

CITY COUNCIL PROCEEDINGS

December 11, 2002

The Mayor and City Council of the City of David City, Nebraska met in open public session in the meeting room of the City Office, 557 4th Street, David City, Nebraska. The Public had been advised of the meeting by publication of notice in The Banner-Press on December 5, and an affidavit of the publisher is on file in the office of the City Clerk. The Mayor and members of the City Council acknowledged advance notice of the meeting by signing the Agenda which is a part of these minutes. The advance notices to the Public, Mayor and Council members conveyed the availability of the Agenda, which was kept continuously current in the office of the City Clerk and was available for public inspection during regular office hours. No new items were added to the agenda during the twenty-four hours immediately prior to the opening of the Council meeting.

Present for the meeting were: Mayor Stephen Smith, Council members Mark Kirby, Gary Kroesing, Gary Smith, Ted Lukassen, Bill Schatz, and Nick Hein, Attorney Jim Birkel, Electric Supervisor Tim Kovar, Street Superintendent Jim McDonald, Police Chief Steve Sunday, Electric Supervisor John Kabourek, Park/Auditorium Supervisor Bill Buntgen, Wastewater Operator Jim Kruse, City Clerk-Treasurer Joan E. Kovar, Banner Press Editor Larry Peirce, and citizens Norm Andrews, Bob Hilger, Max Birkel, Marv Hilger, Rich Sabata, Laddie & Louis Svoboda, Kevin Slama, Kent Ketteler, Jason Lavicky, Jim Vandenberg, Bob Kobza, Willow Holoubek, Nick Hottovy, and John Kobza.

Mayor Smith called the meeting to order at 7:00 p.m.. Attorney James Birkel administered the Oath of Office to Mayor Smith, Mark Kirby as Council member First Ward; Gary Kroesing as Council member Second Ward; and Nick Hein as Council member Third Ward, and they were seated.

Most of the citizens present were concerning the wellhead protection ordinance so Council member Hein made a motion to advance to agenda item #9 - Consideration of Ordinance No. 925 to provide for protection of the City of David City wellhead protection area. Council member Kirby seconded the motion. All of the council members were present, all voted YEA, and the motion carried.

A summary of the wellhead protection committee meeting held on December 7, 2002 was prepared by Council member Schatz as follows:

- The Wellhead Protection Plan and the proposed ordinance are separate items and once each is approved will make up the total Wellhead/Ground water protection plan for the city.
- The Wellhead Protection Plan defines the area of protection and provides the mechanism for regulatory agencies (Nebraska Department of Environmental Quality, EPA, Lower Platte North NRD) to assist, as well as respond in the event of a contamination. The Wellhead Protection Plan is required in the event of a contamination event in order to request priority assistance from the regulatory agencies. The ordinance serves as a reporting/permit system to make the city aware of structures or activities which have the potential to contaminate and has provisions to bring in the regulatory agencies as experts and for enforcement.
- The initial procedure was to have an approved ordinance to incorporate in the Wellhead Protection Plan, conduct public hearings and submit the plan to NDEQ for approval. Because of concerns raised with the ordinance, that procedure should be modified.

- As previously planned, in order to comply with the Wellhead Protection statutes, a public hearing is required to present the Wellhead Protection Plan. A public hearing will be scheduled.
- In order to best facilitate the hearing process, the ordinance should be incorporated in the plan, however specific concerns are still pending in the proposed ordinance.
- Because of concerns raised regarding the ordinance and a need to further address those concerns, it is recommended that the third reading of the ordinance be postponed until after the public hearing on the Wellhead Protection Plan.
- The committee has scheduled another committee meeting for December 21st at 9:00 a.m. at the City Office to specifically discuss the proposed ordinance and possibly amend sections of the ordinance of concern, while maintaining the intent of the ordinance to protect the groundwater and wells of the city.

Rich Sabata, who serves on the committee, stated that there are several issues that need to be discussed, some issues they would like to see changed, and the committee would like to receive more public input.

Kevin Slama and Jim Vandenberg both questioned if changes were made to the ordinance if the process for the passage of the ordinance starts over. Attorney Birkel stated no, that minor changes can be made on every reading of the ordinance. Ordinance No. 925 has already passed on two readings. If the ordinance is changed so much that it doesn't even resemble the original ordinance, then it would be best to start all over with the passage process.

