

CITY COUNCIL PROCEEDINGS

November 9, 2011

The City Council of the City of David City, Nebraska, met in open public session in the meeting room of the City Office, 557 N 4th Street, David City, Nebraska. The Public had been advised of the meeting by publication of notice in The Banner Press on November 3rd, 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 Alan Zavodny, Council members Gary Kroesing, John Vandenberg, Ruddy Svoboda, Gary Smith and City Attorney James Egr, Interim City Administrator Joan Kovar and Interim Clerk-Treasurer Tami Comte. Council member Bill Scribner arrived at 7:25 p.m. Council member Mike Rogers was absent.

Also present were: Street Superintendent James McDonald, Matt Rief from Olsson Associates, Phil Lorenzen from D.A. Davidson, Janis Cameron, Carolyn Yates, Jeff Yates, Joy Fountain, Don & Chuck McLaughlin, Pat Meysenburg and Banner Press Editor Larry Peirce.

The meeting opened with the Pledge of Allegiance.

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

The minutes of the October 12, 2011 meeting of the Mayor and City Council were approved upon a motion by Council member Vandenberg and seconded by Council member Smith. Voting AYE: Council members Svoboda, Vandenberg, Kroesing and Smith. Voting NAY: None. The motion carried. Council members Scribner and Rogers were absent.

Mayor Zavodny asked for consideration of claims. Council member Smith made a motion to authorize the payment of claims and Council member Vandenberg seconded the motion. Voting AYE: Council members Svoboda, Vandenberg, Smith and Kroesing. Voting NAY: None. The motion carried. Council members Scribner and Rogers were absent.

Mayor Zavodny called for Committee and Officer Reports. Mayor Zavodny stated that Water/Wastewater Supervisor Gary Janicek informed him that the E-Coli and Coliform report was not sent in for the wastewater plant. It was an oversight. The Dept. of Environmental Quality will be writing a letter about this. Janicek informed him that the testing would be completed early in November and the report sent it.

Mayor Zavodny stated that there is an opening in the City Office and there is also an opening in the Water/Sewer department and we are taking applications to fill those positions.

Council member Kroesing made a motion to accept the Committee and Officers reports as presented. Council member Smith seconded the motion. Voting AYE: Council members Kroesing, Smith, Vandenberg and Svoboda. Voting NAY: None. The motion carried. Council members Rogers and Scribner were absent.

Don and Chuck McLaughlin were present to discuss concerns about the drainage and the easement through their property.

Matt Rief of Olsson Associates was present to give an update concerning Industrial Drive and "O" Street.

Council member Smith made a motion to advance to agenda items #10 and #11. Council member Kroesing seconded the motion. Voting AYE: Council members Svoboda, Vandenberg, Scribner, Kroesing and Smith. Voting NAY: None. The motion carried. Council member Rogers was absent.

Council member Kroesing introduced Ordinance No. 1158 and moved 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 Kroesing, Scribner, Smith, Vandenberg and Svoboda. Voting NAY: None. The motion carried. Council member Rogers was absent.

Council member Kroesing made a motion to pass Ordinance no. 1158 on third and final reading. Council member Smith seconded the motion. Voting AYE: Council members Kroesing, Smith, Vandenberg, Svoboda and Scribner. Council member Rogers was absent. The motion carried and Ordinance No. 1158 was passed and adopted on third and final reading as follows:

ORDINANCE NO. 1158

AN ORDINANCE OF THE CITY OF DAVID CITY, NEBRASKA, CREATING A STREET IMPROVEMENT DISTRICT WITHIN THE CITY OF DAVID CITY TO BE KNOWN AS STREET IMPROVEMENT DISTRICT NOS. 2011-4, 2011-5 and 2011-6; DEFINING THE BOUNDARIES OF SAID DISTRICTS AND THE PROPERTY CONTAINED THEREIN; AND, PROVIDING FOR THE CONSTRUCTION OF IMPROVEMENTS THEREIN CONSISTING OF GRADING AND CONSTRUCTION OF CURB AND GUTTER, CONCRETE PAVING, AND STORM SEWER IMPROVEMENTS TOGETHER WITH SUCH OTHER APPURTENANCES AS MAY BE INCIDENTAL THERETO.

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

Section 1. The Mayor and City Council of the City of David City, Butler County, Nebraska, hereby find and determine that a petition has been filed with the City Clerk and presented to the Mayor and City Council petitioning for the creation of a street improvement district for the improvement of 10th Street from the north line of N Street south to the center line of M Street in the City of David City, including the intersections at N Street and at M Street.

As determined by the records in the office of the County Clerk and Register of Deeds of Butler County, Nebraska, there are 600 feet of front footage of property directly abutting on the streets to be improved and the owners of 60% or more of the front footage directly abutting on the streets to be improved have signed said petition. The petition is sufficient in form and is signed by

owners of at least 60% of said front footage abutting on the streets proposed to be improved, and that it is in the best interests of the City of David City to create a street improvement district for the construction of the said improvements as requested by said petition.

Section 2. There is hereby created within the City of David City, Nebraska, a street improvement district to be known and designated as Street Improvement District No. 2011-4, the outer boundaries of which shall contain the following property:

BEGINNING AT THE POINT OF INTERSECTION OF THE CENTERLINE OF M STREET AND THE SOUTHERLY EXTENSION OF THE EAST LINE OF ALLEY R.O.W. BETWEEN 9TH STREET AND 10TH STREET; THENCE NORTH ALONG SAID EAST R.O.W. LINE TO THE POINT OF INTERSECTION OF THE NORTHERLY EXTENSION OF SAID EAST R.O.W. LINE AND THE NORTH R.O.W. LINE OF N STREET, SAID POINT ALSO BEING THE SOUTHWEST CORNER OF LOT 12, BLOCK 2, LAND AND LOT ADDITION; THENCE EAST ALONG THE NORTH R.O.W. LINE OF N STREET TO THE SOUTHEAST CORNER OF LOT 11, BLOCK 1, LAND AND LOT ADDITION, SAID POINT ALSO BEING THE POINT OF INTERSECTION OF SAID NORTH R.O.W. LINE OF N STREET AND THE NORTHERLY EXTENSION OF THE WEST LINE OF ALLEY R.O.W. BETWEEN 10TH STREET AND 11 STREET; THENCE SOUTH ALONG SAID WEST R.O.W. LINE TO THE POINT OF INTERSECTION OF THE SOUTHERLY EXTENSION OF SAID WEST R.O.W. LINE AND THE CENTERLINE OF M STREET; THENCE WEST ALONG SAID CENTERLINE OF M STREET TO THE POINT OF BEGINNING.

Within said Street Improvement District No. 2011-4, the following streets shall be improved by construction of improvements therein consisting of grading and construction of curb and gutter, concrete paving and storm sewer improvements together with such other appurtenances as may be incidental thereto.

10th Street from the north line of N Street south to the centerline of M Street in the City of David City, including the intersections at N Street and at M Street.

Section 3. The Mayor and City Council of the City of David City, Butler County, Nebraska, hereby find and determine that a petition has been filed with the City Clerk and presented to the Mayor and City Council petitioning for the creation of a street improvement district for the improvement of 10th Street from the centerline of M Street south to the centerline of L Street in the City of David City, including the intersections at M Street and at L Street.

As determined by the records in the office of the County Clerk and Register of Deeds of Butler County, Nebraska, there are 600 feet of front footage of property directly abutting on the streets to be improved and the owners of 60% or more of the front footage directly abutting on the streets to be improved have signed said petition. The petition is sufficient in form and is signed by owners of at least 60% of said front footage abutting on the streets proposed to be improved, and that it is in the best interests of the City of David City to create a street improvement district for the construction of the said improvements as requested by said petition.

Section 4. There is hereby created within the City of David City, Nebraska, a street improvement district to be known and designated as Street Improvement District No. 2011-5, the outer boundaries of which shall contain the following property:

BEGINNING AT THE POINT OF INTERSECTION OF THE CENTERLINE OF L STREET AND THE SOUTHERLY EXTENSION OF THE EAST LINE OF ALLEY R.O.W. BETWEEN 9TH STREET AND 10TH STREET; THENCE NORTH ALONG SAID EAST R.O.W. LINE TO THE POINT OF INTERSECTION OF THE NORTHERLY EXTENSION OF SAID EAST R.O.W. LINE AND THE CENTERLINE OF M STREET; THENCE EAST ALONG SAID CENTERLINE OF M STREET TO THE POINT OF INTERSECTION OF SAID CENTERLINE AND THE NORTHERLY EXTENSION OF THE WEST LINE OF ALLEY R.O.W. BETWEEN 10TH STREET AND 11TH STREET; THENCE SOUTH ALONG SAID WEST R.O.W. LINE TO THE POINT OF INTERSECTION OF SAID WEST R.O.W. LINE AND THE CENTERLINE OF L STREET; THENCE WEST ALONG SAID CENTERLINE OF L STREET TO THE POINT OF BEGINNING

Within said District the following streets shall be improved by construction of improvements therein consisting of grading and construction of curb and gutter, concrete paving and storm sewer improvements together with such other appurtenances as may be incidental thereto.

