

**ACKNOWLEDGEMENT OF RECEIPT OF NOTICE OF MEETING
OF THE MAYOR AND CITY COUNCIL OF
THE CITY OF DAVID CITY, NEBRASKA**

The undersigned members of the governing body of the City of David City, Nebraska, hereby acknowledge receipt of advance notice of a regular meeting of said body and the agenda for such meeting to be held at 7:00 o'clock p.m. on the **24th day of July, 2019**, in the meeting room of the City Office, 557 North 4th Street, David City, Nebraska.

This agenda is available for public inspection in the office of the City Clerk and may be modified up to twenty-four hours prior to the opening of the meeting.

Dated this 19th day of July, 2019.

AGENDA AS FOLLOWS:

1. Roll Call;
2. Pledge of Allegiance;
3. Inform the Public about the location of the Open Meetings Act and the Citizens Participation Rules; _____
Mayor Alan Zavodny
4. Minutes of the July 10th, 2019 meeting of the Mayor and City Council; _____
Council President Kevin N. Hotovy
5. Consideration of Progress Estimate #20 for Constructors, Inc. in the amount of \$262,716.20; _____
Council member Thomas J. Kobus
6. Consideration of Pay Estimate #9 to Eriksen Construction Co., in the amount of \$96,759.69 for the Wastewater Treatment Plant Project; _____
Council member Dana E. Trowbridge
7. Consideration of Pay Estimate #1 to Midlands Contracting, Inc. in the amount of \$47,725.74 for Sanitary Sewer Rehabilitation; _____
Council member Patrick J. Meysenburg
8. Presentation by Al Hottovy of Leo A. Daly concerning the Downtown Improvement Project; _____
Council member John P. Vandenberg
9. Consideration of Ordinance No. 1320 relating to electric service rates concerning the 2019 Cost of Service / Rate Design Study- Electric Utility; _____
Council member Gary D. Smith
10. Consideration of the proposals received concerning a new Website design for the City; _____
City Clerk Joan E. Kovar
11. Consideration of accepting the resignation of Clarence J. Novak as the Interim Wastewater Supervisor effective July 23, 2019;
12. Consideration of renewing the contract between the City and Raymond S. Sueper as the Building Inspector;

13. Consideration of the bids received for the engineering services concerning the proposed "O" Street Paving and Drainage Improvements;
14. Presentation by David Levy concerning the Treat property;
15. Consideration of the request of St. Mary's School to add parking to the east of the school on 6th Street north of J Street;
16. Discussion and consideration of the removal of a hazardous tree at 353 N. 8th Street, the property owned by Todd DeWispelare;
17. Consideration of the proposed budgets for the upcoming fiscal year October 1, 2019 – September 30, 2020;
18. Adjourn.

CITY COUNCIL PROCEEDINGS

July 24, 2019

The City Council of the City of David City, Nebraska, met in open public session at 7:00 p.m. in the meeting room of the City Office, 557 North 4th Street, David City, Nebraska. The Public had been advised of the meeting by publication of notice in The Banner Press on July 18th, 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 Thomas Kobus, Dana Trowbridge, and Kevin Hotovy, City Attorney Jim Egr, and Deputy City Clerk Tami Comte. Council members Gary Smith, Pat Meysenburg and John Vandenberg were absent. City Clerk Joan Kovar was also absent.

Also present for the meeting were: Ken Polacek, Planning Commission Member Janis Cameron, Sergeant Drew Behn, Interim Water Supervisor Aaron Gustin, Library Director Kay Schmid, Street Supervisor Christopher Kroesing, Building Inspector Ray Sueper, Ken Polacek, David Levy and Lindsay Lundholm, representing Baird Holm LLP.

The meeting opened with the Pledge of Allegiance.

Mayor Alan Zavodny notified the public of the "Open Meetings Act" posted on the west wall of the meeting room and asked those present to silence their cell phones.

Mayor Zavodny stated that we have a quorum but barely.