Council member Schatz made a motion to table Ordinance No. 925 and refer the ordinance back to the committee which consists of Water/Sewer Supervisor Gene Divis, Bill Magargal, Rich Sabata, Jim Vandenberg, and Council member Bill Schatz. Council member Lukassen seconded the motion. All of the Council members were present, all voted YEA, and the motion carried.

ORDINANCE NO. 925

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, which has been approved by the Nebraska Department of Environmental Quality;

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 jurisdictional zoning map for the City of David City.

Section 2. The City of David City adopts the Wellhead Protection Plan and 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. For purposes of this ordinance, livestock confinement shall be restricted to a maximum density of animal production of one animal unit per 8 acres as defined by Title 130 of the regulations of the Nebraska Department of Environmental Quality and where allowed by zoning regulations in the General Plan and ordinance of the City of David City.

Section 5. 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 herein, to wit:

Activity

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 Section 4
Pit toilet
Sanitary landfill - not allowed
Chemical or petroleum product storage
Septic tank

Sewage treatment plant - not allowed
Sewage wet well - not allowed
Sanitary sewer connection
Sanitary sewer manhole
Sanitary sewer line

Section 6. The placing, installing, construction or replacing of any allowed structure or activity as set forth in Section 5 of this ordinance, hereafter termed "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 7. 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</u>	<u>Minimum Distance from Water Supply</u>
Non-potable water well	1,000 ft.
Sewage lagoon	not allowed
Absorption or disposal or leach field for waste	not allowed
Cesspool	not allowed
Sanitary landfill	not allowed
Livestock confinement	10,000 ft.
Pit toilet	1,000 ft.
Chemical or petroleum storage	5,000 ft.
Septic tank	1,000 ft.
Lawn and garden compost	500 ft.
Fertilizer and pesticide storage	2,500 ft.
Septic tank exceeding 1,000 GPD	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 7 located within the defined setback distance shall be considered prima facie a hazard to the quality of the municipal water supply.

Section 8. Any wellhead structure or activity not prohibited by Section 5 and Section 7 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 Enforcement Officer 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.

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 Enforcement Officer 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 Enforcement Officer may proceed pursuant to Section 12 of this ordinance against said owner of the structure or activity.

Section 12. Any person found 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 _____ day of _____, 2002

1st rdg- 10/09/02; 2nd rdg- 11/13/02; tabled
Mayor Stephen Smith

Attest:

1st rdg- 10/09/02; 2nd rdg- 11/13/02; tabled
City Clerk Joan E. Kovar

Council member Schatz suggested a roll call nomination rather than distributing ballots for the election of Council President. Schatz stated that this would give council members the opportunity to make a nomination and explain why they felt their nominee was qualified to be council president. Council member Kirby nominated Gary Kroesing. Council member Smith seconded. Council member Schatz nominated Gary Smith stating that he has good demeanor,

is knowledgeable and studies issues coming before the council. Council member Kroesing seconded. Nominations ceased. Roll call vote was as follows: Council member Kroesing: Smith; Council member Smith: Kroesing; Council member Schatz: Smith; Council member Hein: Kroesing; Council member Lukassen: Kroesing; Council member Kirby: Kroesing. The vote being Smith: 2 and Kroesing 4, Mayor Smith declared Council member Kroesing the Council President.

Council member Kirby made a motion to appoint Council members Gary Smith and Ted Lukassen to serve on the Finance Committee. Council member Kroesing seconded the motion. All of the Council members were present, all voted YEA, and the motion carried.

Mayor Smith announced the appointment of Department Heads, Police Chief and Officers and other appointed officials. Council member Hein made a motion to approve the appointments as presented. Council member Kroesing seconded the motion. All of the Council members were present, all voted YEA, and the appointments were approved as follows:

APPOINTED OFFICIALS
 December 11, 2002

CODE SECTION	OFFICIAL TITLE	APPOINTEE
201	City Administrator	
203 204	City Clerk +) City Treasurer)	Joan E. Kovar *
203.01	Deputy Clerk	Tami L. Comte
206	City Attorney	James M. Egr
	Special Prosecutor	Carl K. Hart
207	City Physician	Victor J. Thoendel, M.D.
208	Chief of Police	Stephen M. Sunday *
209	Police Officers	James D. Sylvester, Sergeant Vincent A. Brehm Kevin L. Broman Daniel J. Schleusener
210	Fire Chief	Michael Hiatt
213	Street Superintendent	James K. McDonald *
214	Electric Supervisor	Tim L. Kovar *
	Power Plant Supervisor	John J. Kabourek *

	Water/Sewer Supervisor	Eugene E. Divis	*
219	Park & Auditorium Supervisor	Bill Buntgen	*

* Denotes Department Head

The minutes of the November 13, 2002 meeting of the Mayor and City Council were approved upon a motion by Council member Kroesing and seconded by Council member Smith. All of the Council members were present, all voted YEA and the motion carried.