10th Street from the centerline of M Street south to the center line of L Street in the City of David City, including the intersections at M Street and at L Street.

Section 5. The Mayor and City Council of the City of David City, Butler County, Nebraska, hereby find and determine that a petition has been filed with the City Clerk and presented to the Mayor and City Council petitioning for the creation of a street improvement district for the improvement of 10th Street from the centerline of L Street south to the south line of K Street in the City of David City, including the intersections at L Street and at K Street.

As determined by the records in the office of the County Clerk and Register of Deeds of Butler County, Nebraska, there are 600 feet of front footage of property directly abutting on the streets to be improved and the owners of 60% or more of the front footage directly abutting on the streets to be improved have signed said petition. The petition is sufficient in form and is signed by owners of at least 60% of said front footage abutting on the streets proposed to be improved, and that it is in the best interests of the City of David City to create a street improvement district for the construction of the said improvements as requested by said petition.

Section 6. There is hereby created within the City of David City, Nebraska, a street improvement district to be known and designated as Street Improvement District No. 2011-6, the outer boundaries of which shall contain the following property:

BEGINNING AT THE NORTHWEST CORNER OF LOT 1, BLOCK 11 OF W.T.&P. 1ST ADDITION, SAID POINT ALSO BEING THE POINT OF INTERSECTION OF THE SOUTH R.O.W. LINE OF K STREET AND THE SOUTHERLY EXTENSION OF THE EAST LINE OF ALLEY R.O.W. BETWEEN 9TH STREET AND 10TH STREET; THENCE NORTH ALONG SAID EAST R.O.W. LINE TO THE POINT OF INTERSECTION OF SAID EAST R.O.W. LINE AND

THE CENTERLINE OF L STREET; THENCE EAST ALONG SAID CENTERLINE OF L STREET TO THE POINT OF INTERSECTION OF SAID CENTERLINE AND THE NORTHERLY EXTENSION OF THE WEST LINE OF ALLEY R.O.W. BETWEEN 10TH STREET AND 11TH STREET; THENCE SOUTH ALONG SAID WEST R.O.W. LINE TO THE POINT OF INTERSECTION OF THE SOUTHERLY EXTENSION OF SAID WEST R.O.W. LINE AND THE SOUTH R.O.W. LINE OF K STREET, SAID POINT ALSO BEING THE NORTHEAST CORNER OF LOT 2, BLOCK 12 OF W.T.P. 1ST ADDITION; THENCE WEST ALONG SAID SOUTH R.O.W. LINE OF K STREET TO THE POINT OF BEGINNING.

Within said District the following streets shall be improved by construction of improvements therein consisting of grading and construction of curb and gutter, concrete paving and storm sewer improvements together with such other appurtenances as may be incidental thereto.

10th Street from the centerline of L Street south to the south line of K Street in the City of David City, including the intersections at L Street and at K Street.

Section 7. All of said improvements shall be constructed to the established grades as fixed by ordinances of the City of David City, and shall be constructed in accordance with plans and specifications to be prepared by the City's Engineers, which plans shall be approved by the Mayor and City Council. The improvements shall be made at public cost, but special assessments shall be levied to reimburse the City for the cost of the improvements as provided by law.

Section 8. Notice of the creation of said Street Improvement District Nos. 2011-4, 2011-5 and 2011-6 shall be published in the Banner Press newspaper, a legal newspaper published and of general circulation within the City of David City, for two weeks after the publication of this Ordinance.

Section 9. 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.

PASSED AND APPROVED this 9th day of November 2011.

Mayor

ATTEST:

Interim City Clerk

[SEAL]

Council member Kroesing introduced Ordinance No. 1159 and moved 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 Kroesing, Scribner, Smith, Vandenberg and Svoboda. Voting NAY: None. The motion carried. Council member Rogers was absent.

Council member Kroesing made a motion to pass Ordinance no. 1159 on third and final reading. Council member Smith seconded the motion. Voting AYE: Council members Kroesing, Smith, Vandenberg, Svoboda and Scribner. Council member Rogers was absent. The motion carried and Ordinance No. 1159 was passed and adopted on third and final reading as follows:

ORDINANCE NO. 1159

AN ORDINANCE OF THE CITY OF DAVID CITY, NEBRASKA, CREATING CERTAIN STREET IMPROVEMENT DISTRICTS WITHIN THE CITY OF DAVID CITY TO BE KNOWN AS STREET IMPROVEMENT DISTRICT NOS. 2011-7, 2011-8, AND 2011-9; DEFINING THE BOUNDARIES OF SAID DISTRICTS AND THE PROPERTY CONTAINED THEREIN; AND, PROVIDING FOR THE CONSTRUCTION OF IMPROVEMENTS THEREIN CONSISTING OF GRADING AND CONSTRUCTION OF CURB AND GUTTER, CONCRETE PAVING, AND STORM SEWER IMPROVEMENTS TOGETHER WITH SUCH OTHER APPURTENANCES AS MAY BE INCIDENTAL THERETO.

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

Section 1. The Mayor and City Council of the City of David City, Butler County, Nebraska, hereby find and determine that it is in the best interests of the City that 10th Street from the south line of J Street north to the south line of K Street in the City of David City, including the intersection at J Street be improved as hereinafter described; and that it is in the best interests of the City of David City to create a street improvement district for the construction of the said improvements.

Section 2. There is hereby created within the City of David City, Nebraska, a street improvement district to be known and designated as Street Improvement District No. 2011-7, the outer boundaries of which shall contain the following property:

BEGINNING AT NORTHWEST CORNER OF LOT 1, BLOCK 14, W.T.&P. 1ST ADDITION, SAID POINT ALSO BEING THE POINT OF INTERSECTION OF SOUTH R.O.W. LINE OF J STREET AND THE SOUTHERLY EXTENSION OF THE EAST LINE OF ALLEY R.O.W. BETWEEN 9TH STREET AND 10TH STREET; THENCE NORTH ALONG SAID EAST R.O.W. LINE TO THE NORTHWEST CORNER OF LOT 1, BLOCK 11, W.T.&P. 1ST ADDITION, SAID POINT ALSO BEING THE POINT OF INTERSECTION OF SAID EAST R.O.W. LINE AND THE SOUTH R.O.W. LINE OF K STREET; THENCE EAST ALONG SAID SOUTH R.O.W. LINE TO THE POINT OF INTERSECTION OF SAID SOUTH R.O.W. LINE AND THE WEST LINE OF ALLEY R.O.W. BETWEEN 10TH STREET AND 11TH STREET, SAID POINT

ALSO BEING THE NORTHEAST CORNER OF LOT 2, BLOCK 12, W.T.&P. 1ST ADDITION; THENCE SOUTH ALONG SAID WEST R.O.W. LINE TO THE POINT OF INTERSECTION OF THE SOUTHERLY EXTENSION OF SAID WEST R.O.W. LINE AND THE SOUTH R.O.W. LINE OF J STREET, SAID POINT ALSO BEING THE NORTHEAST CORNER OF LOT 2, BLOCK 13, W.T.&P. 1ST ADDITION; THENCE WEST ALONG SAID SOUTH R.O.W. LINE OF J STREET TO THE POINT OF BEGINNING.

Within Street Improvement District No. 2011-7, 10th Street from the south line of J Street north to the south line of K Street, including the intersection at J Street shall be and is hereby ordered improved by construction of improvements therein consisting of grading, construction of curb and gutter, concrete paving, and storm drainage, together with other necessary appurtenant improvements.

Section 3. The Mayor and City Council further find and determine that it is in the best interests of the City that 10th Street from the south line of I Street north to the south line of J Street in the City of David City, including the intersection at I Street be improved as hereinafter described; and that it is in the best interests of the City of David City to create a street improvement district for the construction of the said improvements.

Section 4. There is hereby created within the City of David City, Nebraska, a street improvement district to be known and designated as Street Improvement District No. 2011-8, the outer boundaries of which shall contain the following property:

BEGINNING AT NORTHWEST CORNER OF LOT 1, BLOCK 17, W.T.&P. 1ST ADDITION, SAID POINT ALSO BEING THE POINT OF INTERSECTION OF THE SOUTH R.O.W. LINE OF I STREET AND THE SOUTHERLY EXTENSION OF THE EAST LINE OF ALLEY R.O.W. BETWEEN 9TH STREET AND 10TH STREET; THENCE NORTH ALONG SAID EAST R.O.W. LINE TO THE POINT OF INTERSECTION OF THE NORTHERLY EXTENSION OF SAID EAST R.O.W. LINE AND THE NORTH R.O.W. LINE OF J STREET, SAID POINT ALSO BEING THE SOUTHWEST CORNER OF LOT 12, BLOCK 11, W.T.&P. 1ST ADDITION; THENCE EAST ALONG SAID NORTH R.O.W. LINE TO THE POINT OF INTERSECTION OF SAID NORTH R.O.W. LINE AND THE NORTHERLY EXTENSION OF THE WEST LINE OF ALLEY R.O.W. BETWEEN 10TH STREET AND 11TH STREET, SAID POINT ALSO BEING THE SOUTHEAST CORNER OF LOT 11, BLOCK 12, W.T.&P. 1ST ADDITION; THENCE SOUTH ALONG SAID WEST R.O.W. LINE TO THE POINT OF INTERSECTION OF THE SOUTHERLY EXTENSION OF SAID WEST R.O.W. LINE AND THE SOUTH R.O.W. LINE OF I STREET, SAID POINT ALSO BEING THE NORTHEAST CORNER OF LOT 2, BLOCK 18, W.T.&P. 1ST ADDITION; THENCE WEST ALONG SAID SOUTH R.O.W. LINE OF I STREET TO THE POINT OF BEGINNING.