Deputy City Clerk Comte asked City Attorney Egr if Mayor Zavodny would need to vote on every motion and he concurred that the Mayor would need to vote on every motion.

The minutes of the July 10th, 2019 meeting of the Mayor and City Council were approved upon a motion by Council member Trowbridge and seconded by Council member Hotovy.

Voting AYE: Council members Hotovy, Kobus, Trowbridge and Mayor Zavodny. Voting NAY: None. Council members Meysenburg, Smith and Vandenberg were absent. The motion carried.

Council member Trowbridge made a motion to approve Progress Estimate #20 for Constructors, Inc., in the amount of \$262,716.20. Council member Kobus seconded the motion. Voting AYE: Council members Kobus, Trowbridge, Hotovy and Mayor Zavodny. Voting NAY: None. Council members Smith, Vandenberg and Meysenburg were absent. The motion carried.

Council member Kobus made a motion to approve Pay Estimate #9 to Eriksen Construction Co., in the amount of \$96,759.69 for the Wastewater Treatment Plant Project. Council member Hotovy seconded the motion. Voting AYE: Council members Kobus, Hotovy, Trowbridge and Mayor Zavodny. Voting NAY: None. Council members Smith, Vandenberg and Meysenburg were absent. The motion carried.

Council member Kobus made a motion to approve Pay Estimate #1 to Midlands Contracting, Inc. in the amount of \$47,725.74 for the sanitary sewer rehabilitation project. Council member Hotovy seconded the motion. Voting AYE: Council members Kobus, Hotovy, Trowbridge and Mayor Zavodny. Voting NAY: None. Council members Vandenberg, Smith and Meysenburg were absent. The motion carried.

Al Hottovy of Leo A. Daly was present to discuss the downtown renovation project. Al Hottovy distributed the following recap of the downtown project.

24-Jul-19			
		CONTRACT	TO-DATE
	ORIGINAL CONTRACT FOR WORK	\$ 9,304,432	\$ 9,318,020
	MINOR WORK TO BE COMPLETED AND PAID FOR		\$ 81,980
	PROJECTED TOTAL COST OF PROJECT		\$ 9,400,000
	ADDED WATER WORK VALUE	\$ 146,000	
		\$ 9,450,432	
	TO DATE COSTS:		
	STREETS		\$ 8,350,000
	WATER		\$ 1,050,000

Al Hottovy said, "What I wanted to do is to present to you where we are at, what is left and I'm going to go over the costs first. As of today, when you approved that payment at the upper right side there is a "to date" cost of \$9,318,020. That includes all work that has been done through approximately June. On this sheet that I gave you, on the righthand side, there is approximately \$81,980 that has not been put on a pay estimate yet, and there's a couple of other items. The total is going to be about \$9,400,000 for the entire project plus or minus. That is estimated to be done by August 15th – totally – out of here. After that, if everything on the

punch list is done and taken care of, then we would come in here with a final pay estimate, which is part of the \$9,318,020. We have a retained percentage of 5% which is about \$450,000 to hold them to get the job done. But the total cost is \$9,318,020 plus what is going to be coming in. \$9,304,432 is what was contracted and we added some work for about \$146,000 and that was major work of water and that was one block of water and then we had two crossings down on 4th Street and then there's some other items. So, the total contract value is about \$9,450,432. We are right where we were supposed to be. There's \$8,350,000 of streets and \$1,050,000 for the water revenue bonds. Of the \$8,350,000, we have about \$1.6 million coming back from the State and about \$211,000 from the County."

Mayor Zavodny said, "Shouldn't we be getting \$1.8 million from the State?"

Al Hottovy said, "Yes, \$1.8 million from the State."

Deputy City Clerk Comte said, "We received \$900,000 from them in October and we should get another \$900,000 from them this October."

Al Hottovy said, "This is what our records show that the construction cost is and I guess the question that I have is, the design fee and the construction administration fee – do you want that prorated. We haven't done that. We could take it by this proration and give you that number so you could have the design fee and you could have the construction fee for both of those, if you want that."