Stephen Smith asked for Petitions, Communications and Citizens' Concerns in addition to those contained in the Agenda packets. There were no petitions.

The following letter was received:

To the Councilmen and Mayor of David City, Nebraska

Gentlemen:

I write as spokesman for the people who contributed financially to the 2002 addition to the David City Downtown Christmas Display. We ask you to accept as a gift to the City of David City this year's addition to the display. Please notify me in writing of your decision.

Thank You.

Dr. Jack Kaufmann

Project fund raiser and financial contributor

Mayor Smith will write Dr. Kaufmann a letter stating that the City of David City gratefully accepts as a gift the Christmas Display which consists of "Happy Holidays" and two metal trees which was added to last year's lighted Christmas display (a metal tree and metal packages).

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

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

Street Superintendent Jim McDonald reported that they have been collecting a lot of yard waste at the landfill. To accommodate the public, McDonald has been leaving the landfill open for yard waste. In the past, the yard waste was clean so the composted yard waste was applied to the fields at the Airport. This year the yard waste contains cans and pop bottles. The tree pile which is only for tree limbs is receiving lumber, 4 x 4's, posts, cement, old doors, etc.. The City can only burn tree limbs so the City has the expense of hauling all of the other items to the privately owned landfill and paying for the disposal. McDonald stated that probably 95% of the people do a wonderful job but it's the 5% that cause the problems. The City may publish a

notice in the paper stating that if this situation isn't remedied the landfill will be closed/locked.

Park/Auditorium Supervisor Bill Buntgen reported that Lueder Construction has completed work to address the pool leakage problem. These efforts included:

- Air pressure testing of all pool piping
- Replacement of a defective 2" winterization ball valve on the main drain line
- Replacement of a defective hose clamp on a 4" drain down line in the surge tank.

Lueder Construction is re-filling the pool and commencing the leak test. Mayor Smith reported that the water heater has been repaired.

Council member Kroesing stated he likes the Christmas lights that Electric Supervisor Tim Kovar and his crew put up. They also decorated the two huge pine trees on both sides of the Schweser House in the City Park.

Mayor Smith reported on the Planning Commission meeting:

- Granted a special exception for Richard Sweney for a salvage yard with the stipulation that the screening of trees must remain and the property must be maintained in a neat and orderly manner. (Located southwest of "A" Street and the Burlington Railroad and outside the corporate city limits.)
- Decided not to re-zone Sabata's 1st Addition from Low Density Residential to High Density Residential. Hildy Construction will be asked to request a variance on the side yard for their duplex. **Mayor Smith explained that Hildy Construction is not at fault.** When the permit was issued everyone failed to notice that the side yard requirements in LDR are twelve (12) feet. With HDR the side yard requirements are only six (6) feet. The front yard setbacks are the same. Mayor Smith stated again that this is not Hildy Constructions fault therefore the filing fee for the variance will be waived.

Mayor Smith scheduled a Committee of the Whole meeting for Monday, December 23, 2002, at 5:30 p.m., in the City Office.

Mayor Smith informed the Council that the Search Committee offered the City Administrator's position to Wesley Blecke who will be graduating from the University of Nebraska at Omaha in December 2002 with a Masters Degree in Public Administration - with concentration in public budgeting and financial management. He is to notify us by Monday or Tuesday of next week whether or not he will accept the position.

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

Council member Schatz made a motion to table consideration of Ordinance No. 926. Schatz would like to discuss this at the Committee of the Whole Meeting on Monday, December 23. Council member Hein seconded the motion. All of the Council members were present, all voted YEA, and the motion carried.

