBY CERTIFIED AND WARRANTED that all conditions, acts and things required by law to exist or to be done precedent to and in the issuance of this bond did exist, did happen and were done and performed in regular and due form and time as provided by law.

AS PROVIDED IN THE ORDINANCE REFERRED TO HEREIN, UNTIL THE TERMINATION OF THE SYSTEM OF BOOK-ENTRY-ONLY TRANSFERS THROUGH THE DEPOSITORY TRUST COMPANY, NEW YORK, NEW YORK (TOGETHER WITH ANY SUCCESSOR SECURITIES DEPOSITORY APPOINTED PURSUANT TO THE ORDINANCE, "DTC"), AND NOTWITHSTANDING ANY OTHER PROVISIONS OF THE ORDINANCE TO THE CONTRARY, A PORTION OF THE PRINCIPAL AMOUNT OF THIS BOND MAY BE PAID OR REDEEMED WITHOUT SURRENDER HEREOF TO THE REGISTRAR. DTC OR A NOMINEE, TRANSFEREE OR ASSIGNEE OF DTC OF THIS BOND MAY NOT RELY UPON THE PRINCIPAL AMOUNT INDICATED HEREON AS THE PRINCIPAL AMOUNT HEREOF OUTSTANDING AND UNPAID. THE PRINCIPAL AMOUNT HEREOF OUTSTANDING AND UNPAID SHALL FOR ALL PURPOSES BE THE AMOUNT DETERMINED IN THE MANNER PROVIDED IN THE ORDINANCE.

UNLESS THIS BOND IS PRESENTED BY AN AUTHORIZED OFFICER OF DTC (A) TO THE REGISTRAR FOR REGISTRATION OF TRANSFER OR EXCHANGE OR (B) TO THE REGISTRAR FOR PAYMENT OF PRINCIPAL, AND ANY BOND ISSUED IN REPLACEMENT HEREOF OR SUBSTITUTION HEREFOR IS REGISTERED IN THE NAME OF DTC AND ANY PAYMENT IS MADE TO DTC OR ITS NOMINEE, ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL BECAUSE ONLY THE REGISTERED OWNER HEREOF, DTC OR ITS NOMINEE, HAS AN INTEREST HEREIN.

This bond shall not be valid and binding on the City until authenticated by the Paying Agent and Registrar.

IN WITNESS WHEREOF, the Mayor and Council of the City of David City, Nebraska, have caused this bond to be executed on behalf of the City with the facsimile signatures of the Mayor and City Clerk of the City, all as of the Date of Original Issue shown above.

CITY OF DAVID CITY, NEBRASKA

ATTEST:

(facsimile signature)

Mayor

(facsimile signature)

City Clerk

CERTIFICATE OF AUTHENTICATION

This bond is one of the bonds authorized by Ordinance passed and approved by the Mayor and Council of the City of David City, Nebraska, as described in said bond.

TREASURER OF THE CITY OF DAVID CITY,
DAVID CITY, NEBRASKA
as Paying Agent and Registrar

Authorized Signature

(FORM OF ASSIGNMENT)

For value received _____ hereby
sells, assigns, and transfers unto _____ the within bond
and hereby irrevocably constitutes and appoints _____,
Attorney, to transfer the same on the books of registration in the office of the within mentioned
Paying Agent and Registrar with full power of substitution in the premises.

Date:

Registered Owner

Signature Guaranteed

By:

Authorized Officer

Note: The signature(s) on this assignment MUST CORRESPOND with the name(s) as written on the face of the within bond in every particular, without alteration, enlargement or any change whatsoever, and must be guaranteed by a commercial bank or a trust company or by a firm having membership on the New York, Midwest or other stock exchange.

Section 9. Each of the 2001 Bonds shall be executed on behalf of the City with the

manual or facsimile signatures of the Mayor and City Clerk of the City. The 2001 Bonds shall be issued initially as "book-entry-only" bonds using the services of The Depository Trust Company (the "Depository"), with one typewritten bond per maturity being issued to the Depository. In such connection said officers are authorized to execute and deliver a letter of representations (the "Letter of Representations") in the form required by the Depository, for and on behalf of the City, which shall thereafter govern matters with respect to registration, transfer, payment and redemption of the Bonds. Upon the issuance of the Bonds as "book-entry-only" bonds, the following provisions shall apply:

(a) The City and the Paying Agent and Registrar shall have no responsibility or obligation to any broker-dealer, bank or other financial institution for which the Depository holds 2001 Bonds as securities depository (each, a "Bond Participant") or to any person who is an actual purchaser of a 2001 Bond from a Bond Participant while the 2001 Bonds are in book-entry form (each, a "Beneficial Owner") with respect to the following:

(i) the accuracy of the records of the Depository, any nominees of the Depository or any Bond Participant with respect to any ownership interest in the 2001 Bonds,

(ii) the delivery to any Bond Participant, any Beneficial Owner or any other person, other than the Depository, of any notice with respect to the 2001 Bonds, including any notice of redemption, or

(iii) the payment to any Bond Participant, any Beneficial Owner or any other person, other than the Depository, of any

amount with respect to the 2001 Bonds. The Paying Agent and Registrar shall make payments with respect to the 2001 Bonds only to or upon the order of the Depository or its nominee, and all such payments shall be valid and effective fully to satisfy and discharge the obligations with respect to such 2001 Bonds to the extent of the sum or sums so paid. No person other than the Depository shall receive an authenticated 2001 Bond, except as provided in (e) below.

(b) Upon receipt by the Paying Agent and Registrar of written notice from the Depository to the effect that the Depository is unable or unwilling to discharge its responsibilities, the Paying Agent and Registrar shall issue, transfer and exchange 2001 Bonds requested by the Depository in appropriate amounts. Whenever the Depository requests the Paying Agent and Registrar to do so, the Paying Agent and Registrar will cooperate with the Depository in taking appropriate action after reasonable notice (i) to arrange, with the prior written consent of the City, for a substitute depository willing and able upon reasonable and customary terms to maintain custody of the 2001 Bonds or (ii) to make available 2001 Bonds registered in whatever name or names the Beneficial Owners transferring or exchanging such 2001 Bonds shall designate.

(c) If the City determines that it is desirable that certificates representing the 2001 Bonds be delivered to the Bond Participants and/or Beneficial Owners of the 2001 Bonds and so notifies the Paying Agent and Registrar in writing, the Paying

Agent and Registrar shall so notify the Depository, whereupon the Depository will notify the Bond Participants of the availability through the Depository of bond certificates representing the 2001 Bonds. In such event, the Paying Agent and Registrar shall issue, transfer and exchange bond certificates representing the 2001 Bonds as requested by the Depository in appropriate amounts and in authorized denominations.

(d) Notwithstanding any other provision of this ordinance to the contrary, so long as any 2001 Bond is registered in the name of the Depository or any nominee thereof, all payments with respect to such 2001 Bond and all notices with respect to such 2001 Bond shall be made and given, respectively, to the Depository as provided in the Letter of Representations.

(e) Registered ownership of the 2001 Bonds may be transferred on the books of registration maintained by the Paying Agent and Registrar, and the 2001 Bonds may be delivered in physical form to the following:

(i) any successor securities depository or its nominee;

(ii) any person, upon (A) the resignation of the Depository from its functions as depository or (B) termination of the use of the Depository pursuant to this Section.