Within Street Improvement District No. 2011-8, 10th Street from the south line of I Street north to the north line of J Street, including the intersection of I Street and J Street, shall be and is hereby ordered improved by construction of improvements therein consisting of grading, construction of curb and gutter, concrete paving, and storm drainage, together with other necessary appurtenant improvements.

Section 5. The Mayor and City Council further find and determine that it is in the best interests of the City that J Street from the west line of 9th Street east to the east line of 10th Street in the City of David City, including the intersections at 9th Street and at 10th Street be improved as hereinafter described; and that it is in the best interests of the City of David City to create a street improvement district for the construction of the said improvements.

Section 6. There is hereby created within the City of David City, Nebraska, a street improvement district to be known and designated as Street Improvement District No. 2011-9, the outer boundaries of which shall contain the following property:

BEGINNING AT THE SOUTHEAST CORNER OF LOT 4, BLOCK 15, W.T.&P. 1ST ADDITION, SAID POINT ALSO BEING ON THE WEST R.O.W. LINE OF 9TH STREET; THENCE NORTH ALONG SAID WEST R.O.W. LINE TO THE NORTHEAST CORNER OF LOT 9, BLOCK 10, W.T.&P. 1ST ADDITION; THENCE EAST TO THE NORTHWEST CORNER OF LOT 10, BLOCK 12, W.T.&P. 1ST ADDITION, SAID POINT ALSO BEING ON THE EAST R.O.W. LINE OF 10TH STREET; THENCE SOUTH ALONG SAID EAST R.O.W. LINE TO THE SOUTHWEST CORNER OF LOT 3, BLOCK 13, W.T.&P. 1ST ADDITION; THENCE WEST TO THE POINT OF BEGINNING.

Within Street Improvement District No. 2011-9, J Street from the west line of 9th Street east to the east line of 10th Street in the City of David City, including the intersections at 9th Street and at 10th Street, shall be and is hereby ordered improved by construction of improvements therein consisting of grading, construction of curb and gutter, concrete paving, and storm drainage, together with other necessary appurtenant improvements.

Section 7. All of said improvements shall be constructed to the established grades as fixed by ordinances of the City of David City, and shall be constructed in accordance with plans and specifications to be prepared by the City's Engineers and approved by the Mayor and City Council. Said improvements shall be made at public cost, but special assessments shall be levied to reimburse the City for the cost of the improvements as provided by law.

Section 8. Notice of the creation of said Street Improvement District Nos. 2011-7, 2011-8 and 2011-9 shall be published in the Banner Press, a legal newspaper of general circulation within the City of David City, for three weeks after the publication of this Ordinance.

Section 9. 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 10. This Ordinance shall be published and take effect as provided by law.

PASSED AND APPROVED this 9th day of November 2011.

Mayor

ATTEST:

Interim City Clerk

(Seal)

Council member Kroesing introduced Resolution No. 26-2011 and moved for its passage and adoption. Council member Smith seconded the motion. Voting AYE: Council members Kroesing, Smith, Svoboda, Vandenberg and Scribner. Voting NAY: None. Council member Rogers was absent. The motion passed and Resolution No. 26-2011 was passed and adopted as follows:

RESOLUTION NO. 26 - 2011

A RESOLUTION APPROVING THE HIRING OF SPECIAL ENGINEERS TO PREPARE PLANS, SPECIFICATIONS AND ESTIMATE OF COST FOR THE CONSTRUCTION OF CERTAIN STREET AND RELATED APPURTENANT IMPROVEMENTS TO BE CONSTRUCTED IN THE CITY OF DAVID CITY, NEBRASKA.

BE IT RESOLVED by the Mayor and Council of the City of David City, Nebraska, that the hiring of Olsson Associates, as special engineers for the construction of certain street and related appurtenant improvements to be constructed in the City of David City, Nebraska, in proposed Street Improvement District Nos. 2011-4, 2011-5, 2011-6, 2011-7, 2011-8 and 2011-9 is hereby approved, and the Mayor and City Clerk are authorized and instructed to sign the engineering agreement in the form submitted to this meeting.

PASSED AND APPROVED this 9th day of November, 2011.

ATTEST:

Mayor Alan Zavodny

Interim City Clerk Tami Comte



2ND AMENDMENT TO LETTER AGREEMENT FOR ENGINEERING SERVICES

THIS AMENDMENT, made as of November 14, 2011, by and between the City of David City, Nebraska, hereinafter called the "Client", and Olsson Associates, hereinafter called "Olsson", WITNESSETH, That whereas the Client intends to complete the Design for Industrial Drive Paving Improvements, David City, Nebraska, for which services were provided under the contract between the Client and Olsson dated April 8, 2011, and amended May 11, 2011, to include Design of West "O" Street, and wishes to add Design of 10th Street from I Street to N Street and J Street from 9th Street to 10th Street in conjunction with the Project. These services are in relation to Street Improvement Districts 2011-4, 2011-5, 2011-6, 2011-7, 2011-8, and 2001-9. Said Additional Services shall be provided as set forth hereafter.

SCOPE OF SERVICES

GENERAL

We propose to render professional services in connection with 10th Street from I Street to N Street and J Street from 9th Street to 10th Street in conjunction with the Project. Olsson shall perform for Client professional services in all phases of the Project to which this Amendment applies as hereinafter provided. These services will include serving as Client's professional representative for the Project, providing professional consultation and advice, and furnishing customary services incidental thereto.

1. **Site Survey**
 - a. Horizontal and Vertical Control
 - b. Topographic Surveys
10th Street from I Street to N Street
J Street, L Street, and M Street from 9th Street to 10th Street to accommodate existing drainage patterns
 - c. Download Survey and Create Base Map
2. **Project Management**
 - a. Contract Administration
3. **Public Paving Improvements**
 - a. Establish horizontal alignments
 - b. Design vertical alignments. This includes looking at vertical street profiles along J Street, L Street, and M Street to accommodate existing drainage patterns and future paving.
 - c. Cross sections.
 - d. Accommodate drainage patterns with culverts as needed. No storm sewer anticipated.
 - e. Construction, removal, plan and profile sheets
 - f. Geometrics, joints and grades
 - g. Erosion control design

- h. Utility coordination
- i. Quantities and cost estimate
- j. Notes, details, typicals
- k. Submit plans to City for review
- l. Property owners meeting (1)
- m. City review meeting
- n. Finalize plans for bidding

4. **Bid Phase Services**

- a. Municipal Streets shall be bid as part of the Industrial Drive and West O Street bid package.

5. **Assumptions**

Construction Phase Services will be amended to this contract after award of the project to include construction staking, observation, testing, and administration.

Any major utility relocation design will be considered additional services.

6. **Compensation**

Client shall pay to Olsson for the performance of the Basic Services the actual time of personnel performing such Services on the basis of Salary Costs times a factor of 2.5 for services rendered by our principals and employees engaged directly on the Project plus Reimbursable Expenses, unless otherwise agreed to by both parties. Reimbursable expenses will be invoiced in accordance with the Schedule contained in the General Provisions attached to this Letter Agreement. Olsson's Basic Services will be provided on a time and expense basis not to exceed **Thirteen Thousand Two Hundred and 00/100 - ----- Dollars (\$13,200.00)**. This is approximately \$2,200 for each street improvement district. Olsson shall submit invoices on a monthly basis, are due upon presentation and shall be considered past due if not paid within 30 calendar days of the due date.

8. If this proposal satisfactorily sets forth your understanding of our agreement, please sign the Amendment in the space provided (indicating Client's designated Project representative if different from the party signing the Agreement). Retain a copy for your files and return an executed original to Olsson.
9. By signing below, you acknowledge that you have full authority to bind Client to this agreement.

OLSSON ASSOCIATES

By 
Matthew R. Rief, Project Manager

By 
Kevin L. Prior, Vice President

Accepted this _____ day of
_____, 2011.

CITY OF DAVID CITY, NEBRASKA

By _____
Alan Zavodny

Title _____
Mayor

ATTEST:

By _____
Joan E. Kovar

Title _____
City Clerk

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Philip Lorenzen with D.A. Davidson was present to recommend refinancing the 2006 outstanding bond issue. In 2006, the interest rate was 3.968%. Lorenzen stated that at the present time the interest rate is .92%. So, if the City refinanced they could save about \$29,000 in interest.