ORDINANCE NO. 926

AN ORDINANCE TO AMEND PROVISIONS RELATING TO BUILDING/ZONING REGULATIONS, TO PROVIDE FOR THE REPEAL OF CONFLICTING ORDINANCES OR

SECTIONS; AND TO PROVIDE FOR AN EFFECTIVE DATE.

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

SECTION 1: That Chapter 9, Article 1, Sections 9-101 thru 9-104 inclusive; Chapter 9, Article 2, Section 9-201, 9-202, 9-205 and Chapter 9, Article 6, Section 9-605 thru 9-608 inclusive of the Municipal Code of David City, Nebraska be repealed and be amended to read as follows:

Chapter 9
BUILDING REGULATIONS

Article 1. Process

§9-101 ZONING PERMIT APPLICATION: Property owners desiring to do any of the following:

- New home construction
- Foundation laying (for new construction or moving a house)
- New additions
- Rebuilding
- Porches, Decks, Storage Sheds, etc.
- Commercial construction
- Sidewalks, Driveways
- Fences
- Signs
- Satellite dish
- All else falling under Zoning Regulations

are required to complete a zoning permit application.

§9-102 PERMIT APPROVAL: The Zoning Permit Application must be approved by the Zoning Enforcement Officer.

Article 2. Zoning Permit

§9-201 ZONING PERMIT: LIMITATION. If the work described in any Zoning Permit has not begun within six (6) months from the date of issuance thereof, said permit shall expire; it shall be cancelled by the Zoning Enforcement Officer; and written notice thereof shall be given to the person affected.

If the work described in any Zoning Permit has not been substantially completed within two (2) years of the issuance thereof, said permit shall expire and be cancelled by the Zoning Enforcement Officer, and written notice thereof shall be given to the person affected, together with notice that further work as described in the cancelled permit shall not proceed unless, and until a new Zoning Permit application has been obtained.

§9-202 PERMIT: Any person desiring to commence or proceed to erect, construct, repair, enlarge, any building or dwelling, or cause the same to be done, shall file with the

Municipal Clerk an application for a Zoning Permit. The Application shall be in writing on a form to be furnished by the Municipal Clerk for that purpose. Every such Application shall set forth the legal description of the land upon which the construction is to take place, the nature of the use or occupancy, the principal dimensions, the estimated cost, the names of the owner, architect, and contractor and such other information as may be requested thereon. The Application, plans, and specifications so filed with the Municipal Clerk shall be checked by the Zoning Enforcement Officer and if they are found to be in conformity with the zoning requirements and all other ordinances applicable thereto, the Zoning Enforcement Office shall authorize the Municipal Clerk to issue the said applicant a permit upon the payment of the permit fee set by resolution of the Governing Body.

SECTION 2. That existing Chapter 9, Article 1, Sections 9-101 thru 9-104 inclusive and Chapter 9, Article 2, Sections 9-201 and 9-202 are hereby repealed.

SECTION 3. Chapter 9, Article 2, Section 9-205 shall be amended to have all reference to "Building Inspector" deleted and substituted therefore the terminology "Zoning Enforcement Officer".

SECTION 4. Chapter 9, Article 6, Sections 9-605 thru 9-607 inclusive shall be amended to have all references to "Chief Building Inspector" deleted and substituted therefore the terminology "Zoning Enforcement Officer".

SECTION 5. Chapter 9, Article 6, Section 9-605 shall have deleted the reference to "he" and have substituted therefore the terminology "he or she".

SECTION 6. Chapter 9, Article 6, Section 9-608 shall have the words "Building Permits" deleted and have substituted therefore the terminology "Zoning Permits".

SECTION 7. That any other ordinance or section 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 8. This ordinance shall take effect and be in full force from and after its passage, approval, and publication or posting as required by law.

Passed and approved this ____ day of _____, 2002.

(1st reading - 11-13-02) Tabled
Mayor Stephen Smith

(1st reading - 11-13-02) Tabled
City Clerk Joan E. Kovar

Council member Schatz made a motion to table consideration of various forms concerning a zoning permit application. Council member Kroesing seconded the motion. All of the Council members were present, all voted YEA, and the motion carried.

The resolution setting zoning permit fees should not be approved prior to adopting the ordinance establishing the zoning permit application. Therefore, Council member Hein made a motion to table consideration of a resolution setting the fees for zoning permits, rezoning, subdivisions, join/divide lots, variances, etc.. Council member Lukassen seconded the motion. All of the Council members were present, all voted YEA, and the motion carried.