(f) In the event of any partial redemption of a 2001 Bond unless and until such partially redeemed Bond has been replaced in accordance with the provisions of Section 6 of this Ordinance, the books and records of the Paying Agent and Registrar shall govern and establish the principal amount of such 2001 Bond as is then outstanding and all of the 2001 Bonds issued to the Depository or its nominee shall contain a legend to such effect.

If for any reason the Depository resigns and is not replaced or upon termination by the City of book-entry-only form, the City shall immediately provide a supply of bond certificates for issuance upon subsequent transfers or in the event of partial redemption. In the event that such supply of certificates shall be insufficient to meet the requirements of the Paying Agent and Registrar for issuance of replacement bond certificates upon transfer or partial redemption, the City agrees to order printed an additional supply of bond certificates and to direct their execution by manual or facsimile signature of its then duly qualified and acting officers. In case any officer whose signature or facsimile thereof shall appear on any 2001 Bond shall cease to be such officer before the delivery of such 2001 Bond (including any bond certificates delivered to the Paying Agent and Registrar for issuance upon transfer or partial redemption), such signature or such facsimile signature shall nevertheless be valid and sufficient for all purposes the same as if such officer or officers had remained in office until the delivery of such 2001 Bond. The 2001 Bonds shall not be valid and binding on the City until authenticated by the Paying Agent and Registrar. The 2001 Bonds shall be delivered to the Paying Agent and Registrar for registration and authentication. Upon execution, registration and authentication of the 2001 Bonds, they shall be delivered to the City's Treasurer, acting on behalf of the City, who shall register the 2001 Bonds as chief finance officer of the City and is thereupon authorized to deliver them to Kirkpatrick, Pettis, Smith, Polian Inc., as initial purchaser thereof, upon receipt of the purchase price of 98.75% of the principal amount thereof plus accrued interest on the principal amount of the 2001 Bonds to date of payment

for the 2001 Bonds. The 2001 Bonds shall also be registered with the office of the Auditor of Public Accounts. Said initial purchasers shall have the right to direct the registration of the 2001 Bonds and the denominations thereof within each maturity, subject to the restrictions of this Ordinance. The City Clerk, acting on behalf of the City, shall make and certify a transcript of the proceedings of the governing body with respect to the 2001 Bonds which shall be delivered to said purchaser.

Section 10. For the payment of the 2001 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 Electric System of the City as a first and prior pledge and encumbrance of such revenues, in accordance with the terms of this Ordinance.

Section 11. 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 Electric System which in the aggregate shall be sufficient at all times to enable the City to pay the principal and interest on the 2001 Bonds and any Additional Bonds as the same become due.

Section 12. The City will maintain and collect rates and charges for all services furnished from its Electric System adequate to produce revenues and earnings sufficient at all times:

(a) to provide for the payment of interest on and principal of the 2001 Bonds and any Additional Bonds as such interest and principal become due;

(b) to pay all reasonable costs of operation and maintenance of the Electric System, including adequate insurance as provided by this ordinance and to pay for the necessary and reasonable repairs, replacements and extensions of said Electric System; and

(c) to establish and maintain the 2001 Debt Service Reserve Account as hereinafter set forth and any debt service reserves account for additional bonds.

Section 13. The revenues and earnings of the Electric System (including any and all additions and improvements thereto hereafter acquired) are hereby pledged and hypothecated for the payment of the 2001 Bonds and any Additional Bonds as authorized by this Ordinance and interest on such 2001 Bonds and Additional Bonds and the City does hereby agree with the holders of said 2001 Bonds as follows:

(a) **DAVID CITY ELECTRIC FUND** - The entire gross revenues and income derived from the operation of the Electric 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 Electric Fund." For purposes of allocating the monies in the David City Electric Fund, the City shall maintain the following accounts: (1) Operation and Maintenance Account; (2) Bond Payment Account; (3) 2001 Debt Service Reserve Account; and (4) Surplus Account.

(b) **OPERATION AND MAINTENANCE ACCOUNT** - Out of the David City Electric 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 Electric 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 Electric 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 July, 2001, the following amounts:

- (1) For the period from July 1, 2001 through November 1, 2001, an amount equal to 1/5th of the next maturing semiannual interest payment on the 2001 Bonds, and for the period from December 1, 2001 until the 2001 Bonds have been paid in full, an amount equal to 1/6th of the next maturing semiannual interest payment on the 2001 Bonds
- (2) For the period from July 1, 2001, through November 1, 2001 an amount equal to 1/5th of the next maturing principal payment on the 2001 bonds and from December 1, 2001, until the 2001 Bonds have been paid in full, an amount equal to 1/12th of the next maturing principal payment for the 2001 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 2001 Bonds or any Additional Bonds and to transfer such amounts due to the Paying Agent and Registrar (or other paying agent for Additional Bonds) at least five (5) business days 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) **2001 DEBT SERVICE RESERVE ACCOUNT** - The City agrees that it shall deposit from monies on hand or from bond proceeds the amount of \$135,000 as the amount required to be maintained as a debt service reserve attributable to the 2001 Bonds. Monies credited to the 2001 Debt Service Reserve Account may be withdrawn, as needed to provide funds to pay, when due, the principal and interest on the 2001 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 2001 Debt Service Reserve Account, there shall be credited to the 2001 Debt Service Reserve Account in the month following such withdrawal all monies in the David City Electric 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 2001 Debt Service Reserve Account until such account has been

restored to the then required balance. 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 2001 Debt Service Reserve Account and such reserve account for Additional Bonds, in revenues available in the David City Electric Fund upon a pro rata basis in accordance with the respective outstanding principal amounts or each such issue. Anything in this Subsection 13(d) to the contrary notwithstanding, the amount required to be maintained in the 2001 Debt Service Reserve Account with respect to the 2001 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 Electric Fund remaining after the credits required in the foregoing Subsections 13(b), 13(c) and 13(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 2001 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 Electric System, to provide for replacements or improvements for the Electric 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 Electric 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 2001 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 13(b), 13(c), 13(d) and 13(e). Monies credited to the 2001 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 Electric System funds or accounts. If invested, monies credited to the 2001 Debt Service Reserve Account or any reserve account established for Additional Bonds may be commingled with other Electric System funds or accounts so long as the City maintains books and records clearly identifying the specific investments, or portions thereof, which belong to the 2001 Debt Service Reserve Account or reserve account for Additional Bonds.

Section 14. So long as any of the 2001 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 Electric System adequate to produce revenues and earnings sufficient at all times:

(a) To provide funds to pay, when due, the principal of and interest on the 2001 Bonds and any Additional Bonds issued pursuant to this Ordinance.

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

(c) To provide funds sufficient to make the credits into the Accounts and at the times and in the amounts required by Section 13 of this Ordinance.

Section 15. To provide funds for any purpose related to the Electric System, the City may issue Additional Bonds, except for Additional Bonds issued for refunding purposes which are governed by Section 21 of this Ordinance, payable from the revenues of the Electric System having equal priority and on a parity with the 2001 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 2001 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 1.25 times the Average Annual Debt Service Requirements for such Additional Bonds.