Council member Scribner introduced Resolution No. 27-2011 and moved for its passage and adoption. Council member Smith seconded the motion. Voting AYE: Council members Scribner, Smith, Vandenberg, Kroesing, and Svoboda. Voting NAY: None. Council member Rogers was absent. The motion carried and Resolution No. 27-2011 was passed and adopted as follows:

RESOLUTION NO. 27-2011

RESOLUTION CALLING ELECTRIC REVENUE REFUNDING BONDS,
SERIES 2006 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 12, 2011 after which date said bonds shall cease to bear interest

Electric Revenue Refunding Bonds, Series 2006, Dated November 15, 2006, in the principal amount of \$450,000, maturing and becoming due November 15, 2012, through November 15, 2015, both inclusive, which bonds were issued by the City for the purpose of refunding and retiring together with cash on hand the City's outstanding \$950,000 balance of its Series 2001 Electric Revenue Refunding 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 9th day of November, 2011.

MAYOR

ATTEST:

INTERIM CITY CLERK

Council member Scribner introduced Ordinance No. 1160. 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 Kroesing, Smith, Scribner, Svoboda and Vandenberg. Voting NAY: None. The motion carried. Council member Rogers was absent.

Council member Kroesing made a motion to pass Ordinance No. 1160 on third and final reading. Council member Smith seconded the motion. Voting AYE: Council members Kroesing, Smith, Scribner, Svoboda and Vandenberg. Voting NAY: None. Council member Rogers was absent. The motion carried and Ordinance No. 1160 was passed and adopted on third and final reading as follows:

ORDINANCE NO. 1160

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 2011, IN THE PRINCIPAL AMOUNT OF FOUR HUNDRED FIVE THOUSAND DOLLARS (\$405,000), FOR THE PURPOSE OF REFUNDING, TOGETHER WITH CASH ON HAND, \$450,000,000 OF OUTSTANDING ELECTRIC REVENUE REFUNDING BONDS, SERIES 2006; 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 2006 of the total principal amount of \$550,000 as follows:

Principal Amount	Maturing November 15	Interest Rate
100,000	2011	3.85%
105,000	2012	3.85
110,000	2013	3.90
115,000	2014	4.00
120,000	2015	4.00

of which Series 2006 Bonds, \$100,000 principal maturing November 15, 2011 will be paid on their regular maturity date from funds on hand and bonds maturing November 15, 2012 through November 15, 2015, both inclusive, in the total principal amount of \$450,000 become callable on November 15, 2011 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, 2012 in the total combined principal amount of \$450,000 are ordered called in accordance with their call provisions on December 12, 2011.

Said bonds maturing on and after November 15, 2012, 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 12, 2011 and the Outstanding Bonds maturing on and after November 15, 2012 have been and hereby are called for redemption on December 12, 2011. 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 \$405,000. 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 Four Hundred Five Thousand Dollars (\$405,000) pursuant to Sections 10-142, and 18-1803 to 18-1805, Reissue Revised Statutes of Nebraska, 2007, 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 2011 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 2011” (the “2011 Bonds”) in the aggregate principal amount of Four Hundred Five Thousand Dollars (\$405,000), 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>
\$100,000	2012	
100,000	2013	
100,000	2014	
105,000	2015	

The 2011 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 2011 Bonds shall be their date of original delivery. Interest on the 2011 Bonds, at the respective rate for each maturity, shall be payable semiannually on May 15 and November 15 of each year commencing May 15, 2012 (each an “Interest Payment date”), and the 2011 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 2011 Bonds shall be numbered from 1 upwards in the order of their issuance. No 2011 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 2011 Bonds issued shall be as directed by the initial purchaser thereof. Payments of interest due on the 2011 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 2011 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 2011 Bonds to the Paying Agent and Registrar. The City and the Paying Agent and Registrar may treat the registered owner of any 2011 Bond as the absolute owner of such 2011 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 2011 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 2011 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 2011 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 2011 Bonds. The Paying Agent and Registrar shall keep and maintain for the City books for the registration and transfer of the 2011 Bonds at the City's office. The names and registered addresses of the registered owner or owners of the 2011 Bonds shall at all times be recorded in such books. Any 2011 Bond may be transferred pursuant to its provisions at the office of said Paying Agent and Registrar by surrender of such 2011 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 2011 Bond or 2011 Bonds of the same series, interest rate, aggregate principal amount and maturity. To the extent of the denominations authorized for the 2011 Bonds by this ordinance, one 2011 Bond may be transferred for several such 2011 Bonds of the same series, interest rate and maturity, and for a like aggregate principal amount, and several such 2011 Bonds may be transferred for one or several such 2011 Bonds, respectively, of the same series, interest rate and maturity and for a like aggregate principal amount. In every case of transfer of a 2011 Bond, the surrendered 2011 Bond shall be canceled and destroyed. All 2011 Bonds issued upon transfer of the bonds so surrendered shall be valid obligations of the City evidencing the same obligation as the 2011 Bonds surrendered and shall be entitled to all the benefits and protection of this ordinance to the same extent as the 2011 Bonds upon transfer of which they were delivered. The City and said Paying Agent and Registrar shall not be required to transfer any 2011 Bond during any period from any Record Date until its immediately following Interest Payment Date or to transfer any 2011 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 2011 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 2011 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 2011 Bonds shall be non-callable prior to maturity.

Section 8. If the date for payment of the principal of or interest on the 2011 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 2011 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 2011

No. _____ \$ _____

<u>Interest Rate</u>	<u>Maturity Date</u>	<u>Date of Original Issue</u>	<u>CUSIP</u>
%	November 15, 20__	December __, 2011	

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, 2012 (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 Four Hundred Five Thousand Dollars (\$405,000) of even date and like tenor, except as to the date of maturity, rate of interest and denomination (the "Series 2011 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 2006, date of original issue – November 15, 2006, of the principal amount of \$450,000, 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, 2007, and other applicable Statutes.

The Bonds are non-callable prior to maturity.

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 2011 Bonds and for the payment of any additional bonds of equal priority issued in accordance with the terms of the Ordinance authorizing the Series 2011 Bonds. The Series 2011 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 2011 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 2011 Bonds and any additional bonds of equal priority with said Series 2011 Bonds and other payments as specified in the Ordinance authorizing the Series 2011 Bonds. The Ordinance authorizing the Series 2011 Bonds also designate the terms and conditions under which additional bonds of equal priority with the Series 2011 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 2011 Bonds, the City also reserves the right to issue bonds or notes junior in lien to the Series 2011 Bonds and any additional bonds of equal priority to the Series 2011 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 2011 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 2011 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 Bonds shall be issued initially as “book-entry-only” bonds under 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 of the City are authorized to execute and deliver a letter of representations and inducement (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 Bonds as securities depository (each, a “Bond Participant”) or to any person who is an actual purchaser of a Bond from a Bond Participant while the 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 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 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 Bonds. The Paying Agent and Registrar shall make payments with respect to the 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 Bonds to the extent of the sum or sums so paid. No person other than the Depository shall receive an authenticated 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 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 Bonds or (ii) to make available Bonds registered

in whatever name or names the Beneficial Owners transferring or exchanging such Bonds shall designate.

(c) If the City determines that it is desirable that certificates representing the Bonds be delivered to the ultimate Beneficial Owners of the 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 Bonds. In such event, the Paying Agent and Registrar shall issue, transfer and exchange bond certificates representing the 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 Bond is registered in the name of the Depository or any nominee thereof, all payments with respect to such Bond and all notices with respect to such Bond shall be made and given, respectively, to the Depository as provided in the Letter of Representations.

(e) Registered ownership of the Bonds may be transferred on the books of registration maintained by the Paying Agent and Registrar, and the 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 and the terms of the Paying Agent and Registrar's Agreement (if any).

(f) In the event of any partial redemption of a 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 Bond as is then outstanding and all of the 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 Bond shall cease to be such officer before the

delivery of such 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 Bond. The Bonds shall not be valid and binding on the City until authenticated by the Paying Agent and Registrar. The Bonds shall be delivered to the Paying Agent and Registrar for registration and authentication. Upon execution, registration and authentication of the Bonds, they shall be delivered to the City Treasurer, who is authorized to deliver them to D.A. Davidson & Co., as initial purchaser thereof, upon receipt of 98.50% of the principal amount of the Bonds (or such other amount as may be determined in the Designation) plus accrued interest thereon to date of payment for the Bonds. Said initial purchaser shall have the right to direct the registration of the Bonds and the denominations thereof within each maturity, subject to the restrictions of this Ordinance. Such purchaser and its agents, representatives and counsel (including its bond counsel) are hereby authorized to take such actions on behalf of the City as are necessary to effectuate the closing of the issuance and sale of the Bonds, including without limitation, authorizing the release of the Bonds by the Depository at closing. If no separate written agreement for the sale of the Bonds is executed and delivered by and between the City and the Underwriter, this Ordinance shall constitute the agreement for sale of the Bond to the Underwriter. 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 2011 Bonds which shall be delivered to said purchaser.

