

CITY COUNCIL PROCEEDINGS

November 8, 2006

The City Council of the City of David City, Nebraska, met in open public session in the meeting room of the City Office, 557 4th Street, David City, Nebraska. The Public had been advised of the meeting by publication of notice in The Banner Press on November 2nd, and an affidavit of the publisher is on file in the office of the City Clerk. The Mayor and members of the City Council acknowledged advance notice of the meeting by signing the Agenda which is a part of these minutes. The advance notice to the Public, Mayor, and Council members conveyed the availability of the agenda, which was kept continuously current in the office of the City Clerk and was available for public inspection during regular office hours. No new items were added to the agenda during the twenty-four hours immediately prior to the opening of the Council meeting.

Present for the meeting were: Mayor Stephen Smith, Council members Gary Smith, Mark Kirby, Gary Kroesing, Bill Schatz, Nick Hein, and Ted Lukassen, City Administrator Joe Johnson, City Attorney Jim Egr, Electric Supervisor Tim Kovar, Water/Sewer Supervisor Jim Kruse, Electric Plant Supervisor John Kabourek, Police Chief Stephen Sunday, Street Superintendent Jim McDonald, Skip Trowbridge, Jim Redler, Philip Lorenzen of D.A. Davidson & Company, Banner-Press Editor Larry Peirce, and City Clerk-Treasurer Joan Kovar.

The meeting opened with the Pledge of Allegiance.

Mayor Smith informed the public of the "Open Meetings Act" posted on the east wall of the meeting room.

The minutes of the October 11th, 2006 meeting of the Mayor and City Council were approved upon a motion by Council member Kirby and seconded by Council member Smith. Voting YEA: Council members Hein, Schatz, Lukassen, Kroesing, Smith, and Kirby. Voting NAY: None. The motion carried.

Mayor Smith asked for Petitions, Communications, and Citizens' Concerns in addition to those contained in the Agenda packets. There were none.

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

Mayor Smith called for Committee and Officers' Reports in addition to those written reports contained in the Agenda packet.

Mayor Smith stated that Banner-Press Editor Larry Peirce did an excellent job writing the article regarding Council member Bill Schatz receiving the E. Benjamin Nelson Government Service Award from the Groundwater Foundation for his work in city government and his conservation efforts. Mayor Smith stated he was very proud of Bill Schatz for getting the award; it is good for our community.

Mayor Smith congratulated Nick Hein on his re-election as Council member – 3rd Ward. Smith also congratulated Bill Scribner – 2nd Ward, and Rick Holland – 1st Ward, though they were absent.

Police Chief Sunday stated that the Council may be receiving citizen input regarding the traffic issues brewing along 4th Street, north of "O" Street. Traffic is traveling along the shoulder north of "O" Street with their left turn signal on, traveling past the driveways for Stop Inn, 1510 N 4, and Northside, 1652 N 4th Street, on their way to the Family Dollar Store, 1844 N 4th Street.

The stretch of 4th Street for northbound traffic between N and O Streets has no striping on it, and it is now a one lane street. There are no markings on the east side of 4th Street north from "O" to the south Northside entrance. Street Superintendent McDonald will ask the State Highway department why there are no markings.

Police Chief Sunday also reported that the Rick Cemper house at 10th & "I" Street was not burned down as scheduled on October 23, 2006. The Fire Department decided to give Rick additional time to get an antique water tank out of the attic. Chief Sunday did not know anything about this until an upset neighbor asked him on October 24th why the house was still standing. The City had allowed extra time for Rick to get an antique bathtub and a spiral staircase; nothing was ever mentioned about an antique water tank. City Administrator Johnson and Police Chief Sunday will contact Fire Chief Matt Hilger.

Mayor Smith scheduled a Committee of the Whole meeting for Monday, November 27, 2006, at 6:00 p.m. in the meeting room of the City Office, 557 4th Street, David City, Nebraska.

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

Council member Kirby made a motion to advance to agenda items #19 – Consideration of a resolution calling Swimming Pool Sales Tax Revenue Bonds, Series 2001 for redemption, #20 – Consideration of an ordinance authorizing the issuance of Recreational Facility Sales Tax Revenue Refunding Bonds, Series 2006; #21- Consideration of a resolution calling Electric Revenue Refunding Bonds, dated June 1, 2001; and #22 – Consideration of an ordinance authorizing the issuance of Electric Revenue Refunding Bonds, Series 2006. Council member Hein seconded the motion. All of the Council members were present, all voted AYE, and the motion carried.

Phil Lorenzen of D. A. Davidson & Co. stated that he projected the sales tax revenue and it should be sufficient to pay off the bonds and to repay the electric department. Phil stated that after further calculations of calling the bonds, issuing new bonds, and the transaction costs involved, he recommends that the City not do this at this time as there are not significant savings to warrant this. Therefore, no action was needed for agenda items #19 – Consideration of a resolution calling Swimming Pool Sales Tax Revenue Bonds, Series 2001 for redemption, and #20 – Consideration of an ordinance authorizing the issuance of Recreational Facility Sales Tax Revenue Refunding Bonds, Series 2006.

Phil Lorenzen of D.A. Davidson & Company reported that the City could save approximately \$48,757.00 by calling the Electric Revenue Refunding Bonds, dated June 1, 2001, Series 1995, and issuing new bonds.

Council member Kroesing introduced Resolution No. 33 – 2006 and moved for its passage and adoption. Council member Lukassen seconded the motion. Voting YEA: Council members Kirby, Smith, Hein, Schatz, Lukassen, and Kroesing. Voting NAY: None. The motion carried and Resolution No. 33 - 2006 was passed and adopted as follows:

RESOLUTION NO. 33 - 2006

RESOLUTION CALLING REFUNDING
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 December 11, 2006 after which date said bonds shall cease to bear interest:

Electric Revenue Refunding Bonds, Dated June 1, 2001, in the principal amount of \$950,000, becoming due November 15, 2007 through November 15, 2015, both inclusive, issued by the City for the purpose of refunding and retiring together with cash on hand the City's outstanding \$1,390,000 balance of its Series 1995 Electric Revenue Bonds.

Section 2. Said bonds are payable at the office of the Treasurer of 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 Treasurer of David City, Nebraska, 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 8th day of November 2006.

ATTEST:

City Clerk

Mayor

[SEAL]

Council member Kirby introduced Ordinance No. 1036. Council member Kroesing made a motion to suspend the statutory rule that requires an Ordinance be read on three separate days. Council member Smith seconded the motion. Voting AYE: Council members Schatz, Lukassen, Hein, Kirby, Smith, and Kroesing. Voting NAY: None. The motion carried.

Council member Kroesing made a motion to pass and adopt Ordinance No. 1036 on the third and final reading. Council member Hein seconded the motion. Voting AYE: Council members Lukassen, Schatz, Smith, Kirby, Hein, and Kroesing. Voting NAY: None. The motion carried and Ordinance No. 1036 was passed and adopted as follows:

ORDINANCE NO. 1036

AN ORDINANCE OF THE CITY OF DAVID CITY, NEBRASKA, AUTHORIZING THE ISSUANCE OF ELECTRIC REVENUE REFUNDING BONDS OF THE CITY OF DAVID CITY, NEBRASKA, SERIES 2006, IN THE PRINCIPAL AMOUNT OF **NINE HUNDRED TWENTY-FIVE THOUSAND**

DOLLARS (\$925,000), FOR THE PURPOSE OF REFUNDING, TOGETHER WITH CASH ON HAND, \$950,000 OF OUTSTANDING ELECTRIC REVENUE REFUNDING BONDS, SERIES 2001; 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 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 THIS ORDINANCE IN PAMPHLET FORM.

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

Section 1. The Mayor and Council of the City of David City, Nebraska, hereby find and determine that (a) the City owns and operates an electric 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 Reissue Revised Statutes of Nebraska, as amended; that said electric system, taken together with all additions and improvements thereto hereafter acquired or constructed, is 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 Refunding Bonds, Series 2001 of the total principal amount of \$1,035,000 as follows:

Principal Amount	Maturing November 15	Interest Rate
\$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

of which Series 2001 Bonds, bonds maturing November 15, 2006 will be paid on their regular maturity date from funds on hand and bonds maturing November 15, 2007 through November 15, 2015, both inclusive, in the total principal amount of \$950,000 became callable on June 15, 2006 or anytime thereafter, at par and accrued interest to the date fixed for redemption and that said bonds, as set out above, maturing on and after November 15, 2007 in the total combined principal amount of \$950,000 are ordered called in accordance with their call provisions on December 11, 2006.

Said bonds maturing on and after November 15, 2007, 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 principal due and interest accruing on the Outstanding Bonds to December 11, 2006 and the Outstanding Bonds maturing on and after November 15, 2007 have been and hereby are called for redemption on December 11, 2006.

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 from its current Debt Service Reserve Fund, and to issue electric revenue refunding bonds of the City in the principal amount of \$925,000. 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 Nine Hundred Thirty Thousand Dollars (\$925,000) pursuant to Sections 10-142, 18-1803 to 18-1805, Reissue Revised Statutes of Nebraska, as amended, do exist and have been done as required by law.

Section 2. That all conditions, acts and things required to exist or to be done precedent to the issuance of Electric Revenue Refunding Bonds pursuant to Section 1 hereof do exist and have been done as required by law.

Section 3. 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 2006 Bonds, including all such bonds issued pursuant to Section 15.

(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 14 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 2006 Bonds pursuant to Section 5 hereof, or any successor thereto.

Section 4. To provide, together with cash available therefor, for the refunding of the Outstanding Bonds as described in Section 1 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 2006" (the "2006 Bonds") in the aggregate principal amount of Nine Hundred Thirty Thousand Dollars (\$925,000), with said bonds bearing interest at the rates per annum and to become due on November 15 of the year as indicated below:

<u>Amount</u>	<u>Maturing November 15</u>	<u>Interest Rate</u>
\$90,000	2007	3.75%
90,000	2008	3.75
95,000	2009	3.80
100,000	2010	3.80
100,000	2011	3.85
105,000	2012	3.85
110,000	2013	3.90
235,000	2015	4.00

Provided, however, bonds maturing November 15, 2015 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:

\$235,000 Principal Maturing November 15, 2015
 \$115,000 to be called November 15, 2014
 \$120,000 to mature November 15, 2015

The 2006 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 2006 Bonds shall be November 15, 2006. Interest on the 2006 Bonds, at the respective rate for each maturity, shall be payable semiannually on May 15 and November 15 of each year commencing May 15, 2007 (each an "Interest Payment date"), and the 2006 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 6 hereof. The 2006 Bonds shall be numbered from 1 upwards in the order of their issuance. No 2006 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 2006 Bonds issued shall be as directed by the initial purchaser thereof. Payments of interest due on the 2006 Bonds prior to maturity or earlier redemption shall be made by the Paying Agent and Registrar as designated pursuant to Section 5 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 2006 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 5 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 2006 Bonds to the Paying Agent and

Registrar. The City and the Paying Agent and Registrar may treat the registered owner of any 2006 Bond as the absolute owner of such 2006 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 2006 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 2006 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 2006 Bonds or claims for interest to the extent of the sum or sums so paid.

Section 5. The Treasurer of the City of David City, David City, Nebraska is hereby designated to serve as Paying Agent and Registrar for the 2006 Bonds. The Paying Agent and Registrar shall keep and maintain for the City books for the registration and transfer of the 2006 Bonds at the City's office. The names and registered addresses of the registered owner or owners of the 2006 Bonds shall at all times be recorded in such books. Any 2006 Bond may be transferred pursuant to its provisions at the office of said Paying Agent and Registrar by surrender of such 2006 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 2006 Bond or 2006 Bonds of the same series, interest rate, aggregate principal amount and maturity. To the extent of the denominations authorized for the 2006 Bonds by this ordinance, one 2006 Bond may be transferred for several such 2006 Bonds of the same series, interest rate and maturity, and for a like aggregate principal amount, and several such 2006 Bonds may be transferred for one or several such 2006 Bonds, respectively, of the same series, interest rate and maturity and for a like aggregate principal amount. In every case of transfer of a 2006 Bond, the surrendered 2006 Bond shall be canceled and destroyed. All 2006 Bonds issued upon transfer of the bonds so surrendered shall be valid obligations of the City evidencing the same obligation as the 2006 Bonds surrendered and shall be entitled to all the benefits and protection of this ordinance to the same extent as the 2006 Bonds upon transfer of which they were delivered. The City and said Paying Agent and Registrar shall not be required to transfer any 2006 Bond during any period from any Record Date until its immediately following Interest Payment Date or to transfer any 2006 Bond called for redemption for a period of 30 days next preceding the date fixed for redemption.

Section 6. In the event that payments of interest due on the 2006 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 2006 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 7. The 2006 Bonds maturing on or after November 15, 2012 shall be subject to redemption, in whole or in part, prior to maturity on November 15, 2011, 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 2006 Bonds for redemption in its sole discretion. The 2006 Bonds shall be redeemed only in amounts of \$5,000 or integral multiples thereof. Any 2006 Bond redeemed in part only shall be surrendered to said Paying Agent and Registrar in exchange for a new 2006 Bond evidencing the unredeemed principal thereof. Notice of redemption of any 2006 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

2006 Bond at said owner's registered address. Such notice shall designate the 2006 Bond or 2006 Bonds to be redeemed by maturity or otherwise, the date of original issue and the date fixed for redemption and shall state that such 2006 Bond or 2006 Bonds are to be presented for prepayment at the office of said Paying Agent and Registrar. In case of any 2006 Bond partially redeemed, such notice shall specify the portion of the principal amount of such 2006 Bond to be redeemed. No defect in the mailing of notice for any 2006 Bond shall affect the sufficiency of the proceedings of the City designating the 2006 Bonds called for redemption or the effectiveness of such call for the 2006 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 2006 Bond for which defective notice has been given.

Section 8. If the date for payment of the principal of or interest on the 2006 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 9. The 2006 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 2006

No. _____ \$ _____

Interest Rate
%

Maturity Date
November 15,

Date of Original Issue
November 15, 2006

CUSIP

Registered Owner: Cede & Co.

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 semiannually on May 15 and November 15 of each year commencing May 15, 2007 (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 office of Treasurer of the City of David City, in 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.

This bond is one of an issue of fully registered bonds of the total principal amount of Nine Hundred Twenty-five Thousand Dollars (\$925,000) of even date and like tenor, except as to the date of maturity, rate of interest and denomination (the "Series 2006 Bonds"), which were issued by the City for the purpose of refunding together with cash available therefor, the City's previously issued and outstanding Electric Revenue Refunding Bonds, Series 2001, date of original issue – June 1, 2001, of the principal amount of \$950,000, to provide for certain reserve funds, 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 10-142 and 18-1803 to 18-1805, Reissue Revised Statutes of Nebraska, as amended and other applicable Statutes.

Bonds maturing November 15, 2015 are subject to mandatory sinking fund payments as follows:

\$235,000 Principal Maturing November 15, 2015

\$115,000 to be called November 15, 2014

\$120,000 to mature November 15, 2015

In addition to said mandatory sinking fund call for redemption, bonds of said issue maturing on or after November 15, 2012, are subject to redemption at the option of the City, in whole or in part, on November 15, 2011, 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 2006 Bonds for redemption in its sole discretion. Notice of redemption shall be given by mail to the registered owner of any Series 2006 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 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 2006 Bonds and for the payment of any additional bonds of equal priority issued in accordance with the terms of the Ordinance authorizing the Series 2006 Bonds. The Series 2006 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 2006 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 2006 Bonds and any additional bonds of equal priority with said Series 2006 Bonds and other payments as specified in the Ordinance authorizing the Series 2006 Bonds. The Ordinance authorizing the Series 2006 Bonds also designate the terms and conditions under which additional bonds of equal priority with the Series 2006 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 2006 Bonds, the City also reserves the right to issue bonds or notes junior in lien to the Series 2006 Bonds and any additional bonds of equal priority to the Series 2006 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 2006 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 manual or the facsimile signatures of the Mayor and City Clerk of the City and by causing the official seal of the City to be imprinted hereon or affixed hereto, all as of the Date of Original Issue shown above.

CITY OF DAVID CITY, NEBRASKA

ATTEST:

(facsimile signature)
City Clerk

(facsimile signature)
Mayor

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 10. Each of the 2006 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 2006 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 (including any blanket letter previously executed and delivered by the City), 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 2006 Bonds as securities depository (each, a "Bond Participant") or to any person who is an actual purchaser of a 2006 Bond from a Bond Participant while the 2006 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 2006 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 2006 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 2006 Bonds. The Paying Agent and Registrar shall make payments with respect to the 2006 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 2006 Bonds to the extent of the sum or sums so paid. No person other than the Depository shall receive an authenticated 2006 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 2006 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 2006 Bonds or (ii) to make available 2006 Bonds registered in whatever name or names the Beneficial Owners transferring or exchanging such 2006 Bonds shall designate.

(c) If the City determines that it is desirable that certificates representing the 2006 Bonds be delivered to the Bond Participants and/or Beneficial Owners of the 2006 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 2006 Bonds. In such event, the Paying Agent and Registrar shall issue, transfer and exchange bond certificates representing the 2006 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 2006 Bond is registered in the name of the Depository or

any nominee thereof, all payments with respect to such 2006 Bond and all notices with respect to such 2006 Bond shall be made and given, respectively, to the Depository as provided in the Letter of Representations.

(e) Registered ownership of the 2006 Bonds may be transferred on the books of registration maintained by the Paying Agent and Registrar, and the 2006 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 2006 Bond unless and until such partially redeemed Bond has been replaced in accordance with the provisions of this Ordinance, the books and records of the Paying Agent and Registrar shall govern and establish the principal amount of such 2006 Bond as is then outstanding and all of the 2006 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 2006 Bond shall cease to be such officer before the delivery of such 2006 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 2006 Bond. The 2006 Bonds shall not be valid and binding on the City until authenticated by the Paying Agent and Registrar. The 2006 Bonds shall be delivered to the Paying Agent and Registrar for registration and authentication. Upon execution, registration and authentication of the 2006 Bonds, they shall be delivered to the City's Treasurer, acting on behalf of the City. Such Treasurer is hereby authorized to deliver them to D.A. Davidson & Co., as initial purchaser thereof, upon receipt of the purchase price of 98.50% of the principal amount thereof plus accrued interest on the principal amount of the 2006 Bonds to date of payment for the 2006 Bonds. Said initial purchasers shall have the right to direct the registration of the 2006 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 2006 Bonds which shall be delivered to said purchaser.

Section 11. For the payment of the 2006 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. The pledge and

hypothecation provided for the 2006 Bonds and any Additional Bonds in this Ordinance is intended to and shall provide for a first and prior pledge or lien upon and security interest in the revenues of the Electric System superior to any pledge, lien or security interest made or given with respect to any other indebtedness of the City as to its Electric System and is intended as a full exercise of the powers of the City provided for in Sections 18-1803 to 18-1805, R.R.S. Neb. 1997, as now or hereafter amended, with respect to the City's Electric System.

Section 12. The City hereby agrees that it will impose and maintain and shall revise from time to time when necessary and shall collect such rentals, rates, fees and charges for the use and services of the Electric System which in the aggregate shall be sufficient at all times to enable the City to pay the principal and interest on the 2006 Bonds and any Additional Bonds as the same become due.

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

- (a) 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;
- (b) to provide for the payment of interest on and principal of the 2006 Bonds and any Additional Bonds as such interest and principal become due; and
- (c) to establish and maintain the 2006 Debt Service Reserve Account as hereinafter set forth and any debt service reserves account for additional bonds.

Section 14. The revenues and earnings of the Electric System, in accordance with the pledge set forth in Section 11 of this ordinance shall be collected, deposited, held and applied 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) 2006 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 January 2007, the following amounts:

- (1) For the period from January 1, 2007 until May 1, 2007 an amount equal to 1/5 of the next maturing interest payments on the 2006 Bonds and from June 1, 2007 until the 2006 Bonds have been paid in full, an amount equal to 1/6th of the next maturing semiannual interest payment on the 2006 Bonds
- (2) For the period from January 1, 2006 until November 1, 2007 an amount equal to 1/11 of the next maturing principal on the 2006 Bonds and from December 1, 2007 until the 2006 Bonds have been paid in full, an amount equal to 1/12th of the next maturing principal payment for the 2006 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 2006 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) **2006 DEBT SERVICE RESERVE ACCOUNT** - The City agrees that it shall transfer concurrently with the settlement of the Bonds \$92,000 from its Debt Service Reserve Account held for the called and redeemed Series 2001 Bonds as the amount required to be maintained as a debt service reserve attributable to the 2006 Bonds (the "2006 Reserve Requirement"). Monies credited to the 2006 Debt Service Reserve Account may be withdrawn, as needed to provide funds to pay, when due, the principal and interest on the 2006 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 2006 Debt Service Reserve Account, there shall be credited to the 2006 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 2006 Debt Service Reserve Account until such account has been restored to the 2006 Reserve Requirement. Upon the issuance of any Additional Bonds a separate debt service reserve account shall be established and any such separate debt service reserve account shall have the right to share, in the event of drawings upon the 2006 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 14(d) to the

contrary notwithstanding, the amount required to be maintained in the 2006 Debt Service Reserve Account with respect to the 2006 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 14(b), 14(c) and 14(d) shall be credited to the Surplus Account. Monies in the Surplus Account may be used to make up any deficiencies in the preceding Accounts, to retire any of the 2006 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 2006 Debt Service Reserve Account and any reserve account for Additional Bonds, the City shall not be required to establish separate bank or investment accounts for the Accounts described in Subsection 14(b), 14(c), 14(d) and 14(e). Monies credited to the 2006 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 Funds or accounts. If invested, monies credited to the 2006 Debt Service Reserve Account or any reserve account established for Additional Bonds may be commingled with other Electric Funds or accounts so long as the City maintains books and records clearly identifying the specific investments, or portions thereof, which belong to the 2006 Debt Service Reserve Account or reserve account for Additional Bonds.

It is understood that the revenues of the Electric System are to be credited to the various accounts hereinabove 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 15. To provide funds for any purpose related to the Electric System, the City may issue Additional Bonds payable from the revenues of the Electric System having equal priority and on a parity with the 2006 Bonds and any Additional Bonds then outstanding, only upon compliance with the following conditions (including also those conditions for refunding bonds and the combining of other utilities as set forth in subsequent paragraphs of this Section 15):

(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 2006 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 2006 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 2006 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.

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, Reissue Revised Statutes of Nebraska, as amended, 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 2006 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 the first paragraph of this Section 15. 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, amortization of financing expenses or interest) and for such purposes any engineer or accountant furnishing projections may take into consideration the factors similar to those described in the first paragraph of this Section 15 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 2006 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 2006 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 2006 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, Reissue Revised Statutes of Nebraska, as amended (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 the first paragraph of this Section 15, 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, Reissue Revised Statutes of Nebraska, as amended (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 Reissue Revised Statutes of Nebraska, as amended (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.

The City hereby covenants and agrees that so long as any of the 2006 Bonds and any Additional Bonds are outstanding, it will not issue any bonds, notes or other indebtedness 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 2006 Bonds and any such Additional Bonds with the principal and interest on such bonds or notes to be payable from monies credited to the Surplus Account as provided in Subsection 14(e).

Section 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 such 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.

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 2006 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 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 D.A. Davidson & Co. as the original purchaser of the 2006 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 System 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 14 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 2006 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, to the extent payable to the City, 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 2006 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. The City will not hereafter grant any franchise or right to any person, firm or corporation to own or operate an Electric System plant or system in competition with that owned by the City.

Section 22. While any of the 2006 Bonds are outstanding, the City will render bills to all customers for Electric System 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 System service shut off on all properties served by Electric System service where there are delinquent Electric System 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 23. 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 2006 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 2006 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 24. So long as any of the 2006 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 2006 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 2006 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 25. 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 2006 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 2006 Bonds or Additional Bonds for which such deposit has been made shall be paid to the City as and when realized and collected.

Section 26. 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 27. 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 28. The Mayor and City Council hereby approve the Preliminary Official Statement with respect to the 2006 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 29. 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 D.A. Davidson & Co. (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: any financial information and operating data which is customarily prepared by the

City and publicly available, including the City's most recently prepared audited financial statements, which shall be prepared on the basis of 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 judgment 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 judgment 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 30. The City hereby covenants and agrees that it will make no use of the proceeds of the 2006 Bonds which would cause the 2006 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 2006 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 2006 Bonds to constitute "private activity bonds" within the meaning of Section 141 of the Code. The City hereby designates the 2006 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 2006.

Section 31. 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 8th day of November 2006.

Mayor

ATTEST:

City Clerk

[SEAL]

City Administrator Joe Johnson stated that in 2005 and 2006, the City of David City budgeted \$30,000.00 to construct a handicapped fishing pier on the west park lake. The Nebraska Game and Parks Commission has agreed to provide the engineering for the fishing pier and five thousand dollars (\$5,000.00) for the construction of a hard surface parking lot and trail access to the pier. The Lower Platte North NRD has pledged two thousand five hundred dollars (\$2,500.00) if the city would dedicate the handicapped fishing pier in the name of Richard Sabata, a long-time resident of David City and NRD Board member. Donations are currently being collected for the handicapped fishing pier and family members are sponsoring a benefit breakfast at the Knights of Columbus Hall on November 19, 2006.

Council member Lukassen made a motion to enter into an Interlocal Cooperative Agreement with the Nebraska Game and Parks Commission to construct a handicapped accessible fishing pier at the west park lake. Council member Kroesing seconded the motion. Voting AYE: Council members Smith, Hein, Schatz, Kirby, Kroesing, and Lukassen. Voting NAY: None. The motion carried.

INTERLOCAL COOPERATIVE AGREEMENT

The City of David City, Nebraska and the Nebraska Game and Parks Commission hereby enter into this Agreement this 8th day of November 2006, pursuant to the Interlocal Cooperation Act.

WHEREAS, the City of David City intends to construct a handicapped accessible fishing pier at the west David City Park Lake, located within the city limits; and,

WHEREAS, the Nebraska Game and Parks Commission wishes to contribute funding and reimbursement of expenses towards such angler access improvement projects;

**THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES AND COVENANTS
HEREIN, THE PARTIES AGREE AS FOLLOWS:**

1. That the City will advertise for bids and construct a handicapped accessible fishing pier and make improvements to the existing parking lot and trail at the west David City Park Lake, located in the City of David City. All project construction will be in accordance with the designs provided by NGPC engineer, Jim Pinkerton.

2. That the Game and Parks Commission will provide reimbursement of expenditures for said improvements to the existing parking lot and trail to provide handicap access to the constructed pier in an amount not to exceed Five Thousand Dollars (\$5,000.00). NGPC's engineer will complete a final inspection of the project to determine that construction was completed in accordance with the NGPC design provided to the City, and if not, what actions need to be taken to complete said project. Once the NGPC engineer approves the project, NGPC will provide reimbursement, to be paid directly to the City of David City, upon proof of expenditure of funds for said portion of the project. Said reimbursement will be paid to the City within sixty (60) days of receipt of invoice or other proof of expenditure from the City.

3. That the City shall be responsible for maintenance and repair of all facilities at the west David City Park Lake, including, but not limited to, said handicapped accessible fishing pier.

4. That the City agrees to allow fishing at the west David City Park Lake for a minimum period of twenty (20) years from the date of this Agreement.

5. This Agreement shall be binding on the parties to the Agreement, and the respective successors and assigns of said parties.

City of David City, Nebraska:

Nebraska Game and Parks Commission:

Stephen Smith, Mayor **Date**

Assistant Director **Date**

Joan E. Kovar, City Clerk **Date**

Witness **Date**

Council member Schatz made a motion to approve the final design and engineering as drawn up by the Nebraska Game & Parks Commission for the handicapped fishing pier to be constructed at the west park lake so that competitive bidding and the construction process may occur before the summer of 2007. Council member Hein seconded the motion. Voting AYE: Council members Lukassen, Smith, Kirby, Kroesing, Hein, and Schatz. Voting NAY: None. The motion carried.

Ordinance No. 1031 concerning fireworks regulations was passed on 1st reading on 8/09/06, tabled on 9/13/06, and passed on second reading on 10/11/06. Council member Kroesing made a motion to pass Ordinance No. 1031 on the third and final reading. Council member Kirby seconded the motion. Voting AYE: Council members Lukassen, Hein, Smith, Schatz, Kirby, and Kroesing. Voting NAY: None. The motion carried.

ORDINANCE NO. 1031

AN ORDINANCE OF THE CITY OF DAVID CITY TO AMEND FIREWORKS REGULATIONS BY AMENDING THE CITY OF DAVID CITY MUNICIPAL CODE; TO PROVIDE FOR THE REPEAL OF ANY ORDINANCE OR RESOLUTION IN CONFLICT THEREWITH; TO PROVIDE FOR AN EFFECTIVE DATE THEREOF; AND TO AUTHORIZE PUBLICATION IN PAMPHLET FORM.

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF DAVID CITY, BUTLER COUNTY, NEBRASKA, AS FOLLOWS:

Section 1. Section 10-414 of the Municipal Code of David City, Nebraska is amended to read as follows:

- §10-414.01 FIREWORKS; DEFINITION. The term "fireworks" shall mean and include any composition or device manufactured or used for the purpose of producing a visible or audible effect by combustion or detonation but does not include model rockets, toy pistol caps, emergency signal flares, snakes or glow worms, party poppers, champagne bottles, or wire sparklers under 24 inches in length.
- §10-414.02 FIREWORKS; SALE. Permissible fireworks may be sold at retail or offered for sale at retail within the City of David City only between 12:01 a.m. June 25 and ending 11:59 p.m. July 4th of each calendar year.
- §10-414.03 FIREWORKS; USE, HOURS RESTRICTED.
1. It shall be unlawful to discharge, explode or use permissible fireworks from an automobile or other moving vehicles or objects.
 2. It shall be unlawful to discharge, explode or use permissible fireworks before 10:00 a.m. and after 11:00 p.m. with the following exceptions:
Exceptions:
 - a. Permissible fireworks may be lawfully discharged, exploded or used between the hours of 8:00 a.m. on July 4th and 1:00 a.m. on July 5th.
 - b. Permissible fireworks may be lawfully discharged, exploded or used between the hours of 8:00 a.m. on December 31st and 1:00 a.m. on January 1st.
- §10-414.04 FIREWORKS; PUBLIC DISPLAY, APPLICATION FOR PERMIT, LOCATION.
1. Application for a permit required under this Section shall be made in the office of the City Clerk at least thirty (30) days prior to the public display. The City Council may, upon written application, grant a permit for the public display of fireworks by religious, educational, fraternal or civic organizations, fair associations, amusement parks, or other organizations or group of individuals. After such permit is granted, sales, possession, use and

distribution of fireworks for such public display shall be lawful for that purpose only.

2. All applications for permits to operate a public display of fireworks shall be in writing and shall set forth:
 - a. The name of the organization or person sponsoring the display, together with the name, age and qualifications of persons actually in charge of firing the display;
 - b. The date and time the display is to be held;
 - c. The exact location planned for the display;
 - d. The manner and place of storage of fireworks prior to the display
3. The actual point at which the fireworks are to be fired shall be at least two hundred (200) feet from the nearest permanent building, public highway or railroad, and fifty (50) feet from any telephone or electric power pole or line, tree, or other overhead obstruction(s).

§10-414.05 FIREWORKS; **VENDOR**, APPLICATION FOR PERMIT.

4. Application for a permit required under this Section shall be made in the office of the City Clerk by June 5th of each year in which the permit, if issued, would be valid. The City Clerk will provide such application form.
5. At the any regular City Council Meeting before June 24th of each year, the City Council will hold hearings on the applications for permits. The City Clerk will, at the time of accepting the application for a permit, give notice of the date and time of the hearing. Applicants are expected to appear at the hearing either in person or by representative.
6. At the time of an application, an applicant shall furnish to the City the name, address, and phone number of the fireworks stand manager. The person designated as manager must be at least 21 years of age. It shall be incumbent upon the applicant to keep this list current so that names of the employees having management responsibilities will always be on file in the office of the City Clerk.
7. Each applicant shall provide a plat plan showing the location of the stand, address, setbacks from right-of-way, distance to nearest building or structure, and occupancy of the nearest building.
8. Any permit issued may be revoked at any time by the City Council upon proper notice and hearing, if one is requested by the permit holder.

§10-414.06 FIREWORKS; **FEES**. Each permit application shall be accompanied by a nonrefundable application fee. Application fees are set by resolution and approved by the City Council.

§10-414.07 FIREWORKS; **ENFORCEMENT OF PROVISIONS**. The Chief of Police or designee is charged with the duty of enforcing all the provisions, terms and regulations of this Article.

§10-414.08 FIREWORKS; **PENALTY**. Any person violating the provisions of this article shall, upon conviction thereof, be fined not less than \$50 nor more than \$500 for each and every offense.

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

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

PASSED AND APPROVED this 8th day of November, 2006.

Mayor Stephen Smith

City Clerk Joan E. Kovar

When the City Council approved the proposed budget for the 2006-2007 budget year the budget included the purchase of one new 4x4 truck for the water department, one new truck for the power plant, and one new police car for the police department. The following bids were received and opened in public forum on October 27, 2006:

Company/Contact	Truck One Cost	Truck Two Cost	Total Truck Cost	Police Car Cost	Total Vehicle Cost
Sid Dillon Attn: Chuck Ames 257 W. A Street Wahoo, NE 68066	17,997.77 Chevrolet Silverado	17,997.77 Chevrolet Silverado	35995.54	18,997.77 Chevrolet Impala	54,993.31
Anderson Auto Group Attn: Tedd Bosworth 1951 Highway 30 Missouri Valley, IA 51555	16,997.00 Ford F-150 (126" Wheel Base)	17,290.00 Ford F-150 (145" Wheel Base)	34,287.00	19,356.00 Chevrolet Impala	53,643.00
Tonniges Chevrolet, Inc. Attn: Steve Toniges P.O. Box 487 Osceola, NE 68651	18,800.00 Chevrolet Silverado	18,700.00 Chevrolet Silverado	37,500.00	NO BID	37,500.00 NO POLICE VEHICLE BID
Atchley Ford, Inc. Attn: Matt Gembol 3633 North 72 nd Street Omaha, NE 68134	17,039.00 Ford F-150	17,039.00 Ford F-150	34,079.50	NO BID	34,079.50 NO POLICE VEHCILE BID
Gene Steffy Ford Attn: Milan Levos 1365 24 th Ave. Columbus, NE 68601	17,590.00 Ford F-150	17,590.00 Ford F-150	35,180.00	NO BID	35,180.00 NO POLICE VEHICLE BID
Woodhouse Ford Attn: Jerry Hughes P.O. Box 546 Blair, NE 68008	17,750.00 Ford F-150	17,750.00 Ford F-150	35,500.00	20,880.00 Ford Crown Victoria	56,380.00
Kobza Motors, Inc. Attn: Tim Beaver 566 E Street David City, NE 68632	19,800.00 Dodge Ram	19,800.00 Dodge Ram	39,600.00	23,200.00 Dodge Charger	62,800.00

Police Chief Sunday stated that if the Council selected a 2006 or 2007 Crown Vic, all of the law enforcement equipment in the 1999 Crown Vic will transfer into it. If an Impala or Charger is ordered the police will have to order model specific law enforcement equipment to fit it. No matter which car is selected a new light bar will need to be purchased as the old one is worn-out. It was also noted that a rear wheel drive vehicle may be preferred. Council member Schatz stated that he wished the City could buy locally but the price spread is too great. Council member Smith agreed stating that he was a firm believer in buying locally. There were also questions concerning the truck bids. Discussion followed.

Council member Schatz made a motion to re-advertise for bids on the police package car requesting rear wheel drive, specific to our needs, and to reserve the right to reject any and all bids. Council member Smith seconded the motion. Voting AYE: Council members Kroesing, Lukassen, Hein, Kirby, Smith, and Schatz. Voting NAY: None. The motion carried.

Council member Schatz made a motion to table consideration of the truck bids to allow time for clarification concerning the bids to the recessed council meeting that will be scheduled for November 27, 2006 at 6:00 p.m. prior to the Committee of the Whole meeting. Council member Hein seconded the motion. Voting AYE: Council members Kroesing, Smith, Lukassen, Kirby, Hein, and Schatz. Voting NAY: None. The motion carried.

Mayor Smith declared a ten minute recess at 8:30. p.m. The meeting resumed at 8:40 p.m.

The trees in the downtown area have become a nuisance due to starlings roosting in the trees, bird droppings covering the sidewalks, and the trees blocking the business façade. Many businesses in the downtown area have voiced complaints about the mess the starlings are creating; the droppings are being tracked into the businesses and there is a health concern. The City has attempted to control the starling problem by placing plastic owls in the trees but this has proved futile.

Street Superintendent Jim McDonald stated that all twenty (20) trees located in the downtown area are not a problem. Jim stated that we could remove only the problem trees and replace with a new species of tree. Discussion followed. The Council instructed Jim McDonald to visit with every property owner in the Downtown area to see if they want the tree on their property removed, and if so do they want it replaced with a new species of tree or with concrete.

Council member Schatz made a motion to remove the problem trees that are a nuisance and health concern due to the droppings from Starlings roosting in the trees, after consulting with the appropriate business owners. Council member Smith seconded the motion. Voting AYE: Council members Kroesing, Kirby, Hein, Lukassen, Smith, and Schatz. Voting NAY: None. The motion carried.

When the City Council approved the proposed budget for the 2006-2007 budget year the budget included \$10,000.00 to bring the City's zoning regulations and map up to date. City Administrator Johnson is familiar with the firm of Johnson, Erickson, O'Brien (JEO) Consulting Group and highly recommends them. Keith Marvin, who is a Planning Commission member, is also employed by JEO Consulting Group. Keith wrote the State of Nebraska Accountability and Disclosure Commission and the commission allowed Keith to serve as a Planning Commission member but "abstain from the deliberations and decision of the Planning Commission regarding

any recommendation it may make to the City on any proposed contract.” City Attorney Jim Egr concurred with the recommendations.

Council member Schatz made a motion to enter into an agreement with (approve hiring) Johnson, Erickson, O’Brien (JEO) Consulting Group to update the City’s zoning regulations and zoning map. Council member Lukassen seconded the motion. Voting AYE: Smith, Kirby, Kroesing, Hein, Lukassen, and Schatz. Voting NAY: None. The motion carried.

The Inter-Local Cooperation Act Agreement is between the City of David City and Butler County, Nebraska and non-governmental parties including the Butler County Development Alliance, HomeTown Competitiveness, and the David City Area Chamber of Commerce. Board representation is as follows:

David City	2 members on the board
Butler County	2 members on the board
Butler County Development Alliance	1 member on the board
D.C. Area Chamber of Commerce	1 member on the board
HomeTown Competitiveness	1 member on the board

Council member Lukassen introduced Resolution No.34 – 2006 and moved for its passage and adoption. Council member Kirby seconded the motion. Voting YEA: Council members Kroesing, Smith, Hein, Schatz, Kirby, and Lukassen. Voting NAY: None. The motion carried and Resolution No. 34 - 2006 was passed and adopted as follows:

RESOLUTION NO. 34 - 2006

A RESOLUTION OF THE CITY OF DAVID CITY, AUTHORIZING THE CITY ADMINISTRATOR AND THE CITY COUNCIL PRESIDENT TO SERVE AS REPRESENTATIVES OF THE CITY OF DAVID CITY ON THE ECONOMIC DEVELOPMENT INTER-LOCAL AGREEMENT WITH BUTLER COUNTY AND THE SUBSIDIARIES OF THE BUTLER COUNTY DEVELOPMENT ALLIANCE, DAVID CITY AREA CHAMBER OF COMMERCE, AND HOMETOWN COMPETITIVESNESS.

WHEREAS, the City of David City, Nebraska (hereinafter referred to as “City”) is an independent body of government, and

WHEREAS, the County of Butler County, Nebraska (hereinafter referred to as “County”) is an independent body of government, and

WHEREAS, the City and County has entered into a relationship to create a comprehensive, effective, and accountable community economic development program for individuals and communities within Butler County and David City.

NOW, THEREFORE, be it resolved by the Mayor and City Council of the City of David City, Nebraska, that:

1. The City Administrator and the City Council President are hereby selected and authorized to serve as the representatives for the City of David City on the Economic Development Inter-local Agreement board.

PASSED AND APPROVED this 8th day of November 2006.

Mayor Stephen Smith

ATTEST

City Clerk Joan E. Kovar

Hildy Estates First Addition was approved by Ordinance No. 1032 on August 28, 2006. Ryan Hilderbrand reported that Hildy Construction has awarded their portion of the construction of the water and sewer lines to Kobus Well Drilling of David City. The City will need to consider bids for the service, labor, materials, and equipment required for the construction of the water and sewer lines from the very southern point of 11th Street to the entrance point of Hildy Estates First Addition. The following bids were received:

Castle Construction, Inc., Columbus	\$31,888.88
G & G Trenching, Inc., Omaha	\$76,307.00
Utility Trenching, Inc., Omaha	\$49,150.00

Council member Schatz made a motion to accept the bid of Castle Construction, Inc. in the amount of \$31,888.88. Council member Smith seconded the motion. Voting AYE: Council members Kroesing, Hein, Lukassen, Kirby, Smith, and Schatz. Voting NAY: None. The motion carried.

Council member Schatz introduced Ordinance No. 1037. Council member Schatz made a motion to suspend the statutory rule that requires an Ordinance be read on three separate days. Council member Lukassen seconded the motion. Voting AYE: Council members Hein, Kirby, Smith, Kroesing, Lukassen, and Schatz. Voting NAY: None. The motion carried.

Council member Schatz made a motion to pass and adopt Ordinance No. 1037 on the third and final reading. Council member Kirby seconded the motion. Voting AYE: Council members Lukassen, Hein, Smith, Kroesing, Kirby, and Schatz. Voting NAY: None. The motion carried and Ordinance No. 1037 was passed and adopted as follows:

ORDINANCE NO. 1037

AN ORDINANCE TO PROVIDE FOR PROTECTION OF THE CITY OF DAVID CITY WELLHEAD PROTECTION AREA PURSUANT TO SECTION 17-536 AND SECTION 46-1501 ET. SEQ. OF THE REVISED STATUTES OF NEBRASKA BY ESTABLISHING LIMITATIONS UPON THE LOCATION OF POTENTIAL SOURCES OF POLLUTION OR INJURY TO THE MUNICIPAL WATER SUPPLY AND GROUND WATER; TO ESTABLISH RULES AND REGULATIONS DEFINING AND ENFORCING SUCH LIMITATIONS; TO PROVIDE FOR REPEAL OF ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; TO PROVIDE FOR AN EFFECTIVE DATE.

WHEREAS, Section 17-536 of the Revised Statutes of Nebraska provides that the jurisdiction of the City to prevent pollution or injury to the source of its water supply shall extend 15 miles beyond its corporate limits;

WHEREAS, Section 46-1503 of the Nebraska Wellhead Protection Area Act in the Revised Statutes of Nebraska provides that the City may designate a wellhead protection area and adopt controls pursuant to said Act for the protection of the public water supply system;

WHEREAS, pursuant to the Nebraska Wellhead Protection Area Act, Sections 46-1501 et. seq. of the Revised Statutes of Nebraska, the Mayor and City Council have adopted a Wellhead Protection Plan and Area;

WHEREAS, it is necessary to place limitations upon the location of potential sources of pollution or injury to the municipal water supply and ground water within the Wellhead Protection Area and to prescribe rules and regulations with respect to such limitations and the enforcement thereof;

WHEREAS, the County of Butler has not adopted zoning regulations at the time of the enactment of this ordinance, this ordinance shall be precedent;

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

Section 1. The City of David City hereby declares the David City Wellhead Protection area to include the entire area within the one mile jurisdictional zoning map for the City of David City.

Section 2. The City of David City adopts the Wellhead Protection Area which has been approved by the Nebraska Department of Environmental Quality; the same is attached hereto and incorporated herein by reference as if fully set forth.

Section 3. Words or phrases used in this ordinance shall be interpreted so as to give them the same meaning as they have in common usage and so as to give this ordinance its most reasonable application. Definitions set forth in the City of David City General Plan shall be applied in the event of any ambiguity or uncertainty in the interpretation of the rules and regulations established by this ordinance.

Section 4. It shall be unlawful for any person, other than the City of David City, to place, install, construct or replace any of the following structures or conduct any of the following activities or any activity which shall be designated by the Planning Commission as a potential threat to the water supply within the Wellhead Protection Area, except as may be provided by permit herein, to wit:

Activity or structure

Potable water well

Non-potable water well

Sewage lagoon - not allowed

Absorption or disposal field for waste - not allowed

Cesspool - not allowed

Dump - not allowed

- Livestock confinement facilities - restricted by Sections 6 & 7
- Pit toilet
- Sanitary landfill - not allowed
- Chemical or petroleum product storage
- Septic Tank and septic drain field
- Sewage treatment plant - not allowed
- Sewage wet well - not allowed
- Sanitary sewer connection
- Sanitary sewer manhole
- Sanitary sewer line

Section 5. The placing, installing, construction or replacing of any allowed structure or activity as set forth in Section 4 of this ordinance, hereafter termed a wellhead structure or activity, within the Wellhead Protection Area, shall not be permitted after the effective date of this ordinance unless a permit approved by the Planning Commission has been obtained. The owner of any wellhead structure or activity shall have the burden of establishing the existence and use of said wellhead structure or activity at the time of the effective date of this ordinance.

Section 6. No permit shall be issued by the Planning Commission within the following setback distances from any City of David City municipal water well:

<u>Activity or structure</u>	<u>Minimum Distance from Water Supply</u>
Potable water well	1,000 ft.
Non-potable water well	1,000 ft.
Sewage lagoon	not allowed
Absorption or disposal field for waste	not allowed
Cesspool	not allowed
Sanitary landfill	not allowed
Livestock confinement	5,000 ft.
Pit toilet	500 ft.
Chemical or petroleum storage	500 ft.
Septic tank and septic drain field	500 ft.
Commercial Lawn and garden compost	500 ft.
Fertilizer and pesticide storage	500 ft.
Septic tank exceeding 1,000 G.P.D.	5,000 ft.
Sewage treatment plant	not allowed
Sewage wet well	not allowed
Sanitary sewer connection	100 ft.
Sanitary sewer manhole	100 ft.
Sanitary sewer line	50 ft.

Any activity described in Section 6 located within the defined setback distance shall be considered prima facie a hazard to the quality of the municipal water supply.

Section 7. For purposes of this ordinance, a livestock confinement operation, as defined by Title 130 of the regulations of the Nebraska Department of Environmental Quality, shall be restricted to a maximum of 300 animal units and shall comply with zoning regulations and ordinances of the City of David City. Livestock confinement operations less than 300 animal units are exempt from the Nebraska Department of Environmental Quality permit process for a livestock waste control facility pursuant to Title 130, Chapter 2. In the event conditions at the livestock facility at any time indicate there is a high potential for waste discharge which may

threaten the municipal water supply or groundwater, as determined by the Nebraska Department of Environmental Quality, the Planning Commission permit for the operation shall be subject to revocation, unless the owner of the operation can provide evidence to the Planning Commission that the threat has been eliminated.

Section 8. Any wellhead structure or activity not prohibited by Section 4 and Section 6 shall be allowed, subject to a determination of the Planning Commission that such activity does not constitute a hazard or threat to the quality of the municipal water supply or ground water and upon issuance of a permit.

Section 9. The Planning Commission of the City of David City shall be responsible for implementation and enforcement of the rules and regulations established by this ordinance and shall consider all applications filed pursuant hereto. All applications shall be approved or rejected by roll call vote. The Zoning Administrator shall be charged with administration of the rules and regulations.

Section 10. Prior to placing, installing, constructing, expanding or replacing any wellhead structure or activity, the owner of the real estate upon which the structure or activity is proposed shall file with the Planning Commission an application for a wellhead activity permit. Said application shall be on a form furnished by the City of David City and shall include supporting information indicating why approval would not adversely impact the municipal water supply and ground water. The application shall be submitted to the Planning Commission for review. Prior to acting upon the application, the Planning Commission may seek an engineering report, recommendations of the Natural Resources District, the Nebraska Department of Environmental Quality or any other party or agency in evaluating the impact of the proposed structure or activity on the municipal water supply. A permit shall be issued only after the Planning Commission determines that the structure or activity is unlikely to contaminate or pollute the municipal water supply and ground water. Replacement or repair of existing properly registered agricultural irrigation wells, when done in an expedited or emergency status process by the Natural Resources District, shall be exempt from the Planning Commission permit process and must meet all requirements of the Natural Resources District and the setback distance requirements of Section 6.

Section 11. Wellhead structures or activities in existence and use in the Wellhead Protection Area as of the effective date of this ordinance shall continue to be permitted unless such continued existence or use, in the opinion of the Planning Commission, presents a hazard to the municipal water supply or ground water. If the Planning Commission determines that an existing wellhead structure or activity presents a hazard, the Planning Commission shall authorize the Zoning Administrator to notify the owner of the structure or activity to cease and desist said structure or activity. If the owner of the structure or activity desires to continue operation of said structure or activity, the owner may make application for a permit pursuant to this ordinance. If the owner does not cease and desist pursuant to this ordinance, the Zoning Administrator may proceed pursuant to Section 12 of this ordinance against said owner of the structure or activity.

Section 12. Any person found guilty by a court of law of violating any provision of this ordinance shall be subjected to a fine not to exceed \$500. The continuation of a violation of this ordinance shall be deemed an additional offense for every 24 hours of such continued violation. In addition, the City of David City may obtain injunctive relief and sue for damages and remediation and pursue other remedy available under laws of the State of Nebraska or other authority having jurisdiction over such matters.

Section 13. Should any section, paragraph, sentence or word of this ordinance hereby adopted be declared for any reason to be invalid, it is the intent of the Mayor and City Council of the City of David City that it would have passed all other portions of this ordinance independent of the elimination of any such portion as may be declared invalid.

Section 14. All ordinances or parts of ordinances in conflict with the provision of this ordinance are hereby repealed.

Section 15. This ordinance shall take effect and be in full force from and after its passage and publication according to law.

PASSED AND APPROVED this 9th day of April, 2003

Attest:

Mayor Stephen Smith

City Clerk Joan E. Kovar

City Administrator Joe Johnson presented an Employment Agreement for consideration. Several changes were made by the Council members as indicated below:

EMPLOYMENT AGREEMENT

This Employment Agreement, hereinafter called "Agreement", is entered into by and between THE CITY OF DAVID CITY, NEBRASKA, a Nebraska Municipal Corporation, hereinafter called "City" and JOSEPH J. JOHNSON, ~~a homeowner and a married man with a family,~~ hereinafter called "Administrator."

WHEREAS, the City is a Nebraska Municipal Corporation and has provided by Ordinance the appointed position of City Administrator, pursuant to Section 1-202 of the City's Municipal Code;

WHEREAS, Administrator serves in the appointed position of City Administrator for the City with duties, responsibilities, and powers pursuant to Section 1-202 and 1-202.01 of the City's Municipal Code; and,

WHEREAS, Administrator was appointed by the Mayor of the City with the approval of a majority of the City's City Council on May 26, 2006; and,

WHEREAS, additional duties of Administrator acknowledge that the Employee's Manual of the City contains the reasons in Chapter VII of the same for disciplinary action, including termination (firing) of employment or appointed position; and,

WHEREAS, it is in the mutual benefit of the City and Administrator to reduce to writing the agreement of Administrator's appointment for the 2006-2007 fiscal year of the City, which runs from October 1, 2006 thru September 30, 2007.

NOW, THEREFORE, the City and Administrator agree to the following, to-wit:

1. The City and Administrator agree that the terms and conditions of this Agreement constitute valuable consideration.
2. The City appoints the Administrator to the position of City Administrator for the fiscal year 2006-2007, which parties agree runs from October 1, 2006 thru September 30, 2007.
3. In the event the City does not reappoint the Administrator for the 2007-2008 fiscal year, the City will notify in writing the Administrator of its decision not to reappoint Administrator as the City's City Administrator on or before July 31, 2007.
4. In the event the Administrator intends not to seek reappointment as the City's City Administrator, Administrator will notify the City of this intent not to seek reappointment in writing to the City on or before July 31, 2007.
5. City recognizes that Administrator is a non-political position but serves at the good judgment of City's elected representatives in a political environment. City and the laws of the State of Nebraska do not accord Administrator "property interest" or "due process" in the employment thereof. Thus, Administrator is engaged in a hazardous **speculative** work environment that **may** causes uncertainty for Administrator. ~~full work productivity by not assuring Administrator's morale and peace of mind with respect to future security.~~
- 6- In the event Administrator is terminated by the City other than as provided in Section 12 and during such time Administrator is willing and able to perform the duties of City Administrator, then in that event, the Administrator

- will terminate employment to avoid legal proceedings and the City will pay Administrator a lump sum hazard cash payment equal to four (4) months pay. ~~plus one (1) additional month of pay for each twelve (12) month period of being the City's Administrator from the time of appointment hereinbefore stated with the maximum number of months of pay, which included the four (4) months stated aforesaid, not to exceed a total of twelve (12) months.~~ **The City and Administrator will review lump sum cash payment annually for the purpose of negotiating the number months of said lump sum cash payment.** ~~Hazard cash payment would be based upon the monthly pay of Administrator for the 2006-2007 fiscal year.~~
7. In the event Administrator does not accept or does not intend to seek reappointment, Administrator will not be entitled to any severance as hereinbefore stated.
 8. Compensation to Administrator will be FIFTY THOUSAND DOLLARS (\$50,000.00), payable in installments at the same time as other employees of the City are paid, per fiscal year of the City commencing November 26, 2006 with all the normal benefits provided to the other appointed officials and/or employees of the City. Should Administrator be appointed for successive fiscal years by City, a Cost of Living Adjustment (COLA) will be given at the same percentage as all other appointed officials and/or employees of the City.
 9. The City shall reimburse the Administrator at a rate equal to the IRS Standard Mileage Rate for any business use of the Administrator's vehicle within or beyond the City's area, payable at the same time as other employees of the City are paid, per fiscal year of the City commencing November 26, 2006.
 10. The City agrees to budget for and to pay for professional dues and subscriptions of the Administrator necessary for continuation and full participation in national, regional, state, and local associations, and organizations necessary and desirable for the Administrator's continued professional participation, growth, and advancement, and for the good of the City.
 11. The City agrees to budget for and to pay for travel and subsistence expenses of Administrator for professional and official travel, meeting, and occasions to adequately continue the professional development of Administrator and to pursue necessary official functions for the City, including but not limited to the ICMA Annual Conference, the Nebraska League of Municipalities, the Nebraska City/County Managers Association (NCMA), American Society of Public Administration, and such other national, regional, state, and local governmental groups and committees in which the City serves as a member.
 12. Should events occur and/or actions of the Administrator occur which bring Administrator within the City's Employee Manual Chapter VII addressing disciplinary action of termination (firing) of Administrator from Administrator's appointed position, such termination (firing) will be immediate and there will not be pay as provided in Section 6, all salary will cease thru the date of termination (firing), and all benefits will cease except those required by Federal Law to continue or which have options available to the Administrator.
 13. Should the City exercise its right to appoint someone other than Administrator for the 2007-2008 fiscal year of the City, Administrator will cease Administrator's duties on August 1, 2007, but will still be entitled to payment of Administrator's two (2) months of salary as normally paid and be entitled to the benefits normally paid thru September 30, 2007 plus the pay provided in Section 6.
 14. The parties recognize that Administrator must devote time outside of normal office hours to the City's business. Administrator shall be allowed to establish an appropriate work schedule.
 15. This Agreement may be modified, amended, or changed upon mutual agreement of the City and Administrator in writing executed by the City Administrator.
 16. This Agreement will be binding on the heirs, successors, assigns, and personal representatives of the City and Administrator.

Council member Schatz made a motion to table consideration of an employment agreement with City Administrator Joe Johnson to the November 27, 2006 recessed council meeting. Council member Hein seconded the motion. Voting AYE: Council members Smith, Kroesing, Kirby, Lukassen, Hein, and Schatz. Voting NAY: None. The motion carried.

Council member Schatz introduced Ordinance No. 1038. Council member Kroesing made a motion to suspend the statutory rule that requires an Ordinance be read on three separate days. Council member Schatz seconded the motion. Voting AYE: Council members Kirby, Lukassen, Hein, Smith, Schatz, and Kroesing. Voting NAY: None. The motion carried.

Council member Kroesing made a motion to pass and adopt Ordinance No. 1038 on the third and final reading. Council member Smith seconded the motion. Voting AYE: Council members Lukassen, Hein, Schatz, Kirby, Smith, and Kroesing. Voting NAY: None. The motion carried and Ordinance No. 1038 was passed and adopted as follows:

ORDINANCE NO. 1038

AN ORDINANCE OF THE CITY OF DAVID CITY, NEBRASKA TO SET THE PAY FOR THE CITY ADMINISTRATOR; REPEAL ALL ORDINANCES OR PORTIONS OF ORDINANCES

IN CONFLICT THEREWITH; PROVIDE AN EFFECTIVE DATE; 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. The Mayor and City Council of David City, Nebraska, do hereby establish and fix the salary for City Administrator Joseph J. Johnson at **\$50,000.00 per year**, after the passage of this ordinance.

SECTION 2. Any and all ordinances, or sections thereof, passed and approved prior to the passage, approval and publication or posting of this ordinance, and in conflict with its provisions, is hereby repealed.

SECTION 3. This ordinance shall be published in pamphlet form and shall be in full force and effect beginning on November 26, 2006.

PASSED AND APPROVED this 8th day of November, 2006.

Mayor Stephen Smith

City Clerk Joan E. Kovar

Council member Hein introduced Resolution No. 35 - 2006 and moved for its passage and adoption. Council member Smith seconded the motion. All of the Council members were present, all voted YEA, and the motion carried. Resolution No. 35 - 2006 was passed and adopted as follows:

RESOLUTION NO. 35 - 2006

WHEREAS, Michael & Darcia Husmann are the owners of the following two properties located on 8th Street between Nebraska and Iowa Streets:

- 1) Lot 1, Block 11, Miles 5th Addition (100' x 140') and
- 2) the North ½ of Lot 4, Block 11, Miles 5th Addition (50' x 140'), and

WHEREAS, Michael & Darcia Husmann have filed a request to divide Lot 1 by subtracting the south 25' of Lot 1, and combining the south 25' of Lot 1 to the North ½ of Lot 4, all in Block 11, Miles 5th Addition, to form the following two lots:

- 1) The North 75' of Lot 1, Block 11, Miles 5th Addition (75' x 140'), and
- 2) The South 25' of Lot 1 and the North 50' of Lot 4, Block 11, Miles 5th Addition (75' x 140')

WHEREAS, there were no objections expressed concerning dividing Lot 1 and combining the south 25' of Lot 1 with the North ½ of Lot 4, all in Block 11, Miles 5th Addition to David City to form two lots, each 75' x 140'.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF DAVID CITY, NEBRASKA, that the request of Michael and Darcia Husmann, to form the above two lots, is hereby approved.

Dated this 8th day of November, 2006.

Mayor Stephen Smith

City Clerk Joan E. Kovar

Council member Hein introduced Resolution No. 36 - 2006 and moved for its passage and adoption. Council member Kirby seconded the motion. All of the Council members were present, all voted YEA, and the motion carried. Resolution No. 36 - 2006 was passed and adopted as follows:

RESOLUTION NO. 36 - 2006

WHEREAS, the Mayor and City Council of David City, Nebraska determined that the property owned by Terry & Lori Colburn at 1255 N. 9th Street, David City, Nebraska and legally described as follows, to-wit:

South ½ of Lot 4, and all of Lot 5, Block 3, Will Thorpe & Perkins 2nd Addition,
David City, Butler County, Nebraska

was in violation of Chapter 4 Article 402 of the Municipal Code of the City of David City, Nebraska; and,

WHEREAS, Terry & Lori Colburn (owners) was provided notice of violation of Chapter 4 Article 402; that the above described real estate would be cleaned up; that the City would begin cleaning up said property on, or after, May 10, 2006, unless a notice of appeal was made with

the District Court of Butler County, Nebraska, and that the real estate above described would be assessed as a special assessment for the cost of said clean-up; and,

WHEREAS, all due process requirements of the above referenced City Ordinances of David City, Nebraska were followed; and,

WHEREAS, Terry & Lori Colburn failed to clean-up the above referenced real estate on or before May 10, 2006; and,

WHEREAS, the City of David City, Nebraska did incur \$580.50 to Environmental Services concerning asbestos at the above described real estate.

NOW, THEREFORE, BE IT RESOLVED that a Special Assessment in the sum of FIVE HUNDRED EIGHTY DOLLARS AND FIFTY CENTS (\$580.50) be assessed against the above described real estate; that the Special Assessment be and hereby is levied effective November 8, 2006; that Terry & Lori Colburn be given fifty (50) days to pay this Special Assessment without interest; and after said fifty (50) days the Special Assessment remaining unpaid will be delinquent and will bear interest at the rate of FOURTEEN PER CENT (14%) per annum from said date; this Special Assessment will be a lien against the above described real estate until paid; this Special Assessment will be filed with the Butler County Treasurer and will be collected in the manner provided for Special Assessments by law.

Dated: November 8, 2006

ATTEST:

CITY OF DAVID CITY, NEBRASKA

Stephen Smith, Mayor

Joan E. Kovar, City Clerk

(Seal)

As there was unfinished business concerning the truck bids and the employment agreement for the City Administrator, Council member Kirby made a motion to recess to Monday, November 27 at 6:00 p.m. Council member Hein seconded the motion. Voting AYE: Council members Schatz, Lukassen, Smith, Kroesing, Hein, and Kirby. Voting NAY: None. The motion carried and Mayor Smith declared the meeting adjourned at 10:05 p.m.

Mayor Stephen Smith

City Clerk Joan E. Kovar

November 27, 2006

Mayor Smith called the meeting of the City Council of David City, Nebraska to order at 6:00 p.m. on Monday, November 27, 2006 in the Council Room of the City Office, 557 4th Street, David City, Nebraska, to continue the meeting of November 8th, 2006 which had been in recess.

Present for the meeting were: Mayor Stephen Smith, Council members Gary L. Kroesing, Mark Kirby, Gary Smith, Ted Lukassen, and Bill Schatz, City Administrator Joe Johnson, Electric Supervisor Tim Kovar, Water/Sewer Supervisor Jim Kruse, Electric Plant Supervisor John Kabourek, Zoning Administrator Roger Kotil, Skip Trowbridge, Firemen Dave Schmit, Mike Novotny, Jim Birkel, Doug Matulka, and Scott Steager, and City Clerk-Treasurer Joan E. Kovar. Council member Nick Hein was absent.

Council member Kirby made a motion to come back into session from the November 8th, 2006 meeting, which had been in recess in order to receive additional information concerning truck bid proposals and to review corrections to the employment agreement for the City Administrator. Council member Smith seconded the motion. Voting AYE: Council members Kroesing, Lukassen, Schatz, Smith, and Kirby. Voting NAY: None. Council member Hein was absent. The motion carried.

Mayor Smith informed the public of the "Open Meetings Act" posted on the east wall of the meeting room.

City Administrator Joe Johnson presented the following bids which included more detailed information regarding the trucks.

CITY OF DAVID CITY
 BIDS: CITY VEHICLES

Company/Contact	Truck 1	Truck 2	Truck 3
Sid Dillon Attn: Chuck Ames 257 W. A Street Wahoo, NE 68066	17,997.77 2007 Chevrolet Silverado ½ Ton / 133" Wheel Base / 4.8L Vortec V8 / 4-spd Auto / A/C	17,997.77 2007 Chevrolet Silverado ½ Ton / 133" Wheel Base / 4.8L Vortec V8 / 4-spd / A/C	
Anderson Auto Group Attn: Tedd Bosworth 1951 Highway 30 Missouri Valley, IA 51555	16,997.00 2007 Ford F-150 ½ Ton / 126" Wheel Base / 4.6L V8 / 4- spd Auto / NO A/C (additional cost of \$800)	17,290.00 2007 Ford F-150 ½ Ton / 145" Wheel Base / 4.6L V8 / 4- spd Auto / NO A/C (additional cost of \$800)	17,963 2006 Ford F-150 ½ Ton / 145" Wheel Base / 4.6L V8 / 4- spd Auto / NO A/C (additional cost of \$800)
Tonniges Chevrolet, Inc. Attn: Steve Toniges P.O. Box 487 Osceola, NE 68651	18,800.00 * 2007 Chevrolet Silverado ½ Ton / 133" Wheel Base / Vortec 4300 V6 / 4-spd Auto / A/C	18,700.00 * 2007 Chevrolet Silverado ½ Ton / 133' Wheel Base / Vortec 5300 / V8 (E85 Flex Fuel) / 4-spd Auto / A/C	18,950.00 * 2006 Chevrolet Silverado ½ Ton / 133" Wheel Base / Vortec 4800 V8 / 4-spd Auto / A/C

Atchley Ford, Inc. Attn: Matt Gembol 3633 North 72 nd Street Omaha, NE 68134	17,039.00 Ford F-150 ½ Ton / 4.6L V8 / 4- spd Auto / NO A/C (additional cost of \$700)	17,039.00 Ford F-150 ½ Ton / 4.6L V8 / 4- spd / NO A/C (additional cost of \$700)	
Gene Steffy Ford Attn: Milan Levos 1365 24 th Ave. Columbus, NE 68601	17,590.00 2007 Ford F-150 ½ Ton / 145" Wheel Base / 4.6L V8 / 4- spd Auto / NO A/C (additional cost of \$700)	17,590.00 2007 Ford F-150 ½ Ton / 145" Wheel Base / 4.6L V8 / 4- spd Auto / NO A/C (additional cost of \$700)	
Woodhouse Ford Attn: Jerry Hughes P.O. Box 546 Blair, NE 68008	17,750.00 2007 Ford F-150 ½ Ton / 145" Wheel Base / 4.6L V8 / 4- spd Auto / NO A/C	17,750.00 2007 Ford F-150 ½ Ton / 145" Wheel Base / 4.6L V8 / 4- spd Auto / NO A/C	
Kobza Motors, Inc. Attn: Tim Beaver 566 E Street David City, NE 68632	18,900.00 * 2007 Dodge Ram 4.7L V8 / ½ Ton / 140" Wheel Base / 4- spd Auto / A/C	18,900.00 * 2007 Dodge Ram 4.7L V8 / ½ Ton / 140" Wheel Base / 4- spd Auto / A/C	

* Price may or may not include rebates.

Joe recommended purchasing two (2) 2007 Dodge Ram pickup trucks from Kobza Motors, Inc. at a price of \$18,900.00 per truck. Although Kobza Motors price is approximately \$1,000.00 greater per truck than the lowest bid, the cost savings that would transpire if a repair was needed would make up for that cost.

Council member Schatz stated that he felt the council should buy locally if the bids are within a reasonable range. Schatz felt this was a reasonable range and was leaning towards Kobza Motors. Council member Lukassen and Smith agreed that the council should buy in town whenever possible. Council member Kirby questioned if only \$15,000 was budgeted per truck, then what? City Administrator Johnson stated that if the budget is overspent on this line item the department heads will need to cut their budgets elsewhere. Water/Sewer Supervisor Jim Kruse stated that he could cut his budget elsewhere; there are things they can do.

Council member Schatz made a motion to accept the bid of Kobza Motors, Inc., for the purchase of two (2) 2007 Dodge Ram pickup trucks at a price of \$18,900.00 per truck. Council member Smith seconded the motion. Voting AYE: Council members Kirby, Kroesing, Lukassen, Smith, and Schatz. Voting NAY: None. Council member Hein was absent. The motion carried.

At the November 8, 2006 City Council Meeting, the City Council questioned the following:

- a. The statement "a homeowner and a married man with a family";
- b. One (1) month of severance pay for each twelve (12) month period of employment;
- c. Hazard payment; and
- d. Stating compensation within the document.

Following is an updated and corrected copy of the employment agreement.

EMPLOYMENT AGREEMENT

This Employment Agreement, hereinafter called "Agreement", is entered into by and between THE CITY OF DAVID CITY, NEBRASKA, a Nebraska Municipal Corporation, hereinafter called "City" and JOSEPH J. JOHNSON, hereinafter called "Administrator."

WHEREAS, the City is a Nebraska Municipal Corporation and has provided by Ordinance the appointed position of City Administrator, pursuant to Section 1-202 of the City's Municipal Code;

WHEREAS, Administrator serves in the appointed position of City Administrator for the City with duties, responsibilities, and powers pursuant to Section 1-202 and 1-202.01 of the City's Municipal Code; and,

WHEREAS, Administrator was appointed by the Mayor of the City with the approval of a majority of the City's City Council on May 26, 2006; and,

WHEREAS, additional duties of Administrator acknowledge that the Employee's Manual of the City contains the reasons in Chapter VII of the same for disciplinary action, including termination (firing) of employment or appointed position; and,

WHEREAS, it is in the mutual benefit of the City and Administrator to reduce to writing the agreement of Administrator's appointment for the 2006-2007 fiscal year of the City, which runs from October 1, 2006 thru September 30, 2007.

NOW, THEREFORE, the City and Administrator agree to the following, to-wit:

1. The City and Administrator agree that the terms and conditions of this Agreement constitute valuable consideration.
2. The City appoints the Administrator to the position of City Administrator for the fiscal year 2006-2007, which parties agree runs from October 1, 2006 thru September 30, 2007.
3. In the event the City does not reappoint the Administrator for the 2007-2008 fiscal year, the City will notify in writing the Administrator of its decision not to reappoint Administrator as the City's City Administrator on or before July 31, 2007.
4. In the event the Administrator intends not to seek reappointment as the City's City Administrator, Administrator will notify the City of this intent not to seek reappointment in writing to the City on or before July 31, 2007.
5. City recognizes that Administrator is a non-political position but serves at the good judgment of City's elected representatives in a political environment. City and the laws of the State of Nebraska do not accord Administrator "property interest" or "due process" in the employment thereof. Thus, Administrator is engaged in a speculative work environment that may cause uncertainty for Administrator.
6. In the event Administrator is terminated by the City other than as provided in Section 12 and during such time Administrator is willing and able to perform the duties of City Administrator, then in that event, the Administrator will terminate employment to avoid legal proceedings and the City will pay Administrator a lump sum cash payment equal to four (4) months pay. The City and Administrator will review lump sum cash payment annually for the purpose of negotiating the number months of said lump sum cash payment.
7. In the event Administrator does not accept or does not intend to seek reappointment, Administrator will not be entitled to any severance as hereinbefore stated.

8. Should Administrator be appointed for successive fiscal years by City, a Cost of Living Adjustment (COLA) will be given at the same percentage as all other appointed officials and/or employees of the City.
9. The City shall reimburse the Administrator at a rate equal to the IRS Standard Mileage Rate for any business use of the Administrator's vehicle within or beyond the City's area, payable at the same time as other employees of the City are paid, per fiscal year of the City commencing November 26, 2006.
10. The City agrees to budget for and to pay for professional dues and subscriptions of the Administrator necessary for continuation and full participation in national, regional, state, and local associations, and organizations necessary and desirable for the Administrator's continued professional participation, growth, and advancement, and for the good of the City.
11. The City agrees to budget for and to pay for travel and subsistence expenses of Administrator for professional and official travel, meeting, and occasions to adequately continue the professional development of Administrator and to pursue necessary official functions for the City, including but not limited to the ICMA Annual Conference, the Nebraska League of Municipalities, the Nebraska City/County Managers Association (NCMA), American Society of Public Administration, and such other national, regional, state, and local governmental groups and committees in which the City serves as a member.
12. Should events occur and/or actions of the Administrator occur which bring Administrator within the City's Employee Manual Chapter VII addressing disciplinary action of termination (firing) of Administrator from Administrator's appointed position, such termination (firing) will be immediate and there will not be pay as provided in Section 6, all salary will cease thru the date of termination (firing), and all benefits will cease except those required by Federal Law to continue or which have options available to the Administrator.
13. Should the City exercise its right to appoint someone other than Administrator for the 2007-2008 fiscal year of the City, Administrator will cease Administrator's duties on August 1, 2007, but will still be entitled to payment of Administrator's two (2) months of salary as normally paid and be entitled to the benefits normally paid thru September 30, 2007 plus the pay provided in Section 6.
14. The parties recognize that Administrator must devote time outside of normal office hours to the City's business. Administrator shall be allowed to establish an appropriate work schedule.
15. This Agreement may be modified, amended, or changed upon mutual agreement of the City and Administrator in writing executed by the City Administrator.
16. This Agreement will be binding on the heirs, successors, assigns, and personal representatives of the City and Administrator.

CITY:
THE CITY OF DAVID CITY, NEBRASKA

ADMINISTRATOR:

by: _____
Stephen Smith, Mayor

by: _____
Joseph J. Johnson

ATTEST:

Joan E. Kovar, City Clerk

Jim Egr, City Attorney

STATE OF NEBRASKA)
) ss.
COUNTY OF BUTLER)

The foregoing Employment Agreement was acknowledged before me on the 27th day of November, 2006 by Stephen Smith, Mayor of the City of David City, Nebraska, a Nebraska Municipal Corporation, on behalf of the Corporation.

Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF BUTLER)

The foregoing Employment Agreement was acknowledged before me on the 27th day of November, 2006 by Joseph J. Johnson, City Administrator.

Notary Public

Council member Kirby made a motion to enter into an employment agreement with City Administrator Joe Johnson. Council member Schatz seconded the motion. Council member Kirby stated that he appreciated Joe discussing his employment agreement in open session; that showed class. Voting AYE: Council members Smith, Lukassen, Kroesing, Schatz, and Kirby. Voting NAY: None. Council member Hein was absent. The motion carried.

At the October 11, 2006 Council Meeting, the Mayor and City Council discussed the annual December appointment of the City Officers. City Attorney Jim Egr reviewed this matter and found that "tradition' established the appointment of City Officers after the election because of the re-organization of the Council, and recommended that the "appointment of City Officers should coincide with the fiscal year of October 1 thru September 30."

There being no further business to come before the Council, Council member Lukassen made a motion to adjourn. Council member Kirby seconded the motion. Voting AYE: Council members Schatz, Smith, Kroesing, Kirby, and Lukassen. Voting NAY: None. Council member Hein was absent. The motion carried and Mayor Smith declared the meeting adjourned at 6:15 p.m.

Mayor Stephen Smith

City Clerk Joan E. Kovar