(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 Electric 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 2001 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 Electric 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 2001 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 Electric 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 Electric 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 2001 Bonds and any Additional Bonds are outstanding, it will not issue any bonds or notes payable from the revenues of the Electric 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 2001 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 13(e).

Section 16. Moneys on deposit in the Electric Fund shall be invested in such obligations as are permitted by law for cities of the class to which the City belongs, maturing at such times not later than ten years from the date of such investment and in such amounts as shall be determined by the City. Earnings from the investment of such moneys shall not be credited to the particular fund, account or sub-account from which the investment was made, but shall be treated as earnings of the Electric System and shall be treated as any other revenues of the system. All investments held for the credit of any Fund or Account may be sold when required to make the payments to be made from such Fund or Account. Any moneys credited to the Electric Fund or any Account therein which are not invested shall be secured in the manner provided by law for the security of funds of cities of the class to which the City of David City belongs.

It is understood that the revenues of the Electric System are to be credited to the various accounts herein above described and as set out in this Ordinance in the order in which said accounts have been listed in said Ordinance, and if within any period the revenues are insufficient to credit the required amounts in any of the said accounts, the deficiencies shall be made up the following period or periods after payment into all accounts enjoying a prior claim on the revenues have been made in full.

Section 17. The City of David City shall keep proper books of record and account,

separate and apart from all other records and accounts, showing complete and correct entries of all transactions relating to the Electric System and the holders of any of the 2001 Bonds or any duly authorized agent or agents of such holders shall have the right at all reasonable times to inspect all records, accounts and data relating thereto and to inspect the Electric System and all properties comprising the same. Within ninety days following the close of each fiscal year the City shall cause an audit of such books and accounts to be commenced by an independent firm of certified public accountants, showing the receipts and disbursements for account of the Electric System, and such audit, as soon as it is complete, shall be available for inspection by the holders of any of the aforesaid bonds. Each such audit, in addition to whatever matters may be thought proper by the accountant to be included therein, shall include the following:

1. A statement in detail of the income and expenditures of each component of the Electric System for such fiscal year.
2. A balance sheet as of the end of such fiscal year.

All expenses incurred in the making of the audits required by this section shall be regarded and paid as a maintenance and operation expense. The City shall furnish a copy of each such audit to Kirkpatrick Pettis as the original purchaser of the 2001 Bonds and to the holder of at least twenty-five percent (25%) of any issue of bonds outstanding, upon request, after the close of each fiscal year, and said purchasers or any such holder shall have the right to discuss with the accountant making the audit the contents of the audit and to ask for such additional information as each may require.

Section 18. The City Treasurer shall be bonded, in addition to said Treasurer's official bond, by an insurance company licensed to do business in Nebraska, in an amount sufficient to cover at all times all the revenues and earnings of the Electric System placed in said Treasurer's hands. Any other person employed by the City in the collection or handling of moneys derived from the operation of the Electric System shall also be bonded in an amount sufficient to cover all moneys which may at any time be placed in his or her hands. The amount of such bonds shall be fixed by the Council and the cost thereof shall be paid from the earnings of said Electric System, and such bonds shall secure the faithful accounting of all moneys.

Section 19. The City will carry adequate insurance on the Electric System in such amounts as are normally carried by private companies engaged in similar operations, including, without limiting the generality of the foregoing, fire and windstorm insurance, public liability insurance and any insurance covering such risks as shall be recommended by a consulting engineer. The cost of all such insurance shall be regarded and paid as an operation and maintenance expense.

All insurance moneys, except from public liability insurance, shall be deposited in the Surplus Account and shall be used in making good the loss or damage in respect of which they were paid either by repairing the property damaged or replacing the property destroyed, and expenditures from said moneys shall be made only upon a certificate issued by a consulting engineer and filed with the City Clerk stating that the proceeds, together with any other moneys available for such purposes, are sufficient for the repair or replacement of any such properties; and when the City shall have been furnished with a certificate of a consulting engineer stating that the property damaged or destroyed has been fully repaired or replaced and such repairs or replacements have been fully paid for, the residue, if any, of such insurance moneys shall be transferred from the Surplus Account to the Electric Revenue Bond Account to make up any deficiency in said account, if any such deficiency exists.

If the proceeds of any insurance shall be insufficient to repair or replace the property damaged or destroyed, the City may use and shall pay out for such purpose, to the extent of such deficiency, any money remaining in the Surplus Account. If, in the opinion of a consulting engineer the proceeds of any insurance, together with any amount then available for that purpose in the Surplus Account shall be insufficient to fully complete and pay for such repairs or replacements and if the City shall fail to supply such deficiency from other sources within a period of six months after receipt by the City of such insurance moneys, or if in the opinion of a consulting engineer it is to the best interest of the City not to repair or replace all or any part of the damaged properties and that failure to repair or replace the damaged properties shall not affect the sufficiency of the income and revenue from the remaining properties to properly maintain and operate the same, provide funds for the Bond Payment Account, Debt Service Reserve Account and Surplus Account, as herein provided for, then such insurance moneys to the extent not applied to repair or replace the damaged properties shall be deposited in the Debt Service Reserve Account as described in Section 13 hereof and used for the purposes for which said account has been created, so as to fill any deficiency in said account, or if no deficiency exists, then to the Surplus Account.

If the holders of sixty percent (60%) or more in principal amount of the 2001 Bonds and any Additional Bonds at the time outstanding hereunder and under this Ordinance shall at any time direct the City in writing to do so, then any insurance moneys theretofore credited to the Surplus Account and then in the hands of the City may be used for extensions and betterments of said electric system properties or applied to the pro rata payment of the principal of and accrued interest on all such bonds then outstanding.

The proceeds of any and all policies for public liability shall be paid to and be held by the City Treasurer and used in paying the claims on account of which they were received.

Section 20. The City will maintain the Electric System in good condition and operate the same in an efficient manner and at a reasonable cost. The City agrees with the holders from time to time of the 2001 Bonds and any Additional Bonds that the City will continue to own, free from all liens and encumbrances, except the liens and pledges provided for herein and will adequately maintain and efficiently operate said Electric System; provided, however, the City may sell for cash, property which is recommended to be sold by the manager or superintendent of utilities, or an independent Consulting Engineer and which is determined as a matter of record by the Council to have become obsolete, non-productive or otherwise unusable to the advantage of the City.

Section 21. In the event any change in the rates, rentals and charges for the use and service of the Electric System or any part thereof has been made during the preceding fiscal year or during the interval between the end of such fiscal year and the issuance of such Additional Bonds, or in the event the City shall covenant in the ordinance or resolution authorizing the issuance of such Additional Bonds to impose, effective upon the issuance of such Additional Bonds, higher rates, rentals and charges for such use and service, compliance with the provisions of this Section 21 or Section 13 of this ordinance may be evidenced by a certificate of an independent Consulting Engineer or firm of engineers or Certified Public Accountant or firm of independent Certified Public Accountants to be filed with the City Clerk prior to the issuance of any such Additional Bonds. Such certificate shall state fully the facts upon which such certificate is based, and if it is a certificate of the Consulting Engineer or firm of Consulting Engineers shall have attached thereto the certified financial statement for the fiscal year next preceding the date of authorization of such Additional Bonds used by the Engineer or firm of Engineers in arriving at the conclusion stated in said certificate. The Consulting Engineer or independent Certified Public Accountant of the City shall, in determining the earnings for such fiscal year, adjust the collections to reflect the result as if such changed rates, rentals and charges, or such higher rates, rentals and

charges had been in existence for such entire preceding fiscal year period, and the amount of such net collections and adjusted earnings as aforesaid shall be conclusive evidence and the only evidence required to show compliance with the provisions and requirements of this Section 21 or Section 13 of this ordinance. A certificate of an independent Consulting Engineer or firm of engineers or Certified Public Accountant or firm of independent Certified Public Accountants contemplated herein shall not be required to evidence compliance with the provisions of this Section 21 or Section 13 if the City Council shall determine the revenues of the Electric System for the fiscal year next preceding the date of the authorization of such Additional Bonds, based upon a certified public accountant's report, comply without adjustment with the requirements of this Section 21 or Section 13.