Section 11. For the payment of the 2011 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 2011 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 2011 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 2011 Bonds and any Additional Bonds as such interest and principal become due; and
- (c) to establish and maintain the 2011 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) 2011 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 2012, the following amounts:

- (1) For the period from January 1, 2012 until May 1, 2012 an amount equal to 1/5 of the next maturing interest payments on the 2011 Bonds and from June 1, 2007 until the 2011 Bonds have been paid in full, an amount equal to 1/6th of the next maturing semiannual interest payment on the 2011 Bonds
- (2) For the period from January 1, 2012 until November 1, 2012 an amount equal to 1/11 of the next maturing principal on the 2011 Bonds and from December 1, 2012 until the 2011 Bonds have been paid in full, an amount equal to 1/12th of the next maturing principal payment for the 2011 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 2011 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) 2011 DEBT SERVICE RESERVE ACCOUNT - The City agrees that it shall transfer concurrently with the settlement of the Bonds \$40,500 from its Debt Service Reserve Account held for the called and redeemed Series 2006 Bonds as the amount required to be maintained as a debt service reserve attributable to the 2011 Bonds (the "2011 Reserve Requirement"). Monies credited to the 2011 Debt Service Reserve Account may be withdrawn, as needed to provide funds to pay, when due, the principal and interest on the 2011 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 2011 Debt Service Reserve Account, there shall be credited to the 2011 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 2011 Debt Service Reserve Account until such account has been restored to the 2011 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 2011 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 2011 Debt

Service Reserve Account with respect to the 2011 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 2011 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 2011 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 2011 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 2011 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 2011 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 2011 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 2011 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 2011 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 2011 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 2011 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 2011 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 2011 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 2011 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 2011 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 2011 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 2011 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 2011 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 2011 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 2011 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 2011 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 2011 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 2011 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 2011 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 2011 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 2011 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 2011 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 2011 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 Offering Circular with respect to the 2011 Bonds and the information therein contained, and the Mayor and City Administrator or either of them is authorized to approve and deliver a final Offering Circular for and on behalf of the City, and said final Offering Circular shall be delivered in accordance with the requirements of Reg. Sec. 240.15c2-12 of the Securities and Exchange Commission.

Section 29. The City hereby covenants and agrees that it will make no use of the proceeds of the 2011 Bonds which would cause the 2011 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 2011 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 2011 Bonds to constitute "private activity bonds" within the meaning of Section 141 of the Code. The City hereby designates the 2011 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 2011.

Section 30. In order to promote compliance with certain federal tax and securities laws relating to the bonds herein authorized (as well as other outstanding bonds) the policy and procedures attached hereto as Exhibit "A" (the "Post-Issuance Compliance Policy and Procedures") are hereby adopted and approved in all respects. To the extent that there is any inconsistency between the attached Post-Issuance Compliance Policy and Procedures and any similar policy or procedures previously adopted and approved, the Post-Issuance Compliance Policy and Procedures shall control.

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 9th day of November 2011.

Mayor

ATTEST:

Interim City Clerk

[SEAL]

EXHIBIT "A"

POLICY AND PROCEDURE

[SEE ATTACHED]

**Policy and Procedures
Federal Tax Law and Disclosure Requirements for
Tax-exempt Bonds and/or Build America Bonds**

ISSUER NAME: City of David City, Nebraska

COMPLIANCE OFFICER (BY TITLE): City Treasurer

POLICY

It is the policy of the Issuer identified above (the "Issuer") to comply with all Federal tax requirements and securities law continuing disclosure obligations for its obligations issued as tax-exempt bonds or as direct pay build America bonds to ensure, as applicable (a) that interest on its tax-exempt bonds remains exempt from Federal income tax, (b) that the direct payments associated with its bonds issued as "build America bonds" are received by the Issuer in a timely manner and (c) compliance with any continuing disclosure obligations of the Issuer with respect to its outstanding bonds.

PROCEDURES

Compliance Officer. Review of compliance with Federal tax requirements and securities law continuing disclosure obligations as generally outlined below shall be conducted by the Compliance Officer identified above (the "Compliance Officer"). To the extent more than one person has been delegated specific responsibilities, the Compliance Officer shall be responsible for ensuring coordination of all compliance review efforts.

Training. The Compliance Officer shall evaluate and review educational resources regarding post-issuance compliance with Federal tax and securities laws, including periodic review of resources published for issuers of tax-exempt obligations by the Internal Revenue Service (either on its website at <http://www.irs.gov/taxexemptbond>, or elsewhere) and the Municipal Securities Rulemaking Board (either on its Electronic Municipal Market Access website ["EMMA"] at <http://www.emma.msrb.org>, or elsewhere).

Compliance Review. A compliance review shall be conducted at least annually by or at the direction of the Compliance Officer. The review shall occur at the time the Issuer's annual audit takes place, unless the Compliance Officer otherwise specifically determines a different time period or frequency of review would be more appropriate.

Scope of Review.

Document Review. At the compliance review, the following documents (the "Bond Documents") shall be reviewed for general compliance with covenants and agreements and applicable regulations with respect to each outstanding bond issue:

- (a) the resolution(s) and/or ordinance(s), as applicable, adopted by the governing body of the Issuer authorizing the issuance of its outstanding bonds, together with any documents setting the final rates and terms of such bonds (the "Authorizing Proceedings"),
- (b) the tax documentation associated with each bond issue, which may include some or all of the following (the "Tax Documents"):
 - (i) covenants, certifications and expectations regarding Federal tax requirements which are described in the Authorizing Proceedings;
 - (ii) Form 8038 series filed with the Internal Revenue Service;
 - (iii) tax certificates, tax compliance agreements, tax regulatory agreement or similar documents;
 - (iv) covenants, agreements, instructions or memoranda with respect to rebate or private use;
 - (v) any reports from rebate analysts received as a result of prior compliance review or evaluation efforts; and
 - (vi) any and all other agreements, certificates and documents contained in the transcript associated with the Authorizing Proceedings relating to federal tax matters.
- (c) the Issuer's continuing disclosure obligations, if any, contained in the Authorizing Proceedings or in a separate agreement (the "Continuing Disclosure Obligations"), and
- (d) any communications or other materials received by the Issuer or its counsel, from bond counsel, the underwriter or placement agent or its counsel, the IRS, or any other material

correspondence relating to the tax-exempt status of the Issuer's bonds or relating to the Issuer's Continuing Disclosure Obligations.

Use and Timely Expenditure of Bond Proceeds. Expenditure of bond proceeds shall be reviewed by the Compliance Officer to ensure (a) such proceeds are spent for the purpose stated in the Authorizing Proceedings and as described in the Tax Documents and (b) that the proceeds, together with investment earnings on such proceeds, are spent within the timeframes described in the Tax Documents, and (c) that any mandatory redemptions from excess bond proceeds are timely made if required under the Authorizing Proceedings and Tax Documents.

Arbitrage Yield Restrictions and Rebate Matters. The Tax Documents shall be reviewed by the Compliance Officer to ensure compliance with any applicable yield restriction requirements under Section 148(a) of the Internal Revenue Code (the "Code") and timely calculation and payment of any rebate and the filing of any associated returns pursuant to Section 148(f) of the Code. A qualified rebate analyst shall be engaged as appropriate or as may be required under the Tax Documents.

Use of Bond Financed Property. Expectations and covenants contained in the Bond Documents regarding private use shall be reviewed by the Compliance Officer to ensure compliance. Bond-financed properties shall be clearly identified (by mapping or other reasonable means). Prior to execution, the Compliance Officer (and bond counsel, if deemed appropriate by the Compliance Officer) shall review (a) all proposed leases, contracts related to operation or management of bond-financed property, sponsored research agreements, take-or-pay contracts or other agreements or arrangements or proposed uses which have the potential to give any entity any special legal entitlement to the bond-financed property, (b) all proposed agreements which would result in disposal of any bond-financed property, and (c) all proposed uses of bond-financed property which were not anticipated at the time the bonds were issued. Such actions could be prohibited by the Authorizing Proceedings, the Tax Documents or Federal tax law.

Continuing Disclosure. Compliance with the Continuing Disclosure Obligations with respect to each bond issue shall be evaluated (a) to ensure timely compliance with any annual disclosure requirement, and (b) to ensure that any material events have been properly disclosed as required by the Continuing Disclosure Obligation.

Record Keeping. If not otherwise specified in the Bond Documents, all records related to each bond issue shall be kept for the life of the indebtedness associated with such bond issue (including all tax-exempt refundings) plus six (6) years.

Incorporation of Tax Documents. The requirements, agreements and procedures set forth in the Tax Documents, now or hereafter in existence, are hereby incorporated into these procedures by this reference and are adopted as procedures of the Issuer with respect to the series of bonds to which such Tax Documents relate.

Consultation Regarding Questions or Concerns. Any questions or concerns which arise as a result of any review by the Compliance Officer shall be raised by the Compliance Officer with the Issuer's counsel or with bond counsel to determine whether non-compliance exists and what measures should be taken with respect to any non-compliance.