RESOLUTION NO. _____

WHEREAS, the City of David City has adopted a Zoning Permit Application, and

WHEREAS, the City has determined a need to charge of fee for the following applications.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF DAVID CITY, NEBRASKA that the following application fees are hereby approved and adopted.

Schedule of application fees:

Zoning Permit.....	\$20.00
Join / Divide Lots.....	\$40.00
Subdivision.....	\$40.00
Rezoning.....	\$40.00
Conditional / Special Use.....	\$40.00
Zoning Amendment	\$40.00
Zoning Variance.....	\$40.00

Dated this ____th day of _____, 2002.

(Tabled)
Mayor Stephen Smith

(Tabled)
City Clerk Joan E. Kovar

Council member Hein made a motion to enter into an agreement with Stahr and Associates to pursue grant money for street improvements. Council member Smith seconded the motion. All of the Council members were present, all voted YEA, and the motion carried.

AGREEMENT

THIS AGREEMENT entered into as of this 11th day of December, 2002 by and between Stahr & Associates, Inc. (herein called the "Consultant") and the City of David City, Nebraska (herein called the "City") to provide professional consulting services in regard to preparation of a 2003 Community Development Block Grant (CDBG) application for street improvements in various parts of the City.

WITNESSETH THAT:

WHEREAS, the City desires to engage the Consultant to render certain technical and professional services hereinafter described.

NOW, THEREFORE, the parties hereto do mutually agree as follows:

1. EMPLOYMENT OF CONSULTANT

The City agrees to engage the Consultant and the Consultant agrees to perform certain technical and professional services hereinafter set forth.

11. SCOPE OF SERVICES

The Consultant shall do, perform and carry out the following:

- A. Discuss and identify the locations of streets proposed for improvement with regard to relationship to the City's designated blighted and substandard areas;
- B. Discuss local share match requirements with City officials and determine levels and types of cash and in-kind match to be provided;
- C. Prepare draft of proposed CDBG application for review by City officials;
- D. Assist Mayor and Council in conducting a public forum to present the proposed CDBG application to interested persons and discuss community needs;
- E. Prepare final draft of proposed CDBG application and submit to the City for consideration at public hearing to be conducted by the Mayor and Council;
- F. Submit final draft of the proposed CDBG application to the Department of Economic Development.

III. MEETINGS

The Consultant shall attend a total of two (2) meetings of the Planning Commission to discuss issues related to items to be included in the application. The Consultant shall also attend one (1) public forum and one (1) public hearing to be conducted by the Mayor and City Council to consider the preliminary and final CDBG application. The Consultant shall, at the option of the Mayor and Council, attend any additional meetings desired by the City and shall be compensated for any additional meetings as set forth in this Agreement.

IV. TIME OF PERFORMANCE

The services of the Consultant shall commence upon execution of this Agreement by all

parties hereto and all work shall be completed not later than April 15, 2003 or the due date for such applications, whichever comes first.

V. COMPENSATION

The City agrees to pay the Consultant a total sum of Four Thousand (\$4,000.00) for all services specified herein, provided that if the City desires the Consultant to attend meetings or hearings in addition to those specified herein, the City agrees to pay the Consultant at the rate of Seventy Five Dollars (\$75.00) per hour plus mileage at the rate of Thirty Cents (\$0.30) per mile for such additional meetings. The Consultant shall submit one (1) billing statement upon completion and presentation of final draft of the application referred to herein in the amount of Three Thousand Dollars (\$3,000.00), which shall constitute complete compensation to the Consultant if the application referred to herein is not approved by the Nebraska Department of Economic Development. If the application referred to herein is approved for funding by the Nebraska Department of Economic Development, the Consultant shall submit and the City agrees to pay an additional billing statement in the amount of One Thousand Dollars (\$1,000.00).

VI. CITY'S RESPONSIBILITIES

The City shall be responsible for providing information regarding estimated street improvement costs, preliminary engineering fees and other related costs and shall be responsible for preparation and publication of legal notices associated with announcing the meetings and public hearings related to proper preparation of the application referred to herein.

VII. ASSIGNABILITY

The Consultant shall not assign any interest in the Agreement and shall not transfer any interest in the same without the prior written consent of the City.