If the City shall find it desirable, it shall also have the right when issuing Additional Bonds to combine with its electric system any other utilities of the City authorized to be combined under Sections 18-1803 through 18-1805, R.R.S. Neb. 1997, including, but not limited to, a water system, a sanitary sewer system, a municipal gas system, a solid waste disposal system or such other system as may constitute a revenue producing undertaking, and to cause all of the revenues of such systems to be paid into the Electric Fund, which Fund may be appropriately redesignated, and to provide that all of the 2001 Bonds and any Additional Bonds previously issued, all as then outstanding, and the proposed issue of Additional Bonds shall be payable from the revenues of such Electric System and such other utility or utilities and shall stand on a parity and in equality as to security and payment, provided, however, no such utility shall be combined with the electric system as contemplated in this paragraph unless the City is current with all the payments required to be made into the accounts set out in this Ordinance and the revenues of the Electric System and such other combined utility or utilities shall satisfy one or the other of the requirements for Additional Bonds provided above in this Section 21 or in Section 13. For purposes of meeting such requirement, the definition of "Net Revenues" shall be altered to include the gross revenues of the additional utility or utilities and there shall be deducted from such revenues the ordinary expenses of operating and maintaining the additional utility or utilities (not including any deduction for depreciation or interest) and for such purposes any engineer or accountant furnishing projections may take into consideration the factors similar to those described in Section 13 above with respect to such additional utility or utilities. Revenues of the additional utility or utilities shall be based upon the report or reports of independent certified public accountants in the same manner as is required above.

For purposes of this ordinance, refunding bonds, which are issued to take up and pay off any or all of the 2001 Bonds or Additional Bonds then outstanding may be issued and shall themselves qualify as Additional Bonds having equal lien and priority as to the revenues of the Electric System with any of the 2001 Bonds or Additional Bonds which are to remain outstanding after the completion of such refunding provided that the following conditions are met:

- (1) if the proceeds of such refunding bonds are not to be applied immediately to the taking up and paying off of the bonds to be refunded from their proceeds, then such refunding bonds must provide by their terms that they shall be junior in lien to all such 2001 Bonds or Additional Bonds, as shall be then outstanding, until the time of application of the proceeds of such refunding bonds to the taking up and paying off of the bonds to be refunded by deposit with the designated paying agent pursuant to Section 10-126, R.R.S. Neb. 1997 (or any successor statutory provision thereto) or until the bonds to be refunded under the terms of their authorizing ordinance or ordinances are no longer deemed to be outstanding, whichever occurs

sooner;

- (2) such refunding bonds shall qualify as Additional Bonds under the revenues test described above in Section 13, provided that in computing Average Annual Bond Debt requirements, all payments of principal and interest due on such refunding bonds from the time of their issuance to the time of application of the proceeds thereof by deposit with the designated paying agent pursuant to Section 10-126, R.R.S. Neb. 1997 (or any successor statutory provision thereto) or until the bonds to be refunded under the terms of their authorizing ordinance or ordinances are no longer deemed to be outstanding, whichever occurs sooner, shall be excluded from such computation to the extent that such principal or interest are payable from other sources (such as bond proceeds or investment earnings thereon) or from moneys in the Surplus Account, and all payments of principal and interest due on the bonds to be refunded, from and after the time of the deposit with the designated paying agent pursuant to Section 10-126 R.R.S. Neb. 1997 (or any successor statutory provision thereto) or the time when such bonds to be refunded under the terms of their authorizing ordinance or ordinances are no longer deemed to be outstanding, whichever occurs sooner, shall also be excluded from such computation.

Section 22. Nothing herein contained 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 Electric System, junior or inferior to the 2001 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 Electric System of the City or from other funds which are available for such debt service.

Section 23. The City will not hereafter grant any franchise or right to any person, firm or corporation to own or operate an electric plant or system in competition with that owned by the City.

Section 24. While any of the 2001 Bonds are outstanding, the City will render bills to all customers for electric services. If bills are not paid within sixty days after due, such utility service will be discontinued, as and to the extent permitted by law. The City agrees that it will order electric service shut off on all properties served by electric service where there are delinquent electric service use charges and will make appropriate charge for use of all properties of the City connected to the electric system, all as and to the extent permitted by law.

Section 25. Except for amendments which are required for the correction of language to cure any ambiguity or defective or inconsistent provisions, omission or mistake or manifest error contained herein, no changes, additions or alterations of any kind shall be made by the City in the provisions of this ordinance in any manner; provided, however, that from time to time the holders of sixty percent (60%) in principal amount of the 2001 Bonds and of Additional Bonds outstanding authorized hereunder (not including any of said bonds credited to any of the Accounts described in this Ordinance or any other of said bonds owned or controlled directly or indirectly by the City) by an instrument or instruments in writing signed by such holders and filed with the City Clerk shall have

the power to assent to and authorize any modification of the rights and obligations of the City and of the holders of the said bonds and the provisions of this ordinance that shall be proposed by the City, and any action authorized to be taken with the assent and authority given as aforesaid of the holders of sixty percent (60%) in principal amount of said bonds at the time outstanding hereunder shall be binding upon the holders of said bonds then outstanding and upon the City as fully as though such action were specifically and expressly authorized by the terms of this ordinance; provided, always, that no such modification shall be made which will (a) extend the time of payment of the principal of or interest on any of said bonds or reduce the principal amount thereof or the rate of interest thereon; or (b) give to any of said bonds secured by this ordinance any preference over any other of said bond or bonds; or (c) authorize the creation of any lien prior to the pledge of the revenues afforded by this Ordinance, for the 2001 Bonds and Additional Bonds; or (d) reduce the percentage in principal amount of said outstanding bonds required to assent to or authorize any such modification. Any modification of the provisions of this ordinance made as aforesaid shall be set forth in a supplemental ordinance to be adopted by the Mayor and Council of the City.

Section 26. So long as any of the 2001 Bonds or any Additional Bonds of equal lien are outstanding, each of the obligations, duties, limitations and restraints imposed upon the City by this ordinance shall be deemed to be a covenant between the City and every holder of said bonds, and this ordinance and every provision and covenant hereof shall constitute a contract of the City with every holder from time to time of said bonds. Any holder of a 2001 Bond or of an Additional Bond or Bonds may by mandamus or other appropriate action or proceeding at law or in equity in any court of competent jurisdiction enforce and compel performance of this ordinance and every provision and covenant thereof including, without limiting the generality of the foregoing, the enforcement of the performance of all duties required by the City by this ordinance and the applicable laws of the State of Nebraska, including in such duties the making and collecting of sufficient rates, rentals, fees or charges for the use and service of the Electric System, the segregation of the revenues of said system, and the application thereof to the respective Fund, Accounts and sub-accounts referred to and described in this Ordinance. Any holder of a 2001 Bond or Additional Bond shall, after any default in payout, have the right to request the appointment of a receiver for the Electric System.