VCAP and Remedial Actions. The Issuer is aware of (a) the Voluntary Closing Agreement Program (known as "VCAP") operated by the Internal Revenue Service which allows issuers under certain circumstances to voluntarily enter into a closing agreement in the event of certain non-compliance with Federal tax requirements and (b) the remedial actions available to issuers of certain bonds under Section 1.141-12 of the Income Tax Regulations for private use of bond financed property which was not expected at the time the bonds were issued.

Council member Scribner introduced Ordinance No. 1161. Council member Kroesing made a motion to suspend the statutory rule requiring an Ordinance be read on three separate days. Council member Smith seconded the motion. Voting AYE: Council members Kroesing, Smith, Scribner, Vandenberg and Svoboda. Voting NAY: None. Council member Rogers was absent. The motion carried.

Council member Kroesing made a motion to pass Ordinance No. 1161 on third and final reading. Council member Smith seconded the motion. Voting AYE: Council members Kroesing, Smith, Scribner, Svoboda and Vandenberg. Voting NAY: None. Council member Rogers was absent. The motion carried and Ordinance No. 1161 was passed and adopted on third and final reading as follows:

ORDINANCE NO. 1161

AN ORDINANCE AMENDING CHAPTER 8; ARTICLE 5 TREES; OF THE DAVID CITY MUNICIPAL CODE BOOK; PROVIDING AN EFFECTIVE DATE; AND PROVIDING FOR PUBLICATION OF THE ORDINANCE IN PAMPHLET FORM.

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

SECTION 1: Chapter 8; Article 5 – Trees; is hereby amended to read as follows:

Article 5. Trees

§8-501 TREES; DEFINITIONS.

STREET TREES. "Street trees" are herein defined as trees, shrubs, bushes and all other woody vegetation on street right-of-way, commonly called parquets, lying between property lines on either side of all streets, avenues, and ways within the City, and the street driving surface.

PARK TREES. "Park trees" are herein defined as trees, shrubs, bushes and all other woody vegetation in public parks and all areas owned by the City, or to which the public has free access as a park.

COMMUNITY FORESTER. "Community Forester" shall be the City employee responsible for the funding and application of Tree City U.S.A.

§8-502 TREES; STREET TREE SPECIES NOT TO BE PLANTED.

Austrees	Elm Trees	Shrubbery of all types
Black Locust	Fruit Trees	Siberian Elm
Black Walnut	Poplars	Silver Maples
Conifers	Seedless Cottonwoods	Tree of Heaven
Cottonwood	Weeping Willow	

§8-503 TREES; PUBLIC TREE CARE.

(1) The City shall have the right to plant, maintain, and remove trees and shrubs on all public areas to ensure public safety and to preserve the continuity and aesthetic beauty of such public grounds.

(2) The City Tree Board may remove or order removed, any tree or part thereof which is in an unsafe condition, or which by reason of its nature is injurious to sewers, electric power lines, underground utilities, and other public improvements, or is infected with an injurious fungus, insect or other pest.

(3) The City Tree Board shall also have cause to order removed any tree or part thereof which is deemed hazardous to private property or the general public.

(4) Planting trees on adjacent property is not affected by this Article except to the extent of provisions of section 8-506 and Attachment A.

(5) The adjacent or abutting property owners shall have the responsibility to perform appropriate tree care on their street trees.

§8-504 TREES; CLEARANCE OVER STREETS AND WALKWAYS.

(1) Clearance over streets and walkways shall be the responsibility of the adjacent or abutting property owner. A clearance of eight feet (8') will be maintained over the walkways and clearance of fourteen feet (14') will be maintained over streets and alleys.

(2) Property owners are responsible for the trees on their own property.

(3) It shall be the responsibility of the Utility Department to prune any trees in close proximity to utility lines.

§8-505 TREES; DISTANCES FOR PLANTING.

(1) Street trees may be planted in the parquetry where there is more than eight feet (8') between the edge of the sidewalk and the curb of the street. Trees planted in the parquetry shall be equidistant from the sidewalk and the curb. Street or private property trees shall not be planted any closer than five feet (5') from a sidewalk.

- (2) No tree shall be planted closer than thirty-five feet (35') from the street corner, measured from the point of the nearest intersection of curbs or curb lines
- (3) Large trees are those that reach mature heights exceeding forty feet (40'). Medium trees have a mature height of twenty-five feet (25') to forty feet (40'), and small (ornamental) trees have a mature height of less than twenty-five feet (25').
- (4) Large or medium street trees shall not be planted closer than thirty-five feet (35') from another tree.
- (5) Small (ornamental) trees shall not be planted closer than twenty-five feet (25') from another tree.
- (6) No tree shall be planted closer than ten feet (10') from a fire hydrant or utility pole.

§8-506 TREES; TREE TOPPING AND TRIMMING.

It shall be unlawful to top any tree. Topping is defined as the severe cutting back of limbs within the tree's crown to such a degree so as to remove the normal canopy and disfigure the tree. Trees severely damaged by storms or other causes, or certain trees under utility wires or other obstructions will be pruned using other acceptable pruning techniques, such as drop crotch pruning or directional pruning.

§8-507 TREES; TREE REMOVAL PERMIT.

- (1) It shall be unlawful for any person, property owner, homeowner or any firm engaged in the business or occupation, for hire or other valuable consideration, to prune, treat or remove any street or any park trees within the City without first applying for and procuring a permit. There shall be no permit fee. The permit is obtained at the City Office during regular business hours.
- (2) The property owner will be required to submit two (2) written estimates with the tree removal application. The City will normally cost share on the removal;
- (3) After the bids / estimates have been reviewed, the City Street Superintendent will notify the bid winner (tree removal estimate);
- (4) If a tree is a hazard or a public safety concern, and the tree needs to be removed quickly, the requirement of two (2) estimates can be skipped with the approval of the Mayor or Council President;
- (5) Trees must be cut down within forty-five (45) days of the issuance of the permit;
- (6) The City Office must be notified one (1) day prior to the actual tree removal;

- (7) During the cutting of anything within ten feet (10') of any street, the police department must be contacted and traffic caution cones must be placed on the street(s);
- (8) A safety letter is to be written by the City Attorney notifying residents of a hazardous tree and the time line in which to remove the tree and cost share with the City;
- (9) If the City removes, or has removed, a dead or hazardous tree the cost is to be assessed against the property;
- (10) Work performed by any public service company or City employee in the pursuit of the public service endeavors shall be exempt from this requirement.
- (11) **Once the entire tree removal process is completed, including the stump removal, the property owner will pay the entire cost to the tree remover and then submit a copy of the paid receipt to the City Office for reimbursement.**

§8-508 TREES; STUMP REMOVAL.

After any street or park tree is removed, the stump shall be removed at least four inches (4") below the surface of the ground and the remaining hole shall be filled with suitable soil. The City will provide the tree stump removal if the home owner removes the tree following the approval of the tree removal application.

§8-509 TREES; BUSINESS LICENSE.

It shall be unlawful for any person or firm to engage in the business or occupation of pruning, treating or removing street or park trees within the City of David City, Nebraska without first filing for and paying a \$25.00 annual license fee based on a calendar year, due January 1. Individual homeowners and property owners pruning, treating or removing street in compliance with Article 8 shall be exempt from licensing, however shall be required to apply for a permit and comply with all requirements required in §8-507 and §8-510 prior to commencing any work.

§8-510 TREES; INSURANCE REQUIREMENTS.

(1) It shall be unlawful for any person or firm to engage in the business or occupation or pruning, treating or removing street or park trees within the City of David City, Nebraska without filing evidence of bond or insurance in the minimum amounts of five hundred thousand dollars (\$500,000.00) for bodily injury and five hundred thousand dollars (\$500,000.00) property damage, which shall be on file with the City Clerk.

(2) It shall be unlawful for individual homeowners and property owners to prune, treat or remove street trees within the City of David City, Nebraska without filing evidence of home owners insurance.

(3) Exempt from this requirement are: a) Any pruning and removals under the diameter of four inches (4") at the last cut, and b) any public employees doing such work in the pursuit of their public service endeavor.

§8-511 TREES; PENALTY.

(1) It shall be unlawful for any person to prevent the appointed representative from entering on to property for purposes of carrying out his or her duties, hereunder, or to interfere with the appointed representatives in the lawful performance of his or her duties under the provisions of this Article.

(2) Any persons violating any provision shall be subject to a fine not to exceed one hundred dollars (\$100.00). (Ordinance No. 1079 6-11-08)

SECTION 2. All ordinances or parts of Ordinances in conflict herewith are hereby repealed.

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

PASSED AND APPROVED this _____ day of _____, 2011.

Mayor Alan Zavodny

Interim City Clerk Tami Comte

Interim City Administrator Joan Kovar stated that we have not had a farm lease with Greg Sabata for several years and she thought that it would be a good idea to have one on file.

Council member Smith made a motion to authorize Mayor Zavodny to execute the lease agreement with Greg Sabata. Council member Kroesing seconded the motion. Voting AYE: Council members Smith, Kroesing, Vandenberg, Scribner, and Svoboda. Voting NAY: None. The motion carried. Council member Rogers was absent.

CASH-RENT FARM LEASE

This Cash-Rent Farm Lease is entered into by and between the CITY OF DAVID CITY, NEBRASKA, hereinafter called "Owner", whether one or more, and GREG SABATA, hereinafter called "Tenant", whether one or more.

DESCRIPTION OF PROPERTY

The Owner hereby leases to the Tenant, to occupy and use for agricultural related purposes, and Tenant leases from the Owner, to occupy and use for agricultural related purposes, the following described property located in Butler County, State of Nebraska.

Northeast Quarter (NE 1/4) of Section Thirty-One (31), Township Fifteen (15), North, Range Three (3), East of the 6th P.M., Butler County, Nebraska EXCEPT the ground reserved for Municipal Airport and Industry and consisting of ninety-six and eight-tenths (96.8) acres, more or less.

All of this property is hereinafter referred to as the "Farm". The Owner warrants that the Owner has the right to lease the Farm, and will defend the Tenant's possession against any and all persons whomsoever.

II. TERMS OF LEASE

The terms of this Lease shall be from the 1st day of April, 2012 to the 31st day of March, 2013.

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

It is further agreed that the Tenant will not plant crops or prepare ground for the planting of any crop on any portion of the Farm, which crop would not mature until after the expiration of the term of this Lease, without first obtaining the written consent of the Owner.

III RENTAL

The Tenant shall pay the Owner a cash rent of \$150 per acre for a total of FOURTEEN THOUSAND FIVE HUNDRED TWENTY DOLLARS (\$14,520.00). One-half of the sum (\$7,260.00) will be due on or before April 1, with the other half (\$7,260.00) due on or before November 1, of the current year.

Subsequent cash rents shall be negotiated annually and agreed upon by March 1 of each year. One-half of the cash rent shall be paid by April 1, with the other half due on or before November 1 for the following years.

The failure or delay of the Owner or Tenant to exercise any of their respective rights or privileges under the provisions of this Lease, or any other terms of this agreement, shall not be held a waiver of any other terms, covenants or conditions of said instrument, nor of any of the respective rights or privileges of either party under the same. Any act of either the Owner or Tenant waiving, or which may be held to have waived, any default of the other party shall not be construed or held to be a waiver of any future default.

IV
OPERATIONAL EXPENSES

The Tenant shall furnish all labor, equipment and expenses for the operation of the Farm, except as indicated below:

NONE.

All financial and production records of mutual interest held by one party shall be accessible to the other party at reasonable times and places.

V
AGREEMENT OF TENANT

Tenant Agrees That:

(1) Tenant will maintain the Farm during Tenant's tenancy in as good condition and repair as at the beginning, or as later improved, normal wear and depreciation from causes beyond the Tenant's control excepted.

(2) Tenant will operate the Farm in an efficient and husbandlike manner, will do the plowing, seeding, cultivating, and harvesting at the proper time and in the proper manner.

(3) Tenant will keep in good repair all grass waterways, terraces, open ditches, and inlets and outlets of tile drains.

(4) Tenant will not commit waste on or damage to the Farm and will use due care to prevent others from so doing.

(5) Tenant will permit the Owner or Owner's agent to enter the Farm at any reasonable time for repair, improvement or inspection.

(6) Tenant will yield up possession of the Farm to the Owner at the expiration of this Lease without further notice.

(7) Tenant will prepare and keep adequate records of his farming operation on the Farm including but not limited to the type, amount, and costs of all seeds planted; the type, amount and cost of all fertilizers, insecticides, herbicides and any other chemicals applied to the property.

(8) Tenant will cultivate the Farm in such manner as to maintain the designed drainage.

(9) Tenant will plow the fence line in order to keep from leaving a ridge along the fence line and will plow so that the water will drain from the Municipal Airport runway.

(10) Tenant will not farm unreasonably close to the buildings on the farm.

(11) Tenant will not cross or turn upon the runway except at the far ends thereof in order to get from field to field on the Farm.

(12) A plat of the Municipal Airport is attached and depicts growing crops and tracts to be farmed and regulations as to low growing and high growing crops as they affect the Municipal Airport.

VI.
AGREEMENT OF OWNER

Owner Agrees That:

- (1) Owner will pay all taxes on said property, if any.
- (2) If Owner should sell or otherwise transfer the Farm, Owner will do so subject to the provisions of this Lease.
- (3) Owner agrees that, if necessity dictates work on the Municipal Airport and any damages to the crops occur, the Owner will pay such damages based upon schedules provided by the Butler County Extension Offices.

VII.
MUTUAL AGREEMENTS OF OWNER AND TENANT

It is Mutually Agreed By and Between the Owner and Tenant That:

- (1) If it is impracticable in any year, from causes beyond the Tenant's control, to grow the crops according to this Lease, appropriate adjustments will be worked out by the two parties.
- (2) Time is of the essence of this Lease.
- (3) The terms of this Lease shall apply to the heirs, personal representatives, successors, and assigns of both Owner and Tenant in like manner as to the original parties. However, in the event this Lease is for more than one (1) year, the Owner, the heirs or personal representative of the deceased party shall have the option to give written notice of termination effective at the end of the Lease year, or in the event death occurs, at the end of the Lease year in which death occurs.
- (4) If this Lease provides for a crop share rent and if the Tenant fails to either begin to harvest the crop or furnish the Owner with satisfactory proof that the crop is not ready to be harvested within five (5) days from receiving a written demand to harvest from the Owner, then the Owner may harvest the crop and deduct the expenses of harvest from the Tenant's share of the crop harvested.

VIII.
ASSIGNMENT AND SUBLETTING

The Tenant shall not encumber, assign, sublet or otherwise transfer this Lease, any right or interest in this Lease, or any right or interest in the Farm of any of the improvements that may now or hereafter be constructed or installed on the Farm, or allow any other persons to occupy or use the Farm or any part thereof, without the prior written consent of the Owner. A consent by Owner to one assignment, subletting or use by another person shall not be deemed to be a consent to any subsequent assignment, subletting or use by another person. Any

encumbrances, assignments, transfer or subletting without the prior written consent of the Owner, whether it be voluntary or involuntary, by operation of law or otherwise, is void, and shall, at the Owner's option, terminate this Lease. This Lease is considered personal to the Tenant only.

IX.
NO PARTNERSHIP

This Lease shall not be deemed to give rise to a partnership relation, and neither the Owner nor the Tenant shall have the authority to obligate the other without prior written consent.

X.
HOLD HARMLESS

The Tenant agrees to indemnify and hold the Owner and the property of the Owner, including the Farm, free and harmless from any and all claims, liability, loss, damage, or expense resulting from the Tenant's occupation and use of the Farm, specifically including without limitations any claim, liability, loss or damage arising:

(a) By reason of the injury to person or property, from whatever cause, while in or on the Farm or in any way connected with the Farm or with the improvements or personal property in or on the Farm including any liability for injury to the person or personal property of the Tenant, Tenant's agents, officers, or employees;

(b) By reason of any work performed on the Farm or materials furnished to the Farm at the instance or request of the Tenant, Tenant's agents, or employees;

(c) By reason of the Tenant's failure to perform any provisions of this Lease or to comply with any requirement imposed on Tenant or on the Farm by any duly authorized governmental agency or political subdivision;

(d) Because of the Tenant's failure or inability to pay as they become due any obligations incurred by the Tenant in the agricultural or other operations to be conducted by the Tenant on the Farm.

XI.
GOVERNMENT PROGRAM

Tenant shall comply with all government programs to which the Farm may be subject during the term of this Lease. Upon a modification of any such program, Tenant shall plan and perform according to such modifications so as not to jeopardize the rights of the Owner and the Farm to further participation in government programs. The Farm shall not be combined with any other tracts operated by Tenant for government program purposes without the prior written consent of the Owner.

XII.
NOXIOUS WEEDS

Tenant shall make and keep the Farm free and clear of all rubbish, weeds of every nature and other growths generally considered by the Agricultural Extension Service of the University of Nebraska to be foul, noxious or objectionable to good farming. Tenant shall further cut all grass in the farmstead, roadside and fence rows.

XIII.
DEFAULT

Upon default by either party, the other party shall have all rights at law, including forcible entry and detainer.

All covenants and agreements contained in this Lease are declared to be conditions of this Lease and to the term hereby demised to the Tenant. Should the Tenant default in the performance of any covenant, condition or agreement contained in this Lease, the Owner may terminate this Lease and re-enter and regain possession of the Farm in the manner then provided by laws of unlawful detainer of the State of Nebraska then in effect.

Dated this ____ day of _____, 20__.

OWNER:
CITY OF DAVID CITY, NEBRASKA

TENANT:

By:
MAYOR

GREG SABATA

By:
CITY CLERK

(Signatures are to be notarized. See affidavit of notary on the following page.)

Mayor Zavodny stated that he narrowed the applicants for City Administrator down to two candidates and he shared the written interview questions with the Council at the previous meeting. Mayor Zavodny stated that he is now down to one candidate and he would recommend Martin Krafka for the Council's consideration. Mayor Zavodny read an e-mail that he received from Mr. Krafka in which he had some items that he was requesting from the Council.

Discussion followed.

Council member Scribner made a motion to table the appointment of a City Administrator to the December Council Meeting. Council member Vandenberg seconded the motion. Voting AYE: Council members Smith, Kroesing, Vandenberg, Scribner, and Svoboda. Voting NAY: None. The motion carried. Council member Rogers was absent.

Council member Smith made a motion to table appointing a replacement to the library board to the December Council Meeting. Council member Kroesing seconded the motion. Voting AYE: Council members Smith, Kroesing, Vandenberg, Scribner, and Svoboda. Voting NAY: None. The motion carried. Council member Rogers was absent.

Interim City Administrator Joan Kovar stated that Street Supt. Jim McDonald had talked to Aquinas about having an agreement that would allow the City to dump snow at the old "Grubaugh Sale Yard" (between M Rd. and Oak Street). Kovar had shown the Council the contract at the previous Committee of the Whole meeting and it had met with their approval so she mailed it to Aquinas. Aquinas then called Kovar and told her that they had sold the property. Kovar then called the new property owner to ask if we could dump the snow on his property and he told her that if they came off of M Road that he would consider it. Kovar indicated that she didn't know if he would charge the City or not. The new owner was also not aware that the City has a drainage easement through the property. The new owner asked Kovar if the easement was filed at the courthouse.

City Attorney James Egr stated that there was no such easement filed at the courthouse. Egr stated that he did extensive research into the easement matter and could not find any indication that an easement had ever been filed on this property. He stated that Aquinas does not own the entire property. They own one-quarter of it. The other part is owned by Mrs. Denny Romshek and the Elsie Grubaugh heirs. Egr stated that what the City might have is known as a prescriptive easement. Prescriptive easement means that you have acquired an easement because you have used it, as such, for more than ten years and nobody has ever contested it. Egr also checked with Dick Ronkar, who is the County Surveyor, to see if this was connected to a natural drain way, from the standpoint of being an official creek. Egr stated that this is a natural waterway. It is a natural depression that water flows through. Egr stated that he contacted the attorney involved with the sale of this property, in Columbus, and told him that it would behoove everyone involved if they could get the correct legal description on that property and to formalize an easement. Egr stated that he understood that the prospective buyer is purchasing the entire piece of property from all of the owners. Egr stated that if this is part of the Northwest Drainage then the City needs to get something worked out with the property owner.

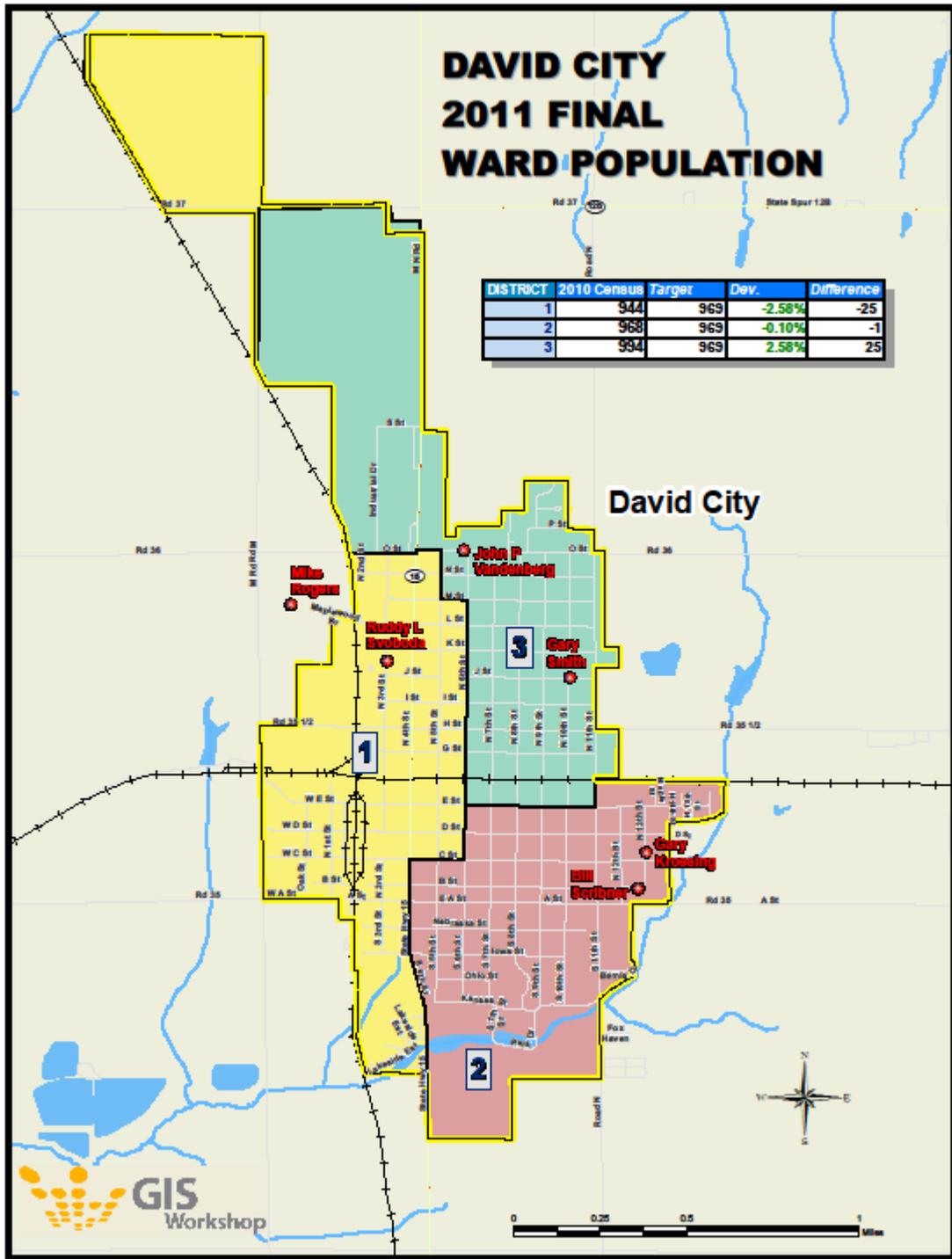
Mayor Zavodny told Street Supt. McDonald that he would speak to the new owner about the easement and about dumping snow on the property and until then he should plan to take the snow to the airport property.

Street Superintendent McDonald indicated that he could take some of the snow to the ballfield parking lot.

Council member Kroesing made a motion to advance to agenda items #23 & #24. Council member Scribner seconded the motion. Voting AYE: Council members Smith, Kroesing, Vandenberg, Scribner, and Svoboda. Voting NAY: None. The motion carried. Council member Rogers was absent.

GIS Workshop e-mailed Interim Administrator Joan Kovar three ward boundary proposals for the Council's consideration.

Council member Scribner made a motion to accept GIS Workshop Proposal #3 Boundaries for the voting wards in David City. Council member Smith seconded the motion. Voting AYE: Council members Smith, Kroesing, Vandenberg, and Scribner. Voting NAY: Council member Svoboda. The motion carried. Council member Rogers was absent.



Council member Kroesing made a motion to table consideration of Ordinance No. 1162 amending Chapter 2, Article 1 – Section 106 Tree Board to the December Council Meeting. Council member Scribner seconded the motion. Voting AYE: Council members Smith, Kroesing, Vandenberg, Scribner, and Svoboda. Voting NAY: None. The motion carried. Council member Rogers was absent.

Council member Smith made a motion to go into executive session to discuss personnel and legal matters. Council member Vandenberg seconded the motion. Voting AYE: Council members Kroesing, Vandenberg, Svoboda, Smith, and Scribner. Voting NAY: None. The motion carried. Council member Rogers was absent.

Mayor Zavodny stated, "Now at 9:34 p.m. we are going into executive session to discuss personnel and legal issues." Mayor Zavodny, all of the Council members, City Attorney Egr, Interim City Administrator Kovar and Interim City Clerk Comte went into executive session at 9:34 p.m.

City Attorney Jim Egr stated that a motion and second was not needed to come out of executive session. Therefore, Mayor Zavodny declared the City Council out of executive session at 10:18 p.m.

There being no further business to come before the Council, Council member Kroesing made a motion to adjourn. Council member Scribner seconded the motion. Voting AYE: Council members Kroesing, Vandenberg, Svoboda, Scribner, and Smith. Voting NAY: None. Council member Rogers was absent. The motion carried and Mayor Zavodny declared the meeting adjourned at 10:19 p.m.



CERTIFICATION OF MINUTES
November 9, 2011

I, Tami L. Comte duly qualified and acting Interim City Clerk for the City of David City, Nebraska, do hereby certify with regard to all proceedings of November 9, 2011; 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.

Tami L. Comte, Interim City Clerk