VIII. INTEREST OF THE CONTRACTOR

The Contractor covenants that the Consultant presently has no interest and shall not acquire any interest which would conflict in any manner with the performance of the services herein specified. The Consultant further covenants that in the performance of the services herein specified, no person having any conflicting interest shall be employed by the Consultant.

IX. EXTENT OF AGREEMENT

This Agreement represents the entire and integrated Agreement between the City and the Consultant and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument executed by both parties hereto.

X. AGREEMENT FORM

This Agreement has been reviewed and approved as to form.

David City Attorney

Date

XI. EXECUTION OF AGREEMENT

This Agreement is executed the day and year first written above as witnessed by signature of the parties hereto.

DAVID CITY, NEBRASKA

Attest:

Stephen Smith, Mayor

Joan E. Kovar, City Clerk

STAHR & ASSOCIATES, INC.,

Orval J. Stahr, President

Council member Smith made a motion to remove the stop signs by the Nebraska Central (Union Pacific) Railroad tracks on 5th Street between "E" and "G" Streets. Council member Kirby seconded the motion. All of the Council members were present, all voted YEA, and the motion carried.

City Clerk Joan Kovar contacted the banks for financing options for the 2003 Dodge Intrepid Police Vehicle. The results follows:

FINANCING OPTIONS FOR THE 2003 DODGE INTREPID POLICE VEHICLE:

U. S. Bank

Loan Amount: 19,400
Term 36 mos
Interest Rate: 4.90%
Annual Payment: \$7110.50
Monthly Payment \$580.56

1st National Bank of Omaha

Loan Amount: 19,400
Term 3 year
Interest Rate: 4.0%
Annual Payment:
Monthly Payment

Union Bank

Loan Amount: 19,400
Term 3 year
Interest Rate: 6.0%
Annual Payment:
Monthly Payment

Bank of the Valley

Loan Amount: 19,400
Term 36 mos
Interest Rate: 6.65%
Annual Payment:
Monthly Payment

Council member Hein made a motion to approve financing the 2003 Dodge Intrepid Police Vehicle through 1st National Bank of Omaha. Approximately \$19,400 at the quoted interest rate of 4% for a three year period. Council member Kroesing seconded the motion. All of the Council members were present, all voted YEA, and the motion carried.

Ruddy L. Svoboda and Louis H. Svoboda - d.b.a. Svoboda Refuse - were present to request permission to provide refuse service to the residents of David City beginning January 1, 2003. Ruddy & Louis would assume Dennis Svoboda's refuse service. Ruddy & Louis presented their

rate for review:

\$10.00 per month for regular garbage pickup

Council member Smith made a motion to approve Ruddy L. Svoboda and Louis H. Svoboda, d.b.a. Svoboda Refuse as authorized refuse haulers in David City. Council member Kroesing seconded the motion. All Council members were present, all voted YEA, and the motion carried.

AGREEMENT

AN AGREEMENT GRANTING A NON-EXCLUSIVE FRANCHISE TO JIM MALLY d.b.a. THE GARBAGE COMPANY, TO DREW HOPWOOD d.b.a. TRIPLE "S" SERVICE, JASON KING d.b.a. JASON KING'S DISPOSAL COMPANY, TO GREG CECH d.b.a. U & I SANITATION, AND TO **RUDDY L. SVOBODA AND LOUIS H. SVOBODA d.b.a. SVOBODA REFUSE**, TO MAINTAIN, OWN, AND OPERATE GARBAGE OR REFUSE HAULING SERVICES IN THE CITY OF DAVID CITY, NEBRASKA; DEFINING TERMS AND SETTING THE TERMS AND CONDITIONS OF THE GRANTS; PROVIDING FOR EXTENSION AND TERMINATION OF THE FRANCHISE;

IT IS HEREBY AGREED BY AND BETWEEN THE MAYOR AND COUNCIL OF THE CITY OF DAVID CITY, NEBRASKA, FRANCHISER, AND

FRANCHISEES:

**RUDDY L. SVOBODA AND LOUIS H. SVOBODA
d.b.a. SVOBODA REFUSE
209 SO. 3RD STREET
DAVID CITY, NE 68602**

AS FOLLOWS:

IT IS HEREBY AGREED BY AND BETWEEN THE MAYOR AND COUNCIL OF THE CITY OF DAVID CITY, NEBRASKA, FRANCHISER, AND **RUDDY L. SVOBODA AND LOUIS H. SVOBODA, d.b.a. SVOBODA REFUSE**, FRANCHISEE AS FOLLOWS:

SECTION 1 – DEFINITIONS

For the purposes of this Agreement, and when not inconsistent with the context, words used herein in the present tense include future; words in plural include the singular, and vice versa. The word "shall" is always mandatory. The captions supplied are for convenience only. The following terms and phrases, as used herein, shall be given the meaning set forth below:

24. "City" is the City of David City, Nebraska, a municipal corporation organized under the laws of the State of Nebraska.
25. "Grantee" is the independent refuse/garbage hauler.
26. "City Council" is the City Council of David City, Nebraska, or its designated representative.

27.

Rate Structure” shall be the regular monthly garbage/refuse charges of the Grantees, charged to resident customers of the “City”, consisting of residential, commercial, and special rates.

SECTION 2 – GRANT OF AUTHORITY

There is hereby granted by the City to each of the authorized independent garbage/refuse haulers in the City, the right and privilege to own, operate, and maintain separate and individual garbage and refuse hauling businesses within the City to provide garbage/refuse disposal for the residents of the City upon the following terms and conditions, to-wit:

1. This franchise is “non-exclusive” and is not intended as a restriction of competition in the garbage/refuse hauling business.
2. The term of this franchise agreement relative to disposition of refuse is two years. In the event the City has not acquired a landfill site at the expiration of the said two (2) years, the terms and provisions hereof relative to disposition of refuse shall automatically be renewed and extended on an annual basis, until the City or Grantee gives written notice of cancellation of such provisions. Provided, further, that in the event the City acquires a municipal landfill site as contemplated above, Grantees shall be permitted to continue their refuse hauling business within the City, in which event the City may require that all refuse collected within the City be deposited at such landfill site, and that Grantees comply with all regulations and fees as may from time to time be established in conjunction therewith. Grantees may continue the refuse hauling portion of said business as long as Grantees comply with the rules, regulations, fees and rate structures established by the City relating thereto.
3. Grantees shall at all times during this franchise be subject to all lawful exercise of the police power of the City. The right is hereby reserved to the City to adopt, in addition to the provisions herein contained and any other existing applicable ordinances, such additional ordinances as it shall find necessary in the exercise of its police power; provided, however, that such additional ordinances shall be reasonable, shall not conflict with or alter in any manner the rights granted herein, and shall not conflict with the laws of the State of Nebraska, the United States of America, or any other governmental entity exercising jurisdiction over the subject matter of this franchise. The Grantees shall keep a record of log of all complaints from customers within the City, which shall be available for examination by the City Administrator upon request.
4. The individual grantees herein shall save the City harmless from all loss sustained by the City on account of any suit, judgment, execution, claim or demand whatsoever against the City resulting from negligence on the part of each respective Grantee in the operation of said refuse/garbage hauling businesses. It is specifically understood and agreed that the Grantees are separate and independent refuse haulers, and the foregoing indemnity provisions relate only to loss or liability arising out of the separate operation of each respective grantee.
5. Rates charged for residential and commercial users, by the Grantees, are subject to approval by the City Council.

- The current rate structure of Grantees **Ruddy L. Svoboda and Louis H. Svoboda**, is as follows:

Regular garbage: \$10.00 per month

dated December 11, 2002, is hereby approved.