Council member Trowbridge said, "It would be nice to know a grand total of the project."

Al Hottovy said, "I can do that."

Mayor Zavodny said, "I know, signing the checks, it seems like we've had quite a few pretty good sized ones."

Al Hottovy said, "You guys all had the punch list that was distributed. They are moving and taking out some panels. I see that some of them have been replaced already. When they are all done they will begin restriping. One of the last things that they are going to be doing is restriping. There are some signs that aren't in. Anything on the money side?"

City Attorney Jim Egr said, "Is the retainage enough to take care of everything?"

Al Hottovy said, "Yes, if he doesn't do it but he's going to have it all done. He told us that he wants to be done by the end of July and that's next week. I'm giving him until August 15th."

Kevin Hotovy said, "Completely moved out? I've been asked by both schools if the parking lot will be available for football season?"

Al Hottovy said, "The east one has been cleaned up but he's got to get the west one cleaned up too. I just took a picture of it and it does need clean up. There's some areas that are on the detour that need repaired. He's got to repair a couple of curbs and pieces. That's not as important right now but it's got to be done before he leaves here."

Mayor Zavodny said, "Money questions before we get into....."

Council member Trowbridge said, "When do we paint lines?"

Al Hottovy said, "The lines are going to be painted probably after he's done with all of the removals. I don't want him to go out there and do something and then we have to take a panel out. We're going to be out here next week looking at this by Superior Glass. We're going to see what we can really do there. The gutter was put in about an inch too high so we're going to fix that."

Mayor Zavodny said, "So water will not run into his business?"

Al Hottovy said, "I was here when we dumped water on there and it didn't run into his business when I was there but it's perception and so the curb is a half inch too high and there will be about six panels taken out of there and drain to the gutter."

Mayor Zavodny said, "So, we'll figure that out?"

Al Hottovy said, "Yes. I can't tell you what we're going to do yet because we've going to shoot it. It's that flat."

Mayor Zavodny said, "Does anybody else have anything before I get to the list of people who have called me? B.J. of B.J.'s Hardware called me and he has some concerns on how the alley situation is with the parking and how that's changed because it's really hard to see. His alley gets used a lot especially during greenhouse season."

Al Hottovy said, "He's got a question on the alley then?"

Mayor Zavodny said, "Well, he's got two questions, the alley, and he said that he's got some customers that are struggling with the way his entrance is done. He doesn't want them to have to go clear to the corner especially if they have mobility problems. So, if you could talk to B.J. directly and that is a must do. Kobza's sidewalk, Tim Beaver had a few questions about that so if you could talk to him. One of the things that I noticed was the brick on 5th Street and I thought that was getting redone."

Al Hottovy said, "It's on the punch list."

Mayor Zavodny said, "To be redone?"

Al Hottovy said, "Yes."

Mayor Zavodny said, "Ok. That was my assumption but then I heard that they were about done. That has to be redone."

Street Supervisor Chris Kroesing said, "They still have the intersection over here at 5th & E to do too. We did talk about that in the last construction meeting. I brought it up with them and they did say that Linhart is coming back to do south 5th and the 5th & E intersection."

Mayor Zavodny said, "That's good to know. My concern was getting them back."

Street Supervisor Chris Kroesing said, "I've also had calls on the detour route. I talked to Mary Sue Kirby again the other day and it will all get done. Greg and Kevin both have a copy and pictures of everything."

Al Hottovy said, "I think the pictures are on there. Everything that you got called on – are they on the punch list?"

Street Supervisor Chris Kroesing said, "Yes."

Al Hottovy said, "Then they have to be redone."

Mayor Zavodny said, "Mary Sue has been very patient."

Street Supervisor Chris Kroesing said, "Yes she has."

Mayor Zavodny said, "It's time to get that taken care of. Also, in front of the fire hall and a couple of places there is globs of concrete on the sidewalk."

Al Hottovy said, "If there is a major crack we're not accepting that but if it's a minor crack we're going to monitor it and in some cases we're going to grout it."