Section 27. The City's obligations under this ordinance and the liens, pledges, dedications, covenants and agreements of the City herein made or provided for shall be fully discharged and satisfied as to any of the 2001 Bonds or Additional Bonds issued hereunder, and said bonds shall no longer be deemed outstanding hereunder if such bonds shall have been purchased and canceled by the City or, as to any of said bonds not theretofore purchased and canceled by the City, when payment of the principal of and any applicable redemption premium, if any, on such bonds plus interest thereon to the respective dates of maturity or redemption (a) shall have been made or caused to be made in accordance with the terms thereof; or (b) shall have been provided for by depositing with a state or national bank having trust powers or trust company in trust solely for such payment (i) sufficient moneys to make such payment and/or (ii) direct general obligations of or obligations the principal and interest of which are unconditionally guaranteed by the United States of America (herein referred to as "Government Obligations") in such amount and bearing interest payable and maturing or redeemable at stated fixed prices at the option of the holder as to principal at such times as will ensure the availability of sufficient moneys to make such payment and such bonds shall cease to draw interest from the date fixed for their redemption or maturity and, except for the purposes of such payment, shall no longer be entitled to the benefits of this ordinance; provided that, with respect to any such bonds called or to be called for redemption, the City shall have duly given notice of redemption or made irrevocable provision

for such notice. Any such moneys so deposited with the aforesaid state or national bank or trust company as provided in this section may be invested and reinvested in Government Obligations at the direction of the City and all interest and income from all such Government Obligations in the hands of the aforesaid trustee bank or trust company which are not required to pay principal and interest on the 2001 Bonds or Additional Bonds for which such deposit has been made shall be paid to the City as and when realized and collected.

Section 28. If any section, paragraph, clause or provision of this ordinance shall be held invalid, the invalidity of such section, paragraph, clause or provision shall not affect any of the other provisions of this ordinance.

Section 29. All ordinances, resolutions or orders or parts thereof in conflict with the provisions of this ordinance are to the extent of such conflict hereby repealed.

Section 30. The Mayor and City Council hereby approve the Preliminary Official Statement with respect to the 2001 Bonds and the information therein contained, and the Mayor and City Administrator or either of them is authorized to approve and deliver a final Official Statement for and on behalf of the City, and said final Official Statement shall be delivered in accordance with the requirements of Reg. Sec. 240.15c2-12 of the Securities and Exchange Commission.

Section 31. In accordance with the requirements of Rule 15c2-12 (the "Rule") promulgated by the Securities and Exchange Commission, the City hereby agrees that it will provide the following continuing disclosure information:

(1) to Kirkpatrick, Pettis, Smith, Polian, Inc. (the "Underwriter") and any person making request at least annually or in the alternative to any state information depository ("SID") for the State of Nebraska (no such SID currently exists or is presently expected to exist based upon any current pending legislation, the following financial information or operating data regarding the City:

- (a) the general financial and operating information shown under the heading "FINANCIAL INFORMATION" in the Official Statement for the Bonds
- (b) any additional financial information and operating data which customarily prepared by the City, including the City's most recently prepared audited financial statements, which shall be prepared for governmental and fiduciary fund types on the basis of generally accepted auditing standards and Government Auditing Standards issued by the Comptroller General of the United States demonstrating compliance with the modified accrual basis and for proprietary funds on the accrual basis, both in accordance with current generally accepted accounting principles.

(2) in a timely manner to the Underwriter, to the Municipal Securities Rule Making Board (the "MSRB"), to the SID (if any) and to any nationally recognized municipal securities information repository for which the Underwriter makes request, notice of the occurrence of any of the following events with respect to the Bonds, if in the judgement of the City, such event is material:

principal and interest payment delinquencies,

nonpayment related defaults,
unscheduled draws on debt service reserves reflecting financial difficulties,
unscheduled draws on credit enhancements reflecting financial difficulties,
substitution of credit or liquidity providers, or their failure to perform,
adverse tax opinions or events affecting the tax-exempt status of the Bonds,
modifications to rights of the bondholders,
bond calls,
defeasances,
release, substitution, or sale of property securing repayment of the Bonds, and
rating changes.

The City does not undertake to provide notice of the occurrence of any other material event, except the events listed above.

The City reserves the right to modify the type of information or the format for any such information provided pursuant to such undertaking, to the extent necessary or appropriate in the judgement of the City, so long as any such modification is consistent with the requirements of the Rule. The undertakings of the City in this Ordinance relating to continuing disclosure are hereby declared to be for the benefit of the registered owners of the Bonds (including beneficial owners of the Bonds held in nominee name, each a "Beneficial Owner") and such covenants may be enforced by the registered owner of any of the Bonds or by any Beneficial Owner of the Bonds, provided that the any right to enforcement shall be limited to specific enforcement of such covenants and any failure shall not constitute an event of default under this Ordinance. The City hereby designates its City Clerk as the contact person from whom the foregoing information, data and notices can be obtained.

Section 32. The City hereby covenants and agrees that it will make no use of the proceeds of the 2001 Bonds which would cause the 2001 Bonds to be arbitrage bonds within the meaning of Sections 103(b)(2) and 148 of the Internal Revenue Code of 1986, as amended (the "Code") and further covenants to comply with said Sections 103(b)(2) and 148 and all applicable regulations thereunder throughout the term of said issue, including all requirements with respect to payment and reporting of rebates, if applicable. The City hereby covenants to take all action necessary to preserve the tax-exempt status of the interest on the 2001 Bonds for federal income tax purposes under the Code with respect to taxpayers generally. The City further agrees that it will not take any actions which would cause the 2001 Bonds to constitute "private activity bonds" within the meaning of Section 141 of the Code. The City hereby designates (to the extent not deemed designated under Section 265 of the Code) the 2001 Bonds as its "qualified tax-exempt obligations" pursuant to Section 265(b)(3)(B)(i)(III) of the Code and covenants and warrants that it does not reasonably expect to issue bonds or other obligations aggregating in principal amount more than \$10,000,000 during calendar 2001.

Section 33. 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 9th day of May, 2001.

Mayor

City Clerk

Mayor Smith called for Committee and Officers' Reports in addition to those written reports contained in the Agenda packet. Police Chief Sunday reported he is reviewing the applications received for a new police officer and hopefully will have a new officer on duty by July. The Council questioned if the officer would be certified, but at this point, Sunday has no idea. WA/SE Supervisor Gene Divis reported the swimming pool has been filled with water in preparation of the swimming season. City Clerk Kovar reported that she will be attending the 55th International Institute of Municipal Clerks Annual Conference on May 20-24 in Kansas City, Missouri. City Attorney Jim Egr reported that the City vs. Joe Smith will go to trial on July 10 at 9:30 a.m.. This will be a permanent injunction. The City vs. Randy Janak will be on July 10 at 1:00 p.m. and set for trial. Council member Schatz reported that the street department planted 71 trees. Schatz suggested that instead of renting a tree spade the City should purchase a used tree spade since this will be a continuing on-going project. Schatz suggested a tree spade account could be set up. A tree spade account could easily be set up, but we couldn't accumulate money in it from year to year. Mayor Smith scheduled a Committee of the Whole meeting for Tuesday, May 22, at 5:30 p.m. in the meeting room of the City Office.

Council member Hein made a motion to accept the Committee and Officers' Reports as presented. Council member Lukassen seconded the motion. All of the Council members were present, all voted YEA, and the motion carried.

Three bids were received for the group health insurance. Our current carrier United Healthcare, and Trustmark from Jones Insurance Agency, and Trustmark from Agency One Insurance. The bids were as follows:

Carrier	Actual	High	Low
United Healthcare	\$14,146	-	-
Trustmark (Jones)	\$13,454*	\$19,777	\$10,763
Trustmark (Agency One)	-	\$19,320	\$12,270

*Estimate

City Administrator Brannen informed the Council that:

1. Both Agency One and Jones Insurance can provide United Healthcare and Trustmark Insurance. Agency One could not submit a bid for United Healthcare because Jones Insurance already has the city account.

2. Under the current coverage for city employees (United Healthcare 125 Plan) there is no deductible and the maximum out of pocket payments for one year is \$750 (for up to 2 family members).

3. The quote Jones received from Trustmark is an estimate and is likely to go up once past claims are reviewed.

Andrew presented a report showing how several different United Healthcare coverages would affect the group rate, and a report showing two examples and how much an employee would owe under the 251, 401, and 451 plans. The amount covered under the 401 and 451 plan is nearly identical in both examples. The difference is that with the 401 plan there is a higher premium, but lower co-pays and prescription charges. The employees prefer the 401 plan.

Council member Smith made a motion to approve the bid submitted by Jones Insurance Agency to provide United Healthcare group health insurance CPN-401. The CPN-401 plan requires a \$10 co-pay, an annual deductible of \$250 (for up to 2 family members), and a 90/10 split on inpatient/outpatient procedures with an out-of-pocket limit of \$1,000 (for up to 2 family members). This is a three-year bid although the rates are not locked in. Council member Lukassen seconded the motion. All of the Council members were present, all voted YEA, and the motion carried.

Council member Smith made a motion to advance ahead to agenda item #11 - Consideration of the Tennis Court Project and Funding Options. Council member Kirby seconded the motion. All of the Council members were present, all voted YEA, and the motion carried.

City Administrator Brannen reported that the Kiewit Foundation grant application that the Jaycees had submitted for the tennis courts was not funded. They have a \$3,000 grant application pending with the U.S. Jaycees Foundation that will be acted on in early June. Currently there is approximately \$13,000 committed for this project. This includes \$5,000 in donations (3,800 raised and 1,200 promised), \$5,000 from the city (sales tax), \$2,500 from the United States Tennis Association, and \$500 from the Nebraska Tennis Association. The estimated total project cost is \$23,000. This estimate is a year old and was given as a stand alone estimate not taking into account the fact that the running track will be constructed at the same time. The City has \$5,000 in Keno money that was in a reserve account that the auditor told us we no longer need. Brannen said the Council may want to consider using some of those funds for the tennis court project. Brannen also stated that \$3,000 was allocated for the 2000-2001 budget from keno funds for the Youth Center and may not be used. The tennis court committee could ask Don Hilger, as Chairman of the Youth Center, if the youth center isn't going to use the keno funds if he would assign the \$3,000 to the tennis court project. Council member Schatz questioned if the \$5,000 in keno money from the reserve account should be allocated to the tennis court project without giving other organizations, such as the Ball Association, notification that this money is available. City Administrator Brannen explained that

the Ball Association will receive approximately \$6,500 of sales tax revenues, and was already allocated \$1,500 of keno funds for the 2000-2001 budget year. Council member Lukassen stated that the tennis court project completes the package at the Park. Council member Kirby agreed and stated that the tennis court project is a one-time deal, where the ball association requests money every year from keno funds. Father Connor stated that once we have the new tennis court, he would be willing to teach the game of tennis and promote tennis as a sport. The concrete will be left as a base, the drainage issue will be addressed, and the project includes taking down the old fence and installing a new fence.

Council member Kirby made a motion to approve allocating \$5,000 of Keno Funds towards the tennis court project. (It was noted that the tennis court committee could request the \$3,000 from Don Hilger that was designated for the youth center). Council member Kroesing seconded the motion. All of the Council members were present, all voted YEA, and the motion carried. Tennis committee member Bob Palik thanked the Council for their support.

Mayor Smith declared a ten minute recess at 8:35 p.m. The meeting resumed at 8:45 p.m.

City Administrator Brannen reported that on May 2, a pre-construction meeting was held with the contractor and the golf course to discuss the next phase of the lakes project. One issue that came up was the possibility of an island for a tee box in the west lake. As the plans stand now there will be a submerged island in the west lake in order to foster fish habitat. The golf course would like to discuss the possibility of developing the submerged island into an above water island that would eventually serve as a tee box. There would be an added expense in doing this, most of which would be attributable to the increased rip-rap that would be needed.

Kelly Danielson, President of the Golf Board, thanked Electric Supervisor Tim Kovar and WA/SE Supervisor Gene Divis for all the help provided and for the use of the trencher for the installation of irrigation. Danielson stated that the golf club has approximately 130 members and they operate with a \$100,000 annual budget. To provide irrigation, the golf board borrowed money, raised dues, and hope to draw new memberships. Danielson asked the council to consider constructing an island in the west lake to be used as a tee box. The island would be a unique feature, visible from Highway 15, that would draw people from out of town and hopefully attract new memberships. It would be necessary to get irrigation to the island and build a bridge to it.

Council member Kroesing stated that the Council just recouped 2/10 of an acre surface area of the lake and he is not ready to sacrifice any more water.

Council member Schatz questioned if an island was built as a tee box and a bridge was constructed to it, could he fish off the island. Kelly Danielson answered "No". Council member Schatz stated he was just looking at what could happen. Discussion followed. City Administrator Brannen will ask the engineers to come up with drawings and additional cost estimates.

Home based businesses in High Density Residential areas was discussed. Council member Hein stated that citizens have said that they want businesses to stay in business districts and residences to stay in residential areas, so he is having a hard time with this Ordinance. Council member Schatz stated that some home businesses already exist. The purpose of the

ordinance is to create guidelines that citizens must adhere to for a home business and make the performance standards as clear as possible. Council member Lukassen stated the ordinance will limit the size of the business in residential areas, yet offer a start to businesses. Kim Shore, who would like to operate a beauty shop in her home, agreed. She stated that she can't afford to operate a shop downtown, but perhaps if she could start small in her home and then establish a business, she would then be more than happy to move the business to a Commercial area.

Council member Kroesing made a motion to pass Ordinance No. 906, establishing home based businesses in High Density Residential, on the 2nd reading. Council member Smith seconded the motion. Voting YEA: Council members Kirby, Lukassen, Schatz, Smith, and Kroesing. Voting NAY: Council member Hein. The motion carried and Ordinance No. 906 was passed on 2nd reading as follows:

ORDINANCE NO. 906

AN ORDINANCE TO AMEND ORDINANCE NO. 616, BY ADDING SECTION 622: HOME OCCUPATIONS; AND SUB-SECTIONS 622.1 INTENT; 622.2 GENERAL PROVISIONS; 622.3 STANDARDS; AND 622.4 REVOCATION; TO THE GENERAL PLAN.

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

Section 1. That Ordinance No. 616, be amended as follows:
That Home Occupation Sections 622, 622.1, 622.2, 622.3, and 622.4 be added to the General Plan as follows:

SECTION 622 HOME OCCUPATIONS:

622.1 INTENT:

Home occupations may be permitted to accompany residential uses by the grant of a Home Occupation Permit subject to the requirements and limitations of this Section. The regulations of this section are designed to allow personal home occupations, yet explicitly maintain the stable environment of the residential district.

622.2 GENERAL PROVISIONS:

- 1. A home occupation may be permitted when said occupation is conducted on residential premises incidental to the primary use of the premises as a residence, so long as the home occupation does not extend outside of the primary residence or single accessory building and is not construed as a retail outlet, shop, store or business. For purposes of this provision, a retail outlet, shop, store or business shall be considered as one which is similar to those traditionally located in Downtown Commercial District (DC) or Highway Commercial District (HC). An application for a home occupation**

shall be made to the City Clerk on a form provided and approved by the Zoning Administrator (City Administrator).

2. Permitted home occupations shall be of a personal service nature limited to domestic crafts and professional service, including, but not limited to:
 - A. Such domestic crafts as dressmaking, millinery, sewing, weaving, tailoring, ironing, washing, custom home furnishings work, carpentry work and furniture repair.
 - B. Such professions as law, medicine, architecture, engineering, planning, real estate, insurance, notary public, manufacturer's agent, clergy, writing, painting, photography, and tutoring, provided, however, the service is limited to advice and consultation and the premises are not used for the general practice of the profession.
 - C. **Home Based Day Care which may include outdoor play areas which are on the property where the primary residence is located.**
 - D. Barber and Beauty Shops.
 1. Limited to one (1) chair.
 - E. Distribution and sales of products such as cosmetics, home/health care products, mail order, and other similar uses.
 - F. Services provided outside the home such as lawn care, snow removal, and other similar uses.
3. Permitted home occupations shall be subject to all the regulations of the applicable zone district.
4. Permitted home occupations shall not affect adversely the residential character of the zone district or interfere with the reasonable enjoyment of adjoining properties.
5. Prohibited uses are those uses that are deemed to be in violation of the Performance Standards of this Ordinance.

622.3 PERFORMANCE STANDARDS:

1. The primary use of the structure or dwelling unit shall remain residential and the operator of the home occupation shall remain a resident in the dwelling unit.

2. The operator conducting the home occupation shall be the sole entrepreneur, and he shall not employ any other person other than a member of the immediate family residing on the premises. This standard applies only when the primary service is conducted within the confines of the residence.
3. No structural additions, enlargements, or exterior alterations changing the residential appearance to a business appearance shall be permitted.
4. No more than twenty-five percent (25%) of the floor area of any one story of the dwelling unit shall be devoted to such home occupation.
5. **Such home occupations shall be conducted entirely within the primary dwelling unit used as a residence or within a single accessory building on the same residential property.**
6. No additional and separate entrance incongruent with the residential structural design shall be constructed for the purpose of conducting the home occupation.
7. No provision for extra off-street parking or loading facilities, other than the requirements and permitted facilities of the zone district, shall be permitted. No part of a minimum required setback distance shall be used for off-street parking or loading facilities, and no additional driveway to serve such home occupations shall be permitted.
8. No display of goods or external evidence of the home occupation shall be permitted, except for one non-animated, non-illuminated, non-flashing announcement plate, indicating not more than the name and address of the resident. Said plate shall be attached flat against the wall of the residence and shall not exceed two (2) sq. ft. in total surface area.
9. No electrical or mechanical equipment shall interfere with local radio communications and television reception, or cause fluctuation in line voltage off the premises, or violate the general performance standards of Section 203 of this Ordinance.

622.4 REVOCATION:

1. *Conditions.* A home occupation permit granted in accordance with the provisions of this section may be terminated if the Zoning Administrator makes any of the following findings:

1. That any condition of the home occupation permit has been violated;
2. That the use has become detrimental to the public health or safety or is deemed to constitute a nuisance;
3. That the permit was obtained by misrepresentation or fraud;
4. That the use for which the permit was granted has ceased or has been suspended for six consecutive months or more; and
5. That the condition of the premises, or of the district of which it is a part, has changed so that the use may no longer be justified under the purpose and intent of this section.

2. *Appeal.* Within five working days of a revocation, an appeal may be made to the city council, through the Zoning Administrator (City Administrator). The Zoning Administrator within ten working days of the receipt of an appeal of his or her revocation action, shall report his or her findings of fact and decision to the city council. The city council shall determine the facts and may revoke, modify or allow to remain unchanged the home occupation permit in accordance with the council's final determination.

3. *Nontransferable.* A home occupation permit granted in accordance with the provisions of this article shall not be transferred, assigned, nor used by any person other than the permittee, nor shall such permit authorize such home occupation at any location other than the one for which the permit is granted.

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 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 _____ day of _____, 2001.

(Passed on 2nd reading - May 9, 2001)
Mayor

(Passed on 2nd reading May 9, 2001)
City Clerk

City Administrator Brannen and Council member Schatz did additional research and found that there is an asphalt product that is a better grade than what we are currently using, but not as expensive or as effective as concrete. The following chart compares Type B Asphalt (what we

currently use) Asphaltic (said to be a better grade), and Portland Cement.

Street Paving Analysis

Product Definitions:

Armour Coat	Oil/Gravel Mix - Not recommended, not included
Type B Asphalt:	Asphalt Binder/Aggregate Round River Rock Mix
Omaha 5/8 Asphaltic (aka Superpave/Asphaltic):	Asphalt Binder/Aggregate Crushed Rock/Limestone Mix
Concrete:	Portland Cement

Considerations

- All paving 6" depth - Asphalt calculated at 26' width; Concrete calculated at 24' width
- Prices from Olsson Associates analysis provided January, 2001 and from quotes of Knight Asphalt, Inc.
- Asphalt does not incur engineering costs
- Subgrade preparation for asphalt is done by city employees
- Asphalt is mix tested daily by an independent firm
- Two streets and one intersection used for comparison and averaging

:

	Str Average Cost			
N St; 3 rd to 4 th 304'x26'x6.25" = 300 Tons	Type B @ \$36/Ton	24.	\$3,9	\$16,086.
8 th St. I to J 388' x 26' x6.25" = 388 Tons	\$10,	800.	\$12,	\$4,578.
Intersection: 8 th St. I to J 2856 Sq. Ft. = 109 Tons	\$13,	788.	Asphaltic @ \$42/Ton \$12,600.	\$14,350.

Concrete
@ 66.67/linear ft.

267.68 \$20,

867.96 \$25,

\$12,000 approx.

\$23,000.00

Council member Kirby made a motion to authorize Street Superintendent Jim McDonald to proceed with some paving projects using asphaltic. Council member Lukassen seconded the motion. All of the Council members were present, all voted YEA, and the motion carried.

Council member Kirby made a motion to allow a semi-trailer to be parked at the youth center (660 No 5th Street) parking lot, on the north side of the astro building, for the collection of aluminum cans for the Boy Scouts. Council member Smith seconded the motion. All of the Council members were present, all voted YEA, and the motion carried.

Mr. Leon Phillips, 475 ½ 4th Street, currently owns all of Lot 8, except the North 13'7" of the west 44'60", Block 24, Original Town of David City. Mr. Phillips submitted a bid of \$500.00 to purchase the North 13'7" of the west 44'60" of Lot 8, Block 24, Original Town of David City. This piece of property was acquired by the City with the old theater building. It is actually behind Leon Phillips' property, and if he would purchase it, it would square his lot off.

Council member Kroesing made a motion to accept the bid of Leon Phillips in the amount of \$500.00 to purchase the North 13'7" of the west 44'60" of Lot 8, Block 24, Original Town of David City. Council member Smith seconded the motion. All of the Council members were present, all voted YEA, and the motion carried. (State Statute states that notice of the sale shall be posted in three prominent places within the city for a period of not less than seven days prior to the sale of the property. The notice shall give a general description of the property offered for sale and state the terms and conditions of the sale.)

Council member Hein introduced Resolution No. 14-2001 and moved for its passage and adoption. Council member Kroesing seconded the motion. All of the Council members were present, all voted YEA, and the motion carried. Resolution No. 14-2001 was passed and adopted as follows:

RESOLUTION NO. 14 - 2001

WHEREAS, the City of David City, Nebraska, proposes to apply for assistance from the Nebraska Department of Economic Development for a CDBG Tourism Development Initiative Grant; and

WHEREAS, the project includes the purchase and installation of a bend slide and a speed slide at the new David City Family Aquatic Center, and the construction of a handicapped accessible bathroom and shower facility at the David City Municipal Campground; and

WHEREAS, the City of David City, Nebraska has available a minimum of 50% of the project cost and has the financial capability to operate and maintain the completed facilities in a safe and attractive manner for public use; and

WHEREAS, the proposed application and supporting documents were made available for public review at a properly announced meeting of the David City - City Council;

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF DAVID CITY, NEBRASKA, that the City of David City applies for a CDBG Tourism Development Initiative Grant from the Nebraska Department of Economic Development.

Passed and approved this 9th day of May, 2001.

Mayor

City Clerk

Council member Schatz will not be able to attend the regularly scheduled council meeting in July, and asked that the council meeting be re-scheduled. Council member Kirby made a motion to re-schedule the council meeting from Wednesday, July 11 to Wednesday, July 18th at 7:00 p.m., in the meeting room of the City Office, 557 4th Street, David City, Nebraska. Council member Smith seconded the motion. All of the Council members were present, all voted YEA, and the motion carried.

Since the participants of the Bike Ride Across Nebraska will be in David City on June 15, 2001, Council member Kroesing made a motion to lower the adult swimming pool admission charge to \$2.00 for *any adult* wanting to swim on June 15, 2001. Council member Hein seconded the motion. All of the Council members were present, all voted YEA, and the motion carried.

As the City Council did not receive any recommendations from the Planning Commission concerning permitted uses under Highway Commercial, Council member Hein made a motion to table consideration of an ordinance amending the permitted uses under Highway Commercial. Council member Kirby seconded the motion. All of the Council members were present, all voted YEA, and the motion carried.

Council member Kroesing made a motion to advance ahead to agenda item #21 - Consideration of the application of the David City Area Jaycees for a Fireworks Permit. Council member Kirby seconded the motion. All of the Council members were present, all voted YEA, and the motion carried.

Council member Kroesing made a motion to approve the application of the David City Area Jaycees for a Fireworks Permit. Council member Hein seconded the motion. All of the Council members were present, all voted YEA, and the motion carried.

Council member Hein made a motion to advance ahead to agenda item #22 - Consideration of a resolution to combine Lot 7 and the East 100.02 feet of Lot Nine, East Park Meadows Addition, to form one lot as requested by Dean & Pat Hilderbrand. Council member Kroesing seconded the motion. All of the Council members were present, all voted YEA, and the motion carried.

Council member Kirby introduced Resolution No. 15 - 2001 and moved for its passage and adoption. Council member Smith seconded the motion. All of the Council members were present and all voted YEA. The motion carried and Resolution No. 15 - 2001 was passed and adopted as follows:

RESOLUTION NO. 15 - 2001

WHEREAS, Dean S. and Patricia J. Hilderbrand, are the owners of Lot Seven (7), East Park Meadows Addition to the City of David City, Butler County, Nebraska, and

WHEREAS, Dean S. and Patricia J. Hilderbrand have recently purchased the east 100.02 feet of Lot Nine (9), East Park Meadows Addition to the City of David City, Butler County, Nebraska, that is directly South of their existing lot, and,

WHEREAS, Dean S. and Patricia J. Hilderbrand have filed an application to combine Lot Seven (7) and the east 100.02 feet of Lot Nine (9), East Park Meadows Addition to the City of David City, Butler County, Nebraska, to form one lot.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF DAVID CITY, NEBRASKA, that the request of Dean S. and Patricia J. Hilderbrand, to combine Lot Seven (7) and the east 100.02 feet of Lot Nine (9), East Park Meadows Addition to the City of David City, Butler County, Nebraska, to form one lot as

follows:

The east 100.02 feet of Lot Nine (9), East Park Meadows Addition to the City of David City, Butler County, Nebraska as measured from the Northeast Corner of said Lot Nine (9) and extending the West Boundary of Lot Seven (7), East Park Meadows Addition to the City of David City, Butler County, Nebraska to the South boundary of the said Lot Nine (9) and extending the east boundary of said Lot Seven (7) 30.84 feet to the South boundary of the said Lot Nine (9).

BE IT FURTHER RESOLVED that the City Clerk be and is hereby instructed to file a copy of this Resolution with the County Clerk of Butler County, Nebraska.

Dated this 9th day of May, 2001.

Mayor

City Clerk

Council member Hein made a motion to advance ahead to agenda item #23 - Consideration of going into executive session. Council member Lukassen seconded the motion. All of the Council members were present, all voted YEA, and the motion carried.

Council member Hein made a motion to go into executive session to discuss the sale of the theater lot. Council member Lukassen seconded the motion. All of the Council members were present, all voted YEA, and the motion carried. The Council, Mayor Smith, City Administrator Brannen, City Attorney Egr, and City Clerk Kovar went into executive session at 9:55 p.m..

Council member Kirby made a motion to come out of executive session. Council member Kroesing seconded the motion. All of the Council members were present, all voted YEA, and the motion carried. The Council came out of executive session at 10:10 p.m..

Council member Kroesing made a motion to set a minimum bid of \$18,500 for the sale of the theater building (481 4th) lot. Council member Hein seconded the motion. All of the Council members were present, all voted YEA, and the motion carried.

There being no further business to come before the Council, Council member Kroesing made a motion to adjourn. Council member Kirby seconded the motion. All of the Council members were present, all voted YEA, and the motion carried. Mayor Smith declared the meeting adjourned at 10:15 p.m..

Mayor

City Clerk



CERTIFICATION OF MINUTES

May 9, 2001

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 May 9, 2001; 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.

Joan E. Kovar