

## CITY COUNCIL PROCEEDINGS

July 28, 2003

The Mayor and City Council of the City of David City, Nebraska met in open public session in the meeting room of the City Office, 557 4th Street, David City, Nebraska. Notice of the special meeting was published in the July 17, 2003 issue of the Banner-Press. The Mayor and members of the City Council acknowledged advance notice of the meeting by signing the Agenda which is a part of these minutes. The Agenda was kept continuously current in the office of the City Clerk and was available for public inspection during regular office hours. No new items were added to the agenda during the twenty-four hours immediately prior to the opening of the Council meeting.

The meeting opened with the Pledge of Allegiance.

Present for the meeting were: Mayor Stephen Smith, Council members Gary Kroesing, Ted Lukassen, Bill Schatz, Gary Smith, Mark Kirby, and Nick Hein, City Administrator Jeff Fiegenschuh, City Attorney Jim Egr, Water/Sewer Supervisor Gene Divis, Wastewater Plant Operator Jim Kruse and daughter Kelsey, Electric Plant Supervisor John Kabourek, Electric Supervisor Tim Kovar, Park/Auditorium Supervisor Bill Buntgen, Roger Helgoth and Jeff Forney of Jacobson Helgoth Consultants, Mike Sousek of Lower Platte North NRD, Dr. Jack Kaufmann, LaVerne & Norma Kozisek, Chairman Bill Voboril - Village Board of Bruno, Banner Press Editor Larry Peirce, and City Clerk Joan E. Kovar.

Council member Lukassen made a motion to pass Ordinance No. 931 on the second reading. Council member Kroesing seconded the motion. Voting YEA: Council members Hein, Smith, Schatz, Lukassen, Kroesing, and Kirby. Voting NAY: None. The motion carried and Ordinance No. 931 was passed on the second reading as follows:

### **ORDINANCE NO. 931**

AN ORDINANCE PROVIDING FOR THE ANNEXATION OF A TRACT OF LAND LOCATED IN THE SOUTHWEST QUARTER (SW 1/4) OF SECTION TWENTY (20), TOWNSHIP FIFTEEN (15) NORTH, RANGE THREE (3) EAST OF THE 6<sup>TH</sup> P.M., BUTLER COUNTY, NEBRASKA, REPEALING ANY ORDINANCES IN CONFLICT HEREWITH; DESCRIBING THE TIME WHEN THIS ORDINANCE SHALL BE IN FULL FORCE AND EFFECT, AND PROVIDING FOR PUBLICATION OF THE ORDINANCE IN PAMPHLET FORM.

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

1) A tract of land located in the Southwest Quarter (SW ¼) of Section 20, Township Fifteen (15) North, Range Three (3) East of the 6<sup>th</sup> P.M., Butler County, Nebraska, described as follows:

Beginning at the northeast corner of Lot 1, Block 3, Kozi Addition to the City of David City; thence easterly, 50.00 feet, on the easterly extension of the North line of said Lot 1; thence southerly, 135.31 feet, parallel with the east line of said Lot 1, to a point on the easterly extension of the south line of said Lot 1; thence westerly, 50.00 feet, on the easterly extension of the

south line of said Lot 1, to the southeast corner of said Lot 1; thence northerly, 135.31 feet, to the point of beginning, containing 0.155 acre, more or less.

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

Section 1. That the boundaries of the City of David City, Nebraska, be amended and changed in order to include the above described property.

Section 2. That this Ordinance be filed with the Office of the County Assessor and County Clerk of Butler County, Nebraska, and that the City Clerk be directed to amend the plat filed in her office to show the inclusion of the real estate listed above and that the boundary of David City as amended by this Ordinance be certified and placed on record in the office of the City Clerk of David City, Nebraska.

Section 3. That any Ordinance, setting or establishing boundaries of the City of David City, Nebraska, which is in conflict with this Ordinance be and the same is hereby repealed.

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

Passed and approved this \_\_\_\_ day of \_\_\_\_\_, 2003.

ATTEST:

Passed on 2<sup>nd</sup> reading 7/28/03  
Mayor Stephen Smith

Passed on 2<sup>nd</sup> reading  
City Clerk Joan E. Kovar

Council member Kroesing made a motion to pass Ordinance No. 932 on the second reading. Council member Kirby seconded the motion. Voting YEA: Council members Kirby, Hein, Smith, Schatz, Lukassen, and Kroesing. Voting NAY: None. The motion carried and Ordinance No. 932 was passed on the second reading as follows:

**ORDINANCE NO. 932**

AN ORDINANCE PROVIDING FOR THE ANNEXATION OF CERTAIN CONTIGUOUS TERRITORY TO THE CITY OF DAVID CITY, NEBRASKA, AS DESCRIBED BELOW, A TRACT OF LAND LOCATED IN THE SW 1/4 OF SECTION 20, T15N, R3E OF THE 6<sup>TH</sup> P.M. IN BUTLER COUNTY, NEBRASKA, **KOZI 2<sup>ND</sup> ADDITION**, REPEALING ANY ORDINANCES IN CONFLICT HERewith; DESCRIBING THE TIME WHEN THIS ORDINANCE SHALL BE IN FULL FORCE AND EFFECT AND PROVIDING FOR PUBLICATION OF THE ORDINANCE IN PAMPHLET FORM.

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



many people knew anything about this. Mayor Smith stated there have been public hearing notices concerning this for the Planning Commission meetings. Council member Lukassen questioned how many people read the legal notices. Following discussion Smith and Kroesing withdrew their motions.

Council member Smith made a motion to pass and adopt Ordinance No. 935 on the first reading. Council member Hein seconded the motion. Voting YEA: Council members Kirby, Hein, Schatz, Lukassen, Kroesing, and Smith. Voting NAY: None. The motion carried and Ordinance No. 935 was passed on first reading as follows:

**ORDINANCE NO. 935**

AN ORDINANCE OF THE CITY OF DAVID CITY, NEBRASKA, TO AMEND ZONING ORDINANCE NO. 616, ARTICLE 3, SECTION 303: DEFINITIONS, TO INCLUDE AND CLARIFY "CONDOMINIUM"; "DWELLING, TOWNHOUSE"; "TOWNHOUSE"; "TOWNHOUSE OWNERSHIP"; "TOWNHOUSE STRUCTURE"; REPEALING ANY ORDINANCES IN CONFLICT HERewith; DESCRIBE THE TIME WHEN THIS ORDINANCE SHALL BE IN FULL FORCE AND EFFECT AND PROVIDE FOR PUBLICATION OF THE ORDINANCE IN PAMPHLET FORM.

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

Section 1. That Ordinance No. 616, Article 3, Section 303: Definitions - be amended by the addition of the following:

CONDOMINIUM: Shall mean an ownership regime whereby the title to each unit of occupancy is held in separate ownership, and the real estate on which the units are located is held in common ownership solely by the owners of the units, with each owner having an undivided interest in the common real estate. Condominiums may include residential, commercial, office, or industrial uses. Condominiums are subject to the Nebraska State Statutes, Section 76-801 through 76-823, the *Condominium Law*.