Mayor Zavodny said, "Some of those, the finish work though is rougher than it should have been."

Al Hottovy said, "We're going to monitor it and we're going to walk it again before we're done. We have two people that walk it and take pictures. They're not getting the retainage until we're done. I'll tell you, I think we've talked to just about every person in Butler County during the project. I haven't seen it at night. What's it look like at night?"

Council member Trowbridge said, "I think it looks better than in the daytime. The low lights make the whole thing work. It looks like a neat downtown with those lights on."

Council member Trowbridge introduced Ordinance No. 1320 relating to electric service rates concerning the 2019 cost of service/rate design study. Mayor Zavodny read Ordinance No. 1320 by title.

Council member Trowbridge made a motion to pass Ordinance No. 1320 on 1st reading only. Council member Kobus seconded the motion. Voting AYE: Council members Kobus, Hottovy, Trowbridge and Mayor Zavodny. Voting NAY: None. Council members Smith, Vandenberg and Meysenburg were absent. The motion carried and Ordinance No. 1320 was passed on 1st reading only as follows:

ORDINANCE NO. 1320

AN ORDINANCE RELATING TO ELECTRIC SERVICE RATES AND MINIMUM CHARGES, TO PROVIDE NEW SCHEDULES OF ELECTRIC RATES, TO REPEAL ALL PARTS OF THE CODE, RESOLUTIONS AND ORDINANCES IN CONFLICT HEREWITH; TO

PROVIDE WHEN THE ORDINANCE SHALL TAKE EFFECT; AND TO PROVIDE 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. NEW SCHEDULES: Relating to electric service and minimum charges, to provide a schedule of electric rates, minimum charges, and customer service charges, to distinguish residential rates, commercial rates, industrial rates, off-peak industrial rates, and irrigation rates; to set availability rating; to provide and establish the following tariff of rates to consumers of electric service from the electric distribution system of the City of David City, Nebraska.

A. RESIDENTIAL SERVICE

Availability. To residential customers in the established service area of David City.

Applicability. To single-family residences and individually metered apartments for all domestic purposes when all service is supplied through a single meter. It is not applicable to residences where a commercial enterprise is conducted.

Character of Service A.C. 60 Hertz, Single-Phase 120 volt, 2 wire or 120/240 volts, 3 wire.

Rate. Subject to application of Production Cost Adjustment (PCA).

Rate Effective October 19, 2019

Customer Service Charge - \$18.00 per month (or partial month)

<u>Summer</u>	<u>Winter</u>	
\$0.1125	\$0.1100	First 500 kwh, per kwh
\$0.1000	\$0.0900	Next 500 kwh, per kwh
\$0.0950	\$0.0790	Excess, per kwh

Minimum Bill. The minimum bill shall be the sum of the Customer Charge.

B. RESIDENTIAL SUMMER CONTROLS

Applicability. To residential consumers who have allowed the Utility Department to install, and operate, such devices as would be required to cycle central air conditioning units during periods of peak electrical demand and imposed upon the electrical system. Window air conditioning units, on a separate electric circuit can be included in this rate.

Rate. Subject to application of Production Cost Adjustment (PCA).

Rate Effective October 19, 2019

Customer Service Charge - \$18.00 per month (or partial month)

<u>Summer</u>	<u>Winter</u>	
\$0.1125	\$0.1100	First 500 kwh, per kwh
\$0.0925	\$0.0900	Next 500 kwh, per kwh
\$0.0875	\$0.0790	Excess, per kwh

Minimum Bill. The minimum bill shall be the sum of the Customer Charge.

C. STREET LIGHT / ALLEY LIGHT RENTALS

Availability. To residential customers in the established service area of David City.

Applicability. To any residential or commercial customer who has an alley light or a **requested** street light that is not individually metered. It is not applicable to residences or businesses where the City has installed a street light for the City's convenience.

Rate. Subject to application of Production Cost Adjustment (PCA).

Rate Effective October 19, 2019

Customer Service Charge - \$6.64 per fixture per month (or partial month)

Some customers will share the cost of one fixture.