- The rate structure of the grantees shall not be changed without prior approval of the City Council. Said rate structure is subject to change upon the grantees making a written request to the City Council at least sixty (60) days in advance of the effective day of the proposed changes in rate. Rates shall not change until approval by the Council is granted. The City agrees it will not unreasonably or arbitrarily refuse such rate increases, the intent being to establish a fair rate of compensation to the Grantees and a fair price of services to the residents of the City. In no event, shall any garbage/refuse hauler be granted a preferential rate structure by the City.
- Grantees may establish reasonable rules and regulations relative to their respective customers, including but not limited to requiring all refuse to be deposited in refuse containers; that all ashes be placed in plastic or paper bags; restriction of pick-ups to compact able refuse; curb pick-ups; etc.
- Existing municipal landfill of the City will be available for brush. Rates for pick-up and hauling of brush, and unusual or uncommon refuse/garbage are not restricted by this franchise.
- Grantees shall provide once a year at a time mutually agreeable between the City and the Grantees a special residential clean-up service of non-garbage items such as furniture and appliances, to the respective customers of said Grantees.
- The grantees hereof agree to provide services in accordance with and to fulfill the City's duty to provide facilities and systems as necessary for the safe and sanitary disposal of solid wastes within the solid waste jurisdiction area of the City of David City, Nebraska. The franchise herein granted requires the franchisees in all respects to comply with the requirements of the laws of the State of Nebraska that the solid waste from the solid waste jurisdiction area of the City be disposed in a permitted facility and that all areas of jurisdiction area will have pick-up service available from the franchisees.
- Grantees may surrender this franchise at any time upon the filing with the City Clerk a written notice of its intention to do so at least three (3) months before surrender date. On date of surrender, all rights and privileges and all of the obligations, duties and liabilities of said grantee in connection with this franchise shall terminate.
- All rights and privileges and all of the obligations, duties and liabilities created by this franchise shall pass to and be binding upon the

successors of the City and the successors and assigns of Grantees. Said franchise shall not be assigned or transferred, except by operation of law or as otherwise provided herein, without the written approval of the City Council, which approval shall not be arbitrarily or unreasonably withheld. Nothing herein shall require City Council approval or prohibit the transfer or assignment of the franchise as security for debt, or in conjunction with a transfer thereof to a corporation in which the grantee of his immediate family own at least fifty percent (50%) of the beneficial ownership in such entity.

SUBJECT TO THE ABOVE, RUDDY L. SVOBODA AND LOUIS H. SVOBODA, d.b.a. SVOBODA REFUSE, ARE HEREBY GRANTED A NON-EXCLUSIVE FRANCHISE.

Dated this 11th day of December, 2002.

The City of David City, Nebraska

by
Mayor Stephen Smith

Attest:

City Clerk Joan E. Kovar

ACCEPTANCE OF FRANCHISE

Ruddy L. Svoboda and Louis H. Svoboda, d.b.a. Svoboda Refuse, hereby accepts the above and foregoing franchise agreement, and agrees to be bound by the terms and provisions therein contained as amended.

Ruddy L. Svoboda

Louis H. Svoboda

12-11-02
Signed this Date

12-11-02
Signed this Date

Council member Kirby made a motion to appoint Eric Betzen to serve as the alternate designated representative pertaining to the Acid Rain Program. Council member Kroesing seconded the motion. Voting YEA: Council members Smith, Hein, Lukassen, Schatz, Kroesing, and Kirby. Voting NAY: None. The motion carried.

Mayor Smith declared a ten minute recess at 8:12 p.m. The meeting resumed at 8:22 p.m..

Council member Kirby made a motion to go into executive session to discuss personnel matters. Council member Smith seconded the motion. All of the Council members were

present, all voted YEA, and the motion carried. The Council, Attorney Birkel, John Kabourek, Bill Buntgen, and City Clerk Kovar went into executive session at 8:28 p.m..

Council member Smith made a motion to come out of executive session. Council member Kroesing seconded the motion. All of the Council members were present, all voted YEA, and the motion carried. The Council came out of executive session at 9:04 p.m..

Council member Smith stated he wants to be sure the department reports are continued.

There being no further business to come before the Council, Council member Kroesing made a motion to adjourn. Council member Kirby seconded the motion. All of the Council members were present, all voted YEA, and the motion carried. Mayor Smith declared the meeting adjourned at 9:12 p.m..

Mayor Stephen Smith

City Clerk Joan E. Kovar



CERTIFICATION OF MINUTES
December 11, 2002

I, Joan E. Kovar, duly qualified and acting City Clerk for the City of David City, Nebraska, do hereby certify with regard to all proceedings of December 11, 2002; that all of the subjects included in the foregoing proceedings were contained in the agenda for the meeting, kept continually current and available for public inspection at the office of the City Clerk; that such subjects were contained in said agenda for at least twenty-four hours prior to said meeting; that the minutes of the meeting of the City Council of the City of David City, Nebraska, were in written form and available for public inspection within ten working days and prior to the next convened meeting of said body; that all news media requesting notification concerning meetings of said body were provided with advance notification of the time and place of said meeting and the subjects to be discussed at said meeting.

Joan E. Kovar