DWELLING, TOWNHOUSE: is one of a group or row of not less than two, single-family dwellings designed and built as a single structure facing upon a street or place and in which the individual town-houses may or may not be owned separately. For the purpose of the side yard regulations, the structure containing the group of townhouses shall be considered as one building occupying a single lot.

A dwelling unit having a common wall with or abutting one or more adjacent dwelling units in a townhouse structure, with its own front and rear access to the outside, and neither above nor below any other dwelling unit. A townhouse may be owner-occupied.

303.112 TOWNHOUSE: A dwelling unit having a common wall with or abutting one or more adjacent dwelling units in a townhouse structure, with its own front and rear access to the outside, and neither above nor below any other dwelling unit. A townhouse may be owner-occupied.

TOWNHOUSE OWNERSHIP: Ownership of a townhouse is allowed whereby the title of each unit of occupancy, and the real estate on which the unit resides, is held in separate ownership. The ownership shall be the unit and an area of land which shall reflect the property if the common wall were extended to serve as a property line.

TOWNHOUSE STRUCTURE: A building formed by at least two townhouses and not more than six contiguous townhouses with common or abutting walls. For the purpose of the side yard regulations, the structure containing a group of townhouses shall be considered as one building occupying a single lot.

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

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

Passed and approved this \_\_\_\_th day of \_\_\_\_\_, 20 \_\_\_\_.

ATTEST:

(Passed on 1<sup>st</sup> reading 7-28-03)  
Mayor Stephen Smith

(Passed on 1<sup>st</sup> reading 7-28-03)  
City Clerk Joan E. Kovar

Council member Lukassen introduced Ordinance No. 936. Council member Smith made a motion to pass and adopt Ordinance No. 936 on the first reading. Council member Kroesing seconded the motion. Voting YEA: Council members Kirby, Schatz, Lukassen, Kroesing, and Smith. Voting NAY: Council member Hein. The motion carried and Ordinance No. 936 was passed on first reading as follows:

**ORDINANCE NO. 936**

AN ORDINANCE OF THE CITY OF DAVID CITY, NEBRASKA, TO AMEND ZONING ORDINANCE NO. 616, SECTION 410 (LDR) LOWER DENSITY RESIDENTIAL DISTRICT, TO ALLOW TOWNHOUSE DWELLINGS; YARD REQUIREMENTS, MAXIMUM LOT COVERAGE; REPEAL ANY ORDINANCES IN CONFLICT HEREWITH; DESCRIBE THE TIME WHEN THIS ORDINANCE SHALL BE IN FULL FORCE AND EFFECT AND PROVIDE FOR PUBLICATION OF THE ORDINANCE IN PAMPHLET FORM.

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF DAVID

CITY, NEBRASKA.

Section 1. That Zoning Regulations, Section 410.4 - Special Exceptions - be amended by the addition of the following:

7. Townhouse Dwellings, provided the minimum requirements, as well as any other conditions deemed necessary based upon the project location, are met when:
  - a. Each unit is separated by a two-hour fire rated wall from the lowest level and continuing through the roof structure
  - b. Each unit shall be serviced by separate utilities
  - c. When each unit is in separate ownership, the accompanying lot shall not be in common ownership with any other unit
  - d. No more than two units shall be attached in this district

Section 2. That Zoning Regulations, Section 410.6 - Minimum Lot Area - be amended as follows:

1. The minimum lot area for single and two-family dwellings shall be ten thousand five hundred (10,500) feet. For Townhouse dwellings the minimum shall be five thousand six hundred (5,600) square feet per unit.
2. The minimum lot area for uses prescribed as exceptions shall be the area appropriate for each exception as determined and approved by the Commission in accordance with Article 9 of this Ordinance, provided that the lot area shall not be less than ten thousand five hundred (10,500) square feet, unless otherwise prescribed herein.

Section 3. That Zoning Regulations, Section 410.7 - Minimum Lot Width and Frontage - be amended by the addition of the following:

2. The minimum lot frontage shall be fifty (50) feet.  
  
Townhouse Dwellings containing only two (2) units, the minimum lot frontage shall be one hundred (100) feet with fifty (50) feet per unit.

Section 4. That Zoning Regulations, Section 410.8 - Minimum Yard Requirements - be amended by the addition of the following:

3. Side Yard: Side yards shall not be less than a depth of twelve (12) feet. Townhouse dwellings shall have a zero lot line along any common wall.

Section 5. That Zoning Regulations, Section 410.9 - Maximum Lot Coverage - be amended to read as follows:

The maximum lot coverage, including all principal and accessory buildings, shall not exceed fifty (50) percent of the total lot area.

Section 6. That any ordinance or section of any ordinance passed and approved prior to

the passage, approval and publication or posting of this ordinance and in conflict with the provisions is hereby repealed.

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

Passed and approved this \_\_\_\_th day of \_\_\_\_\_, 20\_\_.

ATTEST:

Passed on 1<sup>st</sup> reading 7/28/03  
Mayor Stephen Smith

Passed on 1<sup>st</sup> reading 7/28/03  
City Clerk Joan E. Kovar

Council member Kroesing introduced Ordinance No. 937. Council member Smith made a motion to pass and adopt Ordinance No. 937 on the first reading. Council member Lukassen seconded the motion. Voting YEA: Council members Kirby, Hein, Schatz, Lukassen, Kroesing, and Smith. Voting NAY: None. The motion carried and Ordinance No. 937 was passed on 1<sup>st</sup> reading as follows:

**ORDINANCE NO. 937**

AN ORDINANCE OF THE CITY OF DAVID CITY, NEBRASKA, TO AMEND ZONING ORDINANCE NO. 616, SECTION 411 (HDR) HIGHER DENSITY RESIDENTIAL DISTRICT, TO ALLOW TOWNHOUSE DWELLINGS; YARD REQUIREMENTS, MAXIMUM LOT COVERAGE; REPEAL ANY ORDINANCES IN CONFLICT HEREWITH; DESCRIBE THE TIME WHEN THIS ORDINANCE SHALL BE IN FULL FORCE AND EFFECT AND PROVIDE FOR PUBLICATION OF THE ORDINANCE IN PAMPHLET FORM.

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

Section 1. That Zoning Regulations, Section 411.4 - Special Exceptions - be amended by the addition of the following:

10. Townhouse Dwellings, provided the minimum requirements, as well as any other conditions deemed necessary based upon the project location, are met when:
  - a. Each unit is separated by a two-hour fire rated wall from the lowest

- level and continuing through the roof structure
- b. Each unit shall be serviced by separate utilities
- c. When each unit is in separate ownership, the accompanying lot shall not be in common ownership with any other unit
- d. No more than six units shall be connected in this district

Section 2. That Zoning Regulations, Section 411.6 - Minimum Lot Area - be amended to read as follows:

1. The minimum lot area for single-family and two-family dwellings shall be seven thousand (7,000) square feet. For Townhouse dwellings the minimum shall be four thousand (4,000) square feet per unit.
2. The minimum lot area for multi-family dwellings shall be one thousand five hundred (1,500) square feet per dwelling unit, provided in no case shall the minimum lot area be less than eight thousand four hundred (8,400) square feet.
3. The minimum lot area for uses prescribed as exceptions shall be the area appropriate for each exception as determined and approved by the Commission in accordance with Article 9 of this Ordinance provided that the lot area shall not be less than seven thousand (7,000) square feet, unless otherwise prescribed herein.

Section 3. That Zoning Regulations, Section 411.7 - Minimum Lot Width and Frontage - be amended as follows:

1. The minimum lot width at the front building line shall be fifty (50) feet.  
  
Townhouse Dwellings containing only two (2) units, the minimum lot frontage shall be one hundred (100) feet with fifty (50) feet per unit  
  
Townhouse Dwellings containing more than two (2) units the lot frontage shall be fifty (50) feet for each unit on the ends and thirty-five (35) feet for each interior unit.
2. The minimum lot frontage shall be forty (40) feet.

Section 4. That Zoning Regulations, Section 411.8 - Minimum Yard Requirements - be amended as follows:

3. Side Yard: Side yards shall not be less than a depth of six (6) feet for single-story construction. For multi-story construction, an additional four (4) feet shall be added to side yard requirements for each additional floor or ten (10) feet in height, whichever is greater.  
Townhouse dwellings shall have a zero lot line on any common walls.

Section 5. That Zoning Regulations, Section 411.9 - Maximum Lot Coverage - be amended as follows:

The maximum lot coverage shall not exceed seventy (70) percent of the total lot area.



The maximum lot coverage, including all principal and accessory buildings for Townhouse Dwellings shall not exceed seventy (70) percent of the total lot area.

Section 6. That any ordinance or section of any ordinance passed and approved prior to the passage, approval and publication or posting of this ordinance and in conflict with the provisions is hereby repealed.

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

Passed and approved this \_\_\_\_th day of \_\_\_\_\_, 20\_\_.

ATTEST:

Passed on 1<sup>st</sup> reading 7/28/03  
Mayor Stephen Smith

Passed on 1<sup>st</sup> reading 7/28/03  
City Clerk Joan E. Kovar

City Attorney Egr stated that James A. Redler has the current lease for the "Park House Tract" as follows:

### **LAND LEASE**

This Land Lease, hereinafter called "Lease", is made and entered into between the CITY OF DAVID, CITY, NEBRASKA, a Nebraska Municipal Corporation, hereinafter called "Lessor", whether one or more, and JAMES A. REDLER and MARY JANE REDLER, husband and wife and DOUGLAS J. REDLER, a married person, all as joint tenants, hereinafter called "Lessee", whether one or more. The Lessor and Lessee do hereby agree to the following terms and conditions, to-wit:

Lessor does hereby agree to let, lease and demise unto Lessee and the Lessee hereby agrees to use, lease, and rent from the Lessor the following described real estate, hereinafter called "Park House Tract", to-wit:

**TRACT DESCRIPTION:** A tract of land located in the South Half of the Northeast Quarter (S½NE¼) of Section Thirty (30) Township Fifteen (15) North, Range Three (3) East of the 6th P.M., Butler County, Nebraska, described as follows:

Commencing at the southeast corner of said Northeast Quarter; thence on an assumed bearing of N 0°00'00" E, on the east line of said Northeast Quarter, 469.44 feet; thence N 90°00'00"W, 1295.65 feet, to point of beginning; thence S 3 ° 17'00"W, 88.08 feet; thence N 86°05'30" W, 76.60 feet; thence N 0°27'30" W, 33.88 feet; thence N 47 °44'00"

W, 23.47 feet; thence N 87°15'30" W, 75.75 feet; thence N 8°35'30" E, 56.93 feet; thence S 80°47'00" E, 168.40 feet, to the point of beginning, containing 0.28 acres, more or less.

AND

**EASEMENT DESCRIPTION:** A tract of land located in the South Half of the Northeast Quarter of Section 30 T15N R3E of the 6th P.M., Butler County, Nebraska, described as follows:

Commencing at the southeast corner of said Northeast Quarter; thence on all assumed bearing of N 0°00'00" E, on the east line of said Northeast Quarter, 469.44 feet; thence N 90°00'00" W, 1295.65 feet, thence N 80°47'00" W, 168.40 feet, to the point of beginning; thence S 8°35'30" W, 56.93 feet; thence N 61°12'00" W, 96.2 feet; thence N 0°00'00" W, 25 feet; thence S 80°47'00" E, 94 feet, to the point of beginning.

with appurtenances thereto, if any, upon the following terms and conditions, to-wit:

EXHIBIT "A"

I  
TERM OF LEASE

It is agreed that the term of the Lease commences February 1, 2002 and ends on January 31, 2101.

It is further agreed by the Lessee that at the expiration of the term of this Lease, the Lessee will yield up the possession of the Park House Tract to the Lessor without further demand or notice in as good order and condition as when the same was entered upon by the Lessee, loss by inevitable accidents or ordinary wear and tear accepted.

II  
CONSIDERATION

As consideration of this Lease, Lessee agrees to pay Lessor, the Lessor agrees to accept from Lessee, as cash rent for the Park House Tract for the period of February 1, 2002 to January 31, 2101 the sum of ONE DOLLAR (\$1.00) payable in full on or before March 1, 2002.

III  
PURPOSE

That Lessee covenants that Lessee will use the Park House Tract as a single family residence. The Lessee in use of the Park House Tract covenants that Lessee will comply with all applicable Federal, State, County, and City laws, ordinances, rules, and regulations and shall not use the Park House Tract so as to constitute a nuisance or cause cancellation of the liability insurance covering the Park House Tract.

The Lessee purchased the residence/dwelling on the Park House Tract but not the Park House Tract. The purpose of this Lease is to allow the residence/dwelling to remain on the Park House Tract to be used by the Lessee as a residence/dwelling. The EASEMENT description is solely for the purpose of access to the TRACT description.

IV  
UTILITIES

The Lessee agrees to pay all utilities connected with the Park House Tract for the residence/dwelling located on the same, including but not limited to gas, propane; electricity, water, sewer, and telephone.

V  
INSURANCE

The Lessee agrees to carry fire and extend coverage insurance on the residence/dwelling located on the Park House Tract. The Lessee will carry liability insurance normal for a residence/dwelling and will provide to the Lessor a Certificate of Insurance for all Lessee's insurance coverages associated with the Park House Tract and residence/dwelling.

The Lessor will maintain Lessor's separate liability coverage for the Park House Tract.

VI  
FIRE AND OTHER CASUALTY

It is understood and agreed, that if, during the continuance of this Lease, the said residence/dwelling on the Park House Tract shall be so damaged by fire or other casualty as to be rendered untenable the Lessee shall start repairs within sixty (60) days and the repairs be substantially completed within six (6) months. In case such damage shall not be repaired by the Lessee within six (6) months thereafter, it will be optional with either party hereto by written notice given not later then seven (7) months after such fire or casualty to terminate this Lease.

In the event of the destruction of the residence/dwelling on the Park House Tract by fire or otherwise, then this Lease shall immediately terminate.

Any other damage or other repairs required to be made to the residence/dwelling on the Park House Tract shall be treated as provided herein if such repairs result from a casualty.

VII  
REPAIRS AND MAINTENANCE

Lessee shall at Lessee's own expense maintain the existing fence on the Park House Tract. Any change in the fence must be by permission of the Lessor, who will not unreasonably withhold such permission. Further, the Lessee in purchasing the residence/dwelling on the Park House Tract agrees that the Lessor has NO OBLIGATION for the repair, upkeep, maintenance, condition, structural elements, or exterior and interior of the said residence/dwelling located on the Park House Tract.

VIII  
IMPROVEMENTS

The Park House Tract is leased "AS IS".

Lessee shall not make any alternations or additions to the Park House Tract without first

obtaining Lessor's written approval. Unless otherwise agreed to in writing, such fixed improvements shall upon expiration or termination of this Lease remain the property of the Lessee. Subject, however, to the Lessor having first option to purchase the fixtures and improvements at their original cost less reasonable depreciation. Lessee is hereby allowed to construct an addition to the Park House contingent upon the said addition meeting all building codes and set-backs of the Lessor.

Fixtures placed or installed upon the Park House Tract by the Lessee shall remain the personal property of the Lessee.

Upon the termination of this Lease, Lessee shall restore the Park House Tract to Lessor in the same conditions as when Lessee received it; subject only to the changes that were approved in writing and repairs which were the responsibility of the Lessor; ordinary wear and tear, damage by fire and other casualty, or the elements or acts of God, excepted.

#### IX INSPECTION

Lessor shall have the right of access to the Park House Tract at reasonable times for the purposes of examination and inspection, making repairs, alterations, or improvements to the extent permitted herein, or exercising any of the rights of Lessor under this Lease.

#### X CONDEMNATION

If the entire Park House Tract is taken by eminent domain, or so much thereof as to), in Lessee's bonafide judgement, render the balance inadequate for the Lessee's use as residence/dwelling, then in such event this Lease shall terminate and the Lessee shall be given a reasonable period of time not to exceed one-hundred twenty (120) days to remove the residence/house on the Park House Tract and any fixtures placed on the Park House Tract placed on the same by the Lessee.

#### XI QUIET POSSESSION

Lessor warrants that Lessee, on paying the rent and the keeping, observing, and performing all other terms, conditions and provisions herein contained on the part of the Lessee to be kept, observed, and performed, shall during the full lease term, peaceably and quietly have, hold, and enjoy the Park House Tract for the full terms of this Lease, thereof, SUBJECT, HOWEVER, to the fact that the real estate surrounding the Park House Tract is a golf course and park area. The Lessor makes no warranties as to quiet, noise, damage, or activities that could arise from the property surrounding the Park House Tract being used as a golf course and park.

#### XII INDEMNIFICATION

Lessee shall indemnify Lessor and hold Lessor harmless from and against any direct damage suffered or liability incurred on account of bodily injury to any person or persons on or about the Park House Tract during the term of this Lease occasioned by the negligent act or omission, or breach of any covenant contained herein by Lessee, Lessee's officers, agents, or servants. This shall include the expense of reasonable attorney fees.

XIII  
WAIVER OF RIGHTS OF SUBROGATION

Lessor and Lessee hereby grant to each other on behalf of any insurance maintained by Lessor on the Park House Tract and insurance maintained by the Lessee on the residence/ dwelling located on the Park House Tract or leasehold improvement owned by Lessee a waiver of any right of subrogation any such insurer of one party may acquire against the other by virtue of payment of any loss under such insurance, such waiver to be effective only so long as each is empowered to grant such waiver under the terms of Lessee's insurance policy or policies involved.

XIV  
ASSIGNMENT AND SUBLETTING

The Lessee with prior written consent of the Lessor shall have the right to assign this Lease in whole or in part or to sublet the Park House Tract in whole or in part, provided always that no business or use is to be pursued on the Park House Tract which will injure the property or detract from the rental value thereof. Lessee continues to be responsible for Lessee's obligations contained herein unless mutually agreed by Lessor.

XV  
HOLDING OVER

In the event the Lessee shall, after the termination of this Lease or any extension thereof, continue to occupy or remain on the Park House Tract without a written agreement having been entered into, any such holding over shall be deemed a month-to-month tenancy, but otherwise subject to all of the terms of this Lease.

XVI  
ENDORSEMENTS

No agreement, oral or written, respecting the Park House Tract shall be binding upon either party to this Lease unless attached hereto.

XVII  
APPROVALS TO BE REASONABLE

Whenever the approval or consent of Lessor or of Lessee is required under the terms of this Lease or under the law, such approval or consent will not be withheld unreasonably.

XVIII  
LIENS AND ENCUMBRANCES

Lessee also agrees to keep the Park House Tract free and clear from all liens and encumbrances, and shall return said Park House Tract to Lessor upon the termination of this Lease free of any encumbrances and liens whatsoever.

XIX  
DEFAULT

If one or more of the following events shall occur:

- (A) Lessee shall default in the payment of rent or in the payment of any sum due and owing by Lessee to Lessor and shall fail to rectify such default within thirty (30) days after being served with written notice thereof by Lessor;
- (B) Lessee shall make an assignment for the benefit of creditors;
- (C) Lessee shall file a Petition or Answer seeking reorganization or arrangement under any of the laws of the United States relating to bankruptcy or any other applicable statute;
- (D) An attachment or execution shall be levied upon Lessee's property or interest under this Lease, and shall not be satisfied or released within sixty (60) days thereafter;
- (E) An involuntary Petition in bankruptcy shall be filed against the Lessee, or a receiver or trustee for all or any part of the property of Lessee shall be appointed by any Court, and such Petition shall not be withdrawn, dismissed or discharged, or such receiver or trustee removed within sixty days from the filing or appointment thereof,
- (F) Default shall be made in the performance or observance of any other covenant, agreement, obligation, provision, or condition to be kept or performed by Lessee under the provisions of this Lease, and such default shall continue for sixty (60) days after written notice thereof given by Lessor to Lessee;

then and in any of such events, the Lessor may at Lessor's option enter the Park House Tract and again have, repossess, and enjoy the same as if this Lease had not been made, and thereupon this Lease and everything herein contained on the part of the Lessor to be done and performed, shall cease, terminate and be utterly void without prejudice. In case of such default and entry by the Lessor, Lessor may relet said Park House Tract for the remainder of said term for the rent obtainable.

In the event the Lessee fails to pay, when due, for any repairs or improvements on the Park House Tract made by the Lessee, or in the event the Lessee fails to pay any of the charges on the Park House Tract which Lessee is obligated to pay by the terms of this Lease, or fails to make any repairs as herein provided, then in addition to all other remedies provided by this Lease, the Lessor may, but is not obligated to, upon Lessee's failure to cure such default within sixty, (60) days after receipt of written notice from Lessor which specifies the default complained of, pay any such charges and make such repairs, and the amount or amounts so paid or expended therefore, shall become due and payable immediately from Lessee to Lessor; and if Lessee shall not repay any such amount or amounts upon demand, said amount or amounts shall be added to, and become a part of, the rent to be paid by Lessee.

In the event the Lessor refuses or neglects to do any of the things specified to be done by the Lessor under the terms of this Lease, then the Lessee may, but is not obligated to, upon the Lessor's failure to cure such default within sixty (60) days after receipt of written notice from







called "Lessor" and JAMES A. REDLER and MARY JANE REDLER, husband and wife, and DOUGLAS G. REDLER, a married person, all as joint tenants, hereinafter called "Lessee", whether one or more.

WHEREAS, Lessor and Lessee entered into a Land Lease executed by Lessor February 5, 2002, and by Lessee February 2, 2002, copy of the same is attached hereto, marked Exhibit "A" and incorporated herein by reference; and,

WHEREAS, Lessor and Lessee agree that certain changes need to be made in the said Land Lease to facilitate a loan for the Lessee.

NOW, THEREFORE, in consideration of the terms and condition herein contained, which the Lessor and Lessee agree to be valuable considerations, the Lessor and Lessee agree as follows:

1. The second full paragraph of Paragraph VI of the said Land Lease will be totally stricken as if it were NOT in the said Land Lease.
2. Paragraph XVIII will be amended to read as follows:

XVIII

LIENS AND ENCUMBRANCES

Lessee agrees to return said Park House Tract to Lessor upon the termination of this Lease free of any encumbrances and liens whatsoever.

3. All other terms and conditions of the said Land Lease will be followed that are not inconsistent with this Addendum.
4. This Addendum will be binding on the heirs, successors, assigns, and personal representative of the Lessor and Lessee.

LESSOR:  
CITY OF DAVID CITY, NEBRASKA  
a Nebraska Municipal Corporation

LESSEE:

by: \_\_\_\_\_  
Stephen Smith, Mayor                      Date

James A. Redler                                      Date

Attest: \_\_\_\_\_  
Joan E. Kovar, City Clerk

Mary Jane Redler                                      Date

(Seal)

Douglas J. Redler                                      Date

State of Nebraska    )  
                                  ) ss.



**INTERLOCAL AGREEMENT**  
**FOR**  
**WATER SUPPLY SERVICE FROM DAVID CITY, NEBRASKA**  
**TO BRUNO, NEBRASKA**

This Interlocal Agreement For Water Supply Service From David City, Nebraska to Bruno, Nebraska, hereinafter referenced as "Agreement", is made and entered into between the VILLAGE OF BRUNO, NEBRASKA, a Nebraska Municipal Corporation, hereinafter referenced as "BRUNO"; the CITY OF DAVID CITY, NEBRASKA, a Nebraska Municipal Corporation, hereinafter referenced as "DAVID CITY"; and the LOWER PLATTE NORTH NATURAL RESOURCES DISTRICT, a Nebraska Natural Resource District and political subdivision, hereinafter referenced as "LPNNRD".

WHEREAS, this Agreement comes within the terms and conditions of the "INTERLOCAL COOPERATION ACT", hereinafter referenced as "Act", pursuant to Sections 13-801 et. seq. of the R.R.S. of Nebraska Reissue 1997 and 2002 Cumulative Supplement, and,

WHEREAS, BRUNO, DAVID CITY, and LPNNRD are all each considered a "public agency" under the definition of terms contained in the Act, Section 13-803 R.R.S. of Nebraska Reissue 1997; and

WHEREAS, this Agreement and the parties hereto are acting and coming within the authority of the Act; derive their authority from the Act; it is the intention of the parties hereto to have this Agreement without the creation of a separate legal entity; and whenever possible, this Agreement shall be construed in conformity with the Act; and,

WHEREAS, BRUNO has owned, maintained and operated a municipal water supply system, but because of circumstances particular to BRUNO, has evaluated potential water supply options for its municipal water system; and,

WHEREAS, LPNNRD has provided the mechanism accessory for BRUNO to examine the hereinafter stated water supply option by providing the initial "Interlocal Cooperation Act Agreement" between LPNNRD and BRUNO, which was executed by them December 20, 2002; and,

WHEREAS, on January 2, 2003 LPNNRD entered into an Agreement with SYNDER ENGINEERING COMPANY, hereinafter referenced as "Company", for the purpose of evaluation of technical and financial feasibility of the hereinafter stated water supply option. The said Agreement being in a format required by U.S. Department of Agriculture Rural Development Form RD 1942-19 with USDA-RD pending approval, and,

WHEREAS, LPNNRD during 2002 began a process of exploring potential interest of entities within Butler County, Nebraska, of which BRUNO and DAVID CITY are located, for the formation of a Rural Water District with possible consideration of utilization of the hereinafter stated under supply option as a key component; and,

WHEREAS, DAVID CITY completed a Water System Report in September, 2001 prepared by JACOBSON HELGOTH CONSULTANTS, hereinafter referenced as "Consultants". The said Report reviews the current assessment of DAVID CITY'S water supply and outlines a ten (10) year Capital Improvement Program to meet water supply, water distribution, and water

storage requirements for DAVID CITY; and

WHEREAS, U.S.D.A. Rural Development has expressed significant support for BRUNO to review acceptable "long-term" regional solutions for its water supply; and

WHEREAS, BRUNO'S water supply options were based upon a February ~, 2003 Water Supply "STUDY" prepared by SNYDER ENGINEERING COMPANY and JACOBSON HELGOTH CONSULTANTS, hereinafter referenced as "Company and Consultants"; and

WHEREAS, it is understood that the Water Supply "STUDY" has reviewed two (2) options: First, the alternative of BRUNO constructing a new well, under treatment and under main system; and Second, as DAVID CITY to BRUNO water supply. Based upon this "STUDY", the DAVID CITY to BRUNO water supply option is the cost-effective option based upon life cycle costs and favorable funding of U.S.D.A. Rural Development.

WHEREAS, Company and Consultants has determined and recommended a water supply option involving water to be supplied by DAVID CITY to BRUNO; and,

WHEREAS, BRUNO and DAVID CITY concur in the aforesaid water supply option determined and recommended by Company and Consultants and concur with Company and Consultants that the aforesaid water supply option to be the most cost effective solution to circumstances that have arisen for the water supply to BRUNO'S municipal water system; and,

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

- (A) BRUNO to proceed with the application process to U.S.D.A. Rural Development for funding for the DAVID CITY to BRUNO water supply option;
- (B) Plan for implementation of design and construction of the said project;
- (C) Provide for operation and maintenance of the said project;
- (D) Provide limitations for the said project, particularly for usage, but not limited thereto;
- (E) Provide terms of fee setting and collection of revenues;
- (F) Provide for other factors important to the parties hereto for the long-term operation of the said project.

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

## DURATION

The duration of this Agreement shall be for SEVENTEEN (17) years commencing on the date of execution of this Agreement. Further, the parties hereto upon mutual agreement to do so grant to each other two (2) FIFTEEN (15) year options to renew this Agreement with any modifications to this Agreement and renewal time being made in writing and executed by the parties hereto. The renewals MUST be exercised at least nine (9) months prior to the expiration of the respective term.

## II CUSTOMER STATUS

DAVID CITY will put BRUNO in a "customer status" as a water supply user with DAVID CITY. This "customer status" will be addressed by an appropriate Ordinance addressing the same for water rates charged to BRUNO by DAVID CITY.

## III SUPPLY WATER

- (a) DAVID CITY will supply to BRUNO quality water as required to be supplied to all its customers and in such pressure and quantity as needed by BRUNO.
- (b) BRUNO WILL NOT "blend" its own water supply with the water supply provided by DAVID CITY and will do all it can to prevent its customers from doing the same with any private water supply they may have access.
- (c) BRUNO WILL require all its water supply customers to maintain in operating condition "backflow prevention devices" to prevent contamination of the water supply provided by DAVID CITY and will see that its customers comply with the plumbing code established by DAVID CITY.
- (d) BRUNO WILL PROVIDE the necessary "backflow prevention devices" as needed at the "Master Meter Location", hereinafter referenced in Paragraph IV (d) or at such place or places agreed by the parties to be in the best interests of the parties to prevent backflow contamination.

## IV RATES

- (a) The water supply rate to be charged to BRUNO will be set by DAVID CITY periodically as it sets its water supply user rates for its customers.
- (b) DAVID CITY will bill BRUNO monthly for its water supply. BRUNO will bill its water supply user customers within its Village Limits, will be responsible for setting such rates, and will be responsible for collection of the same. DAVID CITY will have no responsibility for collection of water supply user billings within the Village Limits of BRUNO.
- (c) BRUNO will promptly pay its monthly billed water supply rate/bill as any customer of DAVID CITY as per DAVID CITY'S billing to BRUNO.

- (d) DAVID CITY shall meter water at a "Master Meter Location" located at or near State Highway Spur 12B. Meter readings shall be performed by DAVID CITY Water Department personnel.

V WATER MAIN AND WATER LINE

In order to provide the water supply to BRUNO by DAVID CITY, the parties agree to the following:

- (a) BRUNO will construct, maintain, repair, and upkeep the line from DAVID CITY'S water tower wherever located to the State Highway Spur 12B connection; this line will be hereinafter referenced as the "Water Main". All costs will be that of BRUNO, including construction. DAVID CITY will have NO liability for the same.
- (b) BRUNO will construct, maintain, repair, and upkeep the line from the State Highway Spur 12B connect to BRUNO; this line will be hereinafter referenced as the "Water Line". All costs will be that of BRUNO, including construction. DAVID CITY will have NO liability for the same.
- (c) BRUNO will construct, maintain, repair, and upkeep the "Tap Ons" to the Water Line. All costs for the same will be that of BRUNO, including construction. DAVID CITY will have NO liability for the same.
- (d) DAVID CITY will construct, maintain, repair, and upkeep the "Tap Ons" to the Water Main. All costs for the same will be that of DAVID CITY. BRUNO will have NO liability for the same.
- (e) BRUNO shall retain full rights of ownership of the Water Main and Water Line. However, BRUNO will extend to DAVID CITY the right to purchase the WaterMain assets. The cost of purchase by DAVID CITY will be the actual cost of the Water Main part of the project contemplated in this Agreement, which includes but is not necessarily limited to construction costs, right-of-way acquisition costs, engineering costs, interest, and such documented related costs, LESS the proportionate share of all grants, subsidies, and monies paid on behalf of the project contemplated herein related to the Water Main part of the project herein.
- (f) DAVID CITY shall be paid an "allocated capital contribution" by BRUNO within one (1) year after completion of this project covered by this Agreement. The agreed "allocated capital contribution" will be the sum of \_\_\_\_\_ DOLLARS (\$) and shall be paid with interest accrued at the current U.S.D.A. Rural Development loan rate.
- (g) LPNNRD or its appropriate assignee shall retain the right of first refusal for the opportunity to purchase assets of the Water Line for incorporation into a duly organized and implemented Rural Water District. The purchase price of said assets shall be the original construction costs of the same plus interest accrued on the same at the U.S.D.A. Rural Development loan rate. This right of first refusal to purchase opportunity shall exist for ten (10) years from completion of the construction of the project contemplated in this Agreement. The sale contemplated herein is SUBJECT to approval by DAVID CITY.

TAP ONS/HOOK UPS

The parties hereto anticipate so-called "Tap Ons/Hook Ups" which shall be referenced herein as "Tap Ons". The following are terms and conditions agreed to by the parties hereto related to Tap Ons, to-wit:

- (a) Tap Ons matters will be those involving the Water line ONLY and NOT the Water Main but will include those Tap Ons outside the Village Limits of BRUNO BUT NOT WITHIN IT'S ONE (1) MILE ZONING AUTHORITY OR DAVID CITY'S ONE (1) MILE ZONING AUTHORITY.
- (b) There is hereby created a "Tap Ons Committee", hereinafter referenced as "Committee" to address Tap Ons. The Committee will consist of the Mayor of DAVID CITY, the City Administrator of DAVID, the Water Department Head of DAVID CITY, the Chairman of the Board of Trustees of BRUNO, and one (1) member of the Board of Trustees of BRUNO. The Committee shall chose its Chairperson, Vice-Chairperson, and Secretary from among its members.
- (c) Tap Ons shall be prohibited to protect the integrity of the Water Line, unless approved by the Committee. Any Tap Ons will only be approved at designated valved Water Line cross or tee fittings.
- (d) The Committee will be responsible for approving Tap Ons.
- (e) The Committee will determine periodically the charges to Tap Ons for the following:
  - (1) Tap reservation fee
  - (2) Tap Fee (when tap is made)
  - (3) Meter and Usage Fee (Rates)

Such charges shall be adopted by Ordinances passed by BRUNO and DAVID CITY.

- (f) The Committee will set any capacity limits both in pressure and quantity of water.
- (g) The Tap Reservation Fee shall limit access to the Water Line water service for five (5) years from the date of payment of said fee. Cost of service from Tap to the users shall be borne by the user.
- (h) The Committee must approve any user's resale of water from the Water Line. The Committee shall determine if such resale is permitted and determine the same based upon the type of use, quantity to be used, and pressure demands, but the Committee IS NOT necessarily limited to such considerations. The purpose herein is to assure the integrity, quality, and quantity of the water supply in the Water Line and Water Main.
- (i) Any Tap Ons MUST install, maintain, and operate backflow prevention devices and comply with the appropriate plumbing code adopted by DAVID CITY.
- (j) The division of fees and rates aforesaid to be charged Tap Ons between BRUNO and DAVID CITY will be determined by the Committee.

VII INTERLOCAL COOPERATION ACT

CONDITION

This Agreement made pursuant to the Interlocal Cooperation Act shall NOT relieve any party of any obligation or responsibility upon it by law EXCEPT to the extent of actual and





State of Nebraska     )  
                                  ) ss.  
County of Butler     )

The foregoing instrument was acknowledged before me on \_\_\_\_\_, 2003 by \_\_\_\_\_, Mayor, and \_\_\_\_\_, City Clerk, of the City of David City, Nebraska, a Nebraska Municipal Corporation, on behalf of the City.

Notary Public

State of Nebraska     )  
                                  ) ss.  
County of Butler     )

The foregoing instrument was acknowledged before me on \_\_\_\_\_, 2003 by \_\_\_\_\_, as \_\_\_\_\_ and \_\_\_\_\_, as \_\_\_\_\_ of the Lower Platte North Natural Resources District, a Nebraska Natural Resources District and political subdivision on behalf of the NRD.

Notary Public

Several concerns were expressed:

Council member Kirby stated that he hears complaints that Souba's Silver Heights has low water pressure and questioned if servicing Bruno would add to the problem. Water/Sewer Supervisor Gene Divis stated that the water pressure in the north end of town, including Souba's Silver Heights, would not be affected even if we serviced Bruno. Divis explained that the elevation in the north end of town is higher than that of the current water tower, however the elevation at Bruno is 200' lower. Divis stated if we ran a straight line from the base of David City's water tower it would probably end up on the top of Bruno's water tower. The water to Bruno will gain pressure due to the difference in elevation; in fact restrictions will probably be needed in the water line to reduce the pressure to Bruno. This will in no way affect the water pressure in the north end of David City.

Council member Smith stated that he sees Bruno as just another water customer. We didn't have a problem servicing Bemis Addition, Kozi Addition, or Sabata's Addition, so why should we have a problem servicing Bruno.

Council member Lukassen stated he is not opposed to servicing water to Bruno but just wants to make sure that we understand the interlocal agreement. Lukassen questioned if the City might be better off if they charged Bruno a rural water rate rather than charge the same rate as city customers and receive the one-time \$65,000 "allocated capital contribution". Mayor Smith stated that the committee decided there will no longer be a rural water rate.

Council member Schatz stated he was in favor of selling water to Bruno. Schatz said "A committee was assigned to research this, which they did." "City Attorney Egr wrote an interlocal agreement that is iron clad." "Now is the time to answer questions even if it takes till midnight". "It is in the best interest of David City to take on a new customer". "It's a matter of public service and I wholly support this," "A perfect solution isn't realistic. We can vacillate on this for another two years," Schatz said.

Council member Hein stated the he agrees with the principal of providing water to Bruno, but if they were to vote now he'd vote no. Hein stated the mechanics have not been ironed out thoroughly enough to say yes. "I'm opposed to a long term marriage to Bruno after only one or two dates," Hein said.

City Attorney Egr stated that the USDA grant writers need an answer by August 18<sup>th</sup> in order for Bruno to stay on top of the funding list. Egr stated the Council needs to be honest with Bruno. "If your not comfortable with the agreement at this time, say so. If you have real concerns lets address them."

Mike Sousek of Lower Platte North NRD asked about Paragraph V (g) which states: *LPNNRD or its appropriate assignee shall retain the right of first refusal for the opportunity to purchase assets of the Water Line for incorporation into a duly organized and implemented Rural Water District. The purchase price of said assets shall be the original construction costs of the same plus interest accrued on the same at the U.S.D.A. Rural Development loan rate. This right of first refusal to purchase opportunity shall exist for ten (10) years from completion of the construction of the project contemplated in this Agreement. The sale contemplated herein is SUBJECT to approval by DAVID CITY.* Sousek stated that the NRD is not trying to take over, but questioned the ten (10) years stating that LPNNRD would like to stay in even if Bruno cannot pay and keep the Agreement as is. City Attorney Egr will draft a change for this paragraph.

There were also concerns expressed with Paragraph V (e). Some felt that David City should have the "Exclusive right to purchase" the water main assets.

Council member Smith made a motion to enter into an interlocal agreement to provide water to the Village of Bruno. Council member Schatz seconded the motion. Voting YEA: Council member Kirby (due to the information from Divis concerning water pressure in the north end of town), Lukassen, Schatz, Kroesing, and Smith. Voting NAY: Council member Hein. The motion carried. City Attorney Egr will prepare the draft of the Interlocal Agreement making the requested changes.

City Administrator Jeff Fiegenschuh reported that David City has the opportunity to apply and qualify for grant funding through the NE Game and Parks Commission for Park Recreational improvements. Some of the improvements will include:

1. Restoration of the Historic Bath House into a functional Park Maintenance Building
2. Development of camping and RV trailer use pads and area to promote greater utilization and support services
3. Replacement of Park Toilet Structure with a modern Shower Latrine Building which meets ADA requirements
4. Construction of a handicap accessible fishing pier, handicap parking, and access ramps
5. Modernization of designated facilities and buildings to improve park utilization

The grant is due into the Parks Commission by Oct 1<sup>st</sup>, so Fiegenschuh asked the council to consider approving a \$3,000 fee to Jacobson Helgoth Consultants for designing tasks 1 - 4.

Council member Kroesing made a motion to enter into an agreement with Jacobson Helgoth Consultants for a cost of up to \$3,000.00 for 2004 Park Recreational Improvement Services as defined above in improvements 1- 4. Council member Hein seconded the motion. The \$3,000 fee will be charged to General: meetings, travel, dues or may be reimbursed from Keno Funds. All of the council members were present, all voted YEA, and the motion carried.

A committee was formed consisting of Council members Bill Schatz, Nick Hein, and Ted Lukassen to consider park recreational improvements.

## **AGREEMENT**

**Between**

**CITY OF DAVID CITY, NEBRASKA**

**and**

**JACOBSON HELGOTH CONSULTANTS, INC.**

**for**

**2004**

**PARK RECREATIONAL IMPROVEMENT SERVICES**

**July 22, 2003**

## **AGREEMENT**

THIS IS AN AGREEMENT made as of July 28, 2003, between City of David City, hereinafter referred to as "CITY" and Jacobson Helgoth Consultants, Inc., hereinafter referred to as "JHC", for 2004 Park Recreational Improvements. Jeff Fiegenschuh, City Administrator, shall serve as designated contact for CITY and Brian Mulinix shall serve as designated contact for JHC. Roger Helgoth shall serve as Project Principal.

The 2004 Park Recreational Improvements envisioned by this agreement are improvements which are prioritized to be compatible with current Park development and Park Lake Restoration. A key part of the application will be to determine a full description and scope of the desired improvement along with appropriate Cost Opinions and prioritization.

In general concept these 2004 Improvements may include any or all of the following:

- (1) Restoration of Historic Bath House into functional Park Maintenance Building
- (2) Development of Camping and RV trailer use pads and area to promote greater utilization and support services
- (3) Replacement of Park Toilet Structure with a modern Shower Latrine Building and meet ADA requirements
- (4) Construction of a Handicap Accessible Fishing Pier and Handicap Parking and access ramps
- (5) Modernization of designated facilities and buildings to improve Park utilization

CLIENT and JHC, in consideration of the mutual covenants contained herein, agree as follows:

### **SECTION 1.0 - SCOPE OF SERVICES**

#### **Task 1 - Project Initiation Meeting**

This initial task will be used to identify project objectives, schedule project activities, establish project milestones and compile existing information. Prior to this meeting, JHC will review the 2003 Land and Water Conservation Fund (L&WCF) application for the David City Park Recreational Improvements project and develop recommendations to adjust this application to meet the current project objectives. Based upon the Initiation, JHC agrees to investigate any other potential funding sources in concert with City Administrator requests. The recommendations will be presented for discussion at the meeting in an outline format based on the application format.

JHC will present a draft task/responsibility matrix that identifies key project tasks and the project team members responsible for completing each task. JHC will coordinate a mutually agreeable meeting date, time, location and agenda and will prepare and distribute meeting minutes.

Deliverables

- Meeting agenda
- Meeting minutes
- Draft outline of 2003 L&WCF application
- Task/responsibility matrix

**Task 2 - Project Concept Design for 2004 Improvements**

Using the objectives identified in Task 1 and the conceptual design presented in the 2003 L&WCF application, JHC will prepare a conceptual design of the project. The conceptual design will be developed to the point where a reasonable opinion of cost can be formulated. Input from an architect will be obtained to confirm building improvements and estimated project costs

The conceptual design process will not include any land and topographic surveying, water and soil sampling or critical wildlife habitat and wetlands assessments.

**Task 3 - Draft Application**

JHC will prepare a draft 2003 L&WCF application using the conceptual design developed under Task 3 and approved by the project team. It is anticipated that the City of David City staff will have the opportunity for full input during the drafting of this document. The draft 2003 L&WCF application will include a narrative project description, an opinion of probable cost, a project schedule, a description of the public/private partnerships developed, a description of the affected real estate and other information necessary to make a competitive application. It will conform to the requirements set forth by the L&WCF program

Deliverables

- Draft 2003 L&WCF application

**Task 4 - Final Application**

Based on the results of the L&WCF and Project Team meeting, JHC will prepare a final 2003 L&WCF application. It will include the requirements of the L&WCF program and incorporate comments developed during the draft preparation in order to make it an attractive and competitive application.

Deliverables

- Five copies of the final 2003 L&WCF Application

**Task 5 - Additional Services**

Upon successful funding of the CITY'S L&WCF application and expansion of this project to include funding for the design and construction of recreation facilities through the Land and Water Conservation Fund. It is mutually agreed that JHC will perform additional professional services in accordance with a contract amendment. These services will include the project management, engineering, surveying and

necessary related services necessary to successfully complete the project design in its entirety. JHC

intends to form a project team that includes professional sub-consultants acceptable to the CITY that are currently familiar with the project and can provide the necessary professional services.

## **SECTION 2.0 - CITY RESPONSIBILITIES**

CITY shall do the following in a timely manner so as not to delay the services of JHC:

- 2.1 Furnish background document available to support the application process
- 2.2 Examine all studies and documents presented by JHC and return decisions pertaining thereto within reasonable times so as not to delay the services of JHC.
- 2.3 Provide accounting, insurance counseling, and legal services as CITY may require.
- 2.4 Give prompt written notice to JHC whenever CITY observes or otherwise becomes aware of any condition that affects the scope or timing of JHC's services, or any defect or nonconformance in the service of any other.
- 2.5 Accept full technical/administrative and legal responsibility for any CITY furnished standard details, technical or general specifications, test data, site data, record drawings, and similar items.

## **SECTION 3.0 - PERIOD OF SERVICE**

JHC's obligation to render services hereunder will extend for a period which may reasonably be required for the performance of JHC's services and required extensions thereto. It is intended that the term of this Agreement shall be indefinite and subject to termination by either party.

## **SECTION 4.0 - PAYMENTS TO JHC**

### **4.1 Compensation Terms Defined**

4.1.1 Payroll Cost shall mean the salary and wages at the time services are performed of all personnel engaged directly on the PROJECT, including, but not limited to, engineers, draftsmen, environmental scientists, technicians, other technical and business personnel; plus the cost of customary and statutory benefits including, but not limited to, social security contributions, unemployment, excise and payroll taxes, worker's compensation, health and retirement benefits, sick leave, vacation, holiday pay and other group benefits.

4.1.2 Direct Labor Costs shall mean salary and wages at the time services are performed of all personnel engaged directly on the PROJECT, including, but not limited to, engineers, draftsmen, environmental scientists, technicians, other technical and business personnel but does not include indirect payroll related costs or fringe benefits.

4.1.3 Service Billing Rates will be based upon a multiplier of 2.3 times Payroll Cost as total compensation for each hour an employee of JHC works on the PROJECT. These service billing rates include payroll costs, general and administrative overhead costs and profit. Professional services will be based upon an eight-hour day. Nonexempt employees' overtime (over eight hours per day) will be invoiced at 1.5 times the standard hourly rate.

4.1.4 Reimbursable Expenses shall mean expenses incurred by JHC directly or indirectly in connection with the PROJECT. These are expenses not associated with professional labor fees described in paragraphs 4.1.1, 4.1.2 and 4.1.3.

Costs, including taxes, associated with direct expenses such as shipping, communication, printing and reproduction, specialized equipment/ Program services for personnel health and safety protection, permits, registrations and licenses directly associated with the PROJECT, computer services, vehicle usage and equipment rented from commercial sources will be payable to JHC at actual cost plus 10 percent for handling and administration.

#### **4.2 Compensation for Tasks Under this Agreement**

4.2.1 Application Services. For Tasks 1-4, JHC shall be paid a not-to-exceed sum of \$3,000.00.

4.2.2 Task 5 Services shall be defined mad agreed to by separate Amendment to this agreement.

#### **4.3 Intervals of Payments**

CITY shall make payment to JHC for 2004 Park Recreational Improvement Services based upon monthly progress and effort, and full payment within 30 days after completion of any tasks

### **SECTION 5.0 - GENERAL PROVISIONS OF AGREEMENT**

Attached and incorporated to this Master Agreement as if fully set forth herein are Jacobson Helgoth Consultants' GENERAL TERMS AND CONDITIONS.

**SECTION 6.0 - EXECUTION**

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first written above.

JACOBSON HELGOTH CONSULTANTS, INC.

By:

Name:

Title:

Date:

CITY OF DAVID CITY, NEBRASKA

By:

Name:

Title:

Date:

When the Council approved the purchase of a new front mount mower for the park, the Council hoped we could use the old mower trade-in as this years payment and then pay 50% in October (2003-2004 fiscal year) and then the remaining 50% the following October (2004-2005 fiscal year). Unfortunately, the 1<sup>st</sup> payment is due now, with the balance due in fiscal year 2003-2004.

Council member Smith made a motion to pay the 1<sup>st</sup> payment on the front mount mower for the park out of the Contingency Fund. Council member Schatz seconded the motion. Voting YEA: Council members Kroesing, Smith, Schatz, Hein, and Kirby. Voting NAY: Council member Lukassen. The motion carried.

There being no further business to come before the Council, Council member Smith made a motion to adjourn. Council member Kroesing seconded the motion. Voting YEA: Council members Smith, Schatz, Lukassen, Kirby, Hein, and Kroesing. Voting NAY: None. The motion carried and Mayor Smith declared the meeting adjourned at 8:12 p.m..

Mayor Stephen Smith



City Clerk Joan E. Kovar



CERTIFICATION OF MINUTES  
July 28, 2003

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 July 28, 2003; that all of the subjects included in the foregoing proceedings were contained in the agenda for the meeting, kept continually current and available for public inspection at the office of the City Clerk; that such subjects were contained in said agenda for at least twenty-four hours prior to said meeting; that the minutes of the meeting of the City Council of the City of David City, Nebraska, were in written form and available for public inspection within ten working days and prior to the next convened meeting of said body; that all news media requesting notification concerning meetings of said body were provided with advance notification of the time and place of said meeting and the subjects to be discussed at said meeting.

City Clerk Joan E. Kovar