D. COMMERCIAL SERVICE

Availability. To any non-residential consumer in the established service area of David City.

Applicability. To any non-residential consumer for lighting, heating and power purposes where the customer's billing demand does not exceed 35 Kw or 10,000 Kwh for three (3) consecutive months.

Character of Service. A.C. 60 Hertz, single-phase or three-phase at any of the Cities standard voltages.

Rate. Subject to application of Production Cost Adjustment (PCA).

Single Phase Rate Effective October 19, 2019

Customer Service Charge - \$28.00 per month (or partial month)

<u>Summer</u>	<u>Winter</u>	
\$0.1200	\$0.1175	First 1,000 kwh, per kwh
\$0.0950	\$0.0925	Next 1,000 kwh, per kwh
\$0.0925	\$0.0800	Excess, per kwh

Three Phase Rate Effective October 19, 2019
Customer Service Charge - \$37.00 per month (or partial month)

<u>Summer</u>	<u>Winter</u>	
\$0.1200	\$0.1200	First 1,000 kwh, per kwh
\$0.1075	\$0.0975	Next 1,000 kwh, per kwh
\$0.0975	\$0.0800	Excess, per kwh

Minimum Bill. The minimum bill shall be the sum of the Customer Charge of \$2.20 per month per horsepower for the first 10 horsepower and \$1.26 per horsepower of connected load thereafter, whichever is the highest.

Power Factor Adjustment. The rates set forth in this schedule are based on the maintenance by the customer of a power factor of not less than 90% leading or lagging at all times. If it is determined by test or metering that the power factor at the time of the customer's peak load is less than 90%, the Utility Department, at its option, may correct the power factor of the customer's load at the expense of the customer.

E. INDUSTRIAL SERVICE

Availability. To any non-residential consumer in the established service area of David City.

Applicability. To any consumer whose monthly consumption equals or exceeds 10,000 Kwh or whose monthly peak demand equals or exceeds 35 Kw for three consecutive months.

Character of Service. A.C. 60 Hertz, single-phase or three-phase at any of the Cities standard voltages.

Rate. Subject to application of Production Cost Adjustment (PCA).

Rate Effective October 19, 2019
Customer Service Charge - \$75.00 per month (or partial month)

Demand Charge

Summer	\$24.00 per kilowatt of maximum billing demand
Winter	\$18.00 per kilowatt of maximum billing demand

Energy Charge

Summer	\$0.0520 per kilowatt-hour used
Winter	\$0.0485 per kilowatt-hour used

Minimum Bill. The minimum bill shall be the customer charge or the billing demand charge, whichever is greater.

Determination of Billing Demand. The maximum demand for any billing period shall be the larger of (1) the highest integrated kilowatt load registered on the meter during any

thirty (30) minute period occurring in the billing period or (2) fifty four percent (54%) of the highest kilowatt average demand registered on the meter during the preceding months of May 20th thru September 19th.

Power Factor Adjustment. The rates set forth in this schedule are based on the maintenance by the customer of a power factor of not less than 90% leading or lagging at all times. If it is determined by test or metering that the power factor at the time of the customer's peak load is less than 90%, the Utility Department will adjust the monthly billing demand by the ratio of 0.90 divided by the power factor (expressed as a decimal) at the time of the customer's maximum hourly usage.

Fluctuating Loads. Customers operating equipment having a highly fluctuating or large instantaneous demand, such as welders and X-ray machines, shall be required to isolate these loads from the balance of the electric system if they unduly interfere with service on the lines. The customer shall be required to pay all non-betterment costs for corrective equipment to eliminate the interference.

F. OFF-PEAK INDUSTRIAL SERVICE

Availability. To any non-residential consumer in the established service area of David City.

Applicability. To any consumer whose monthly consumption equals or exceeds 10,000 Kwh or whose monthly peak demand equals or exceeds 35 Kw for (3) three consecutive months and whose peak demand during the winter season exceeds the peak demand experienced during the preceding summer season.

Character of Service. A.C. 60 Hertz, single-phase or three-phase at any of the Cities standard voltages.

Rate. Subject to application of Production Cost Adjustment (PCA).

Rate Effective October 19, 2019

Customer Service Charge - \$75.00 per month (or partial month)

Demand Charge

Summer	\$23.00 per kilowatt of maximum billing demand
Winter	\$13.00 per kilowatt of maximum billing demand

Energy Charge

Summer	\$0.0520 per kilowatt-hour used
Winter	\$0.0485 per kilowatt-hour used

Minimum Bill. The minimum bill shall be the customer charge or the billing demand charge, whichever is greater.

Determination of Billing Demand. The maximum demand for any billing period shall be the larger of (1) the highest integrated kilowatt load registered on the meter during any thirty (30) minute period occurring in the billing period or (2) fifty four percent (54%) of

the highest kilowatt average demand registered on the meter during the preceding months of June, July, August or September.

Power Factor Adjustment. The rates set forth in this schedule are based on the maintenance by the customer of a power factor of not less than 90% leading or lagging at all times. If it is determined by test or metering that the power factor at the time of the customer's peak load is less than 90%, the Utility Department will adjust the monthly billing demand by the ratio of 0.90 divided by the power factor (expressed as a decimal) at the time of the customer's maximum hourly usage.

Fluctuating Loads. Customers operating equipment having a highly fluctuating or large instantaneous demand, such as welders and X-ray machines, shall be required to isolate these loads from the balance of the electric system if they unduly interfere with service on the lines. The customer shall be required to pay all non-betterment costs for corrective equipment to eliminate the interference.

G. IRRIGATION SERVICE

Availability. To irrigation customers in the established service area of David City.

Applicability. **Off-Peak:** During the irrigation season, the utility may interrupt pump service during the peak hours. Peak hours shall be those hours designated as "on-peak" by Nebraska Public Power District and are typically between 8:00 a.m. and 10:00 p.m. Central Daylight Savings Time, Monday through Saturday, excluding holidays and up to four (4) hours on Sunday. The City, at their sole discretion may change the period of interruptible hours.

Rate Effective October 19, 2019: On-peak irrigation (Firm)
\$58.00 per Horsepower connected per year. Energy consumed shall be billed at the rate of 8.00¢ per kilowatt hour per month, payable as used.

Rate Effective October 19, 2019: Off-peak irrigation (Non-Firm)
\$25.00 per Horsepower connected per year. Energy consumed shall be billed at the rate of 6.00¢ per kilowatt hour per month, payable as used.

Minimum Bill. The minimum bill shall be the Horsepower Charge.

Determination of Connected Load. The connected load in horsepower shall be taken from the name plates of the motors or from an actual measurement of horsepower input to the motor, or motors, operating under maximum load conditions. The City reserves the right at any time to check the customer's load for recalculation of the connected load.

Terms of Payment. The total horsepower charge shall be billed on approximately April 25th of each year and total amount payable upon receipt. It shall become due the first day of May each year and become delinquent at 5:00 p.m. on the 10th day of May. A ten percent (10%) penalty is imposed on all delinquent bills.

Bills for the kwh usage are mailed on approximately the 25th day of each month and are payable upon receipt. They become due the 1st day of each month and become delinquent at 5:00 p.m. on the 10th day of each month. A ten percent (10%) penalty is imposed on all delinquent bills.

Power Factor Adjustment. The rates set forth in this schedule are based on the maintenance by the customer of a power factor of not less than 90% whether leading or lagging at all times. Power factor adjustments will be made in the horsepower billing, when the power factor, as determined by test, at the time of the maximum use is less than 90%. The measured maximum horsepower will be multiplied by 90% and divided by the customer's power factor expressed in percent.

Fluctuating Loads. Customers operating equipment having a highly fluctuating or large instantaneous demand, such as welders and X-ray machines, will be charged \$1.78 per month per KVA of such nameplate rating of such equipment or other equipment for energy used, and such charges will be in addition to the bill determined by the kilowatt hours recorded by the meter and billed at scheduled rates. It will be added to the minimum bill for services in the event the energy for other services does not equal the amount of a minimum bill for such other services.

Section 2. Seasonal Billing Periods. The *summer* period is for the meter readings obtained during the four-month period of May 19th through September 19th. The *winter* period is for the meter readings obtained during the eight-month period of September 19th through May 19th.

Section 3. Terms of Payment. Utility bills are mailed on approximately the 25th day of each month and are payable upon receipt. Utility bills become due the 1st day of each month and become delinquent if not received in the City Office by 5:00 p.m. on or before the 10th day of the month. If the 10th of the month falls on a weekend, customers will be given until the following regular business day. A 10% penalty is imposed on all delinquent bills.

Section 4. Production Cost Adjustment (PCA). Whereas, the rates offered to the customer by the City is based upon the current rate being paid by the City to its wholesale supplier, the City shall reserve the right, during the term of the rates, to adjust said rates to the consumer by an amount not to exceed two (2) mills per kilowatt hour greater than the adjustment to the City by its wholesale supplier.

Section 5. Any other ordinance or section passed and approved prior to the passage, approval, and publication or posting of this Ordinance and in conflict with its provisions, are hereby repealed.

Section 6. This Ordinance shall be published in pamphlet form and all rates included in this Ordinance shall be effective as of October 19, 2019.

PASSED AND ADOPTED this _____ day of _____, 2019.

Passed on 1st reading only
Mayor Alan Zavodny

Passed on 1st reading only
Deputy City Clerk Tami Comte

Mayor Zavodny stated that the next item on the agenda was consideration of the proposals received concerning a new website design for the City.

Council member Trowbridge said, "If you sort it by price, you've got two players and my perception of the presentations, coming from each of the players, knocks it down to really only one and that is the lady from Lincoln."

Mayor Zavodny said, "SOCS?"

Council member Trowbridge said, "Yes. Her presentation was so much better than the other one and the amount of business that they're doing and I really enjoy not being sold anything. She seemed to be here to want to be helpful. If that's their corporate image then I would move that we contract with SOCS from Lincoln, NE."

Council member Trowbridge made a motion to contract with SOCS out of Lincoln, NE. Council member Kobus seconded the motion. Voting AYE: Council members Kobus, Trowbridge, Hotovy and Mayor Zavodny. Voting NAY: None. Council members Smith, Vandenberg and Meysenburg were absent. The motion carried.

Council member Hotovy made a motion to accept the resignation of Clarence J. Novak as the Interim Wastewater Supervisor effective July 23, 2019. Council member Kobus seconded the motion. Voting AYE: Council members Hotovy, Trowbridge, Kobus and Mayor Zavodny. Voting NAY: None. Council members Vandenberg, Meysenburg and Smith were absent. The motion carried.

Council member Trowbridge stated that he wanted to wait until the entire Council was present to discuss renewing Building Inspector Ray Sueper's contract. Council member Trowbridge made a motion to table renewing the contract between the City and Building Inspector Ray Sueper until the next Council meeting. Council member Kobus seconded the motion. Voting AYE: Council members Trowbridge, Hotovy, Kobus and Mayor Zavodny. Voting NAY: None. Council members Meysenburg, Smith and Vandenberg were absent. The motion carried.

Mayor Zavodny stated that the next item on the agenda is consideration of the bids received for the engineering services concerning the proposed "O" Street paving and drainage improvements.

Mayor Zavodny said, "How many did we receive?"

Deputy Clerk Comte said, "We received two bids and we received letters from two firms that said "thanks for the opportunity but we're not going to bid right now"."

Council member Trowbridge said, "This one yells at me – why are we doing this right now? This is \$58,000 minimum that we probably don't have. Doing this isn't going to get us

any closer to fixing it because first of all we need to identify where the better part of 2 million dollars is going to come from and I can't see it on the horizon that I have."

Mayor Zavodny said, "A few places that I've talked to about a way to do this haven't satisfied my feelings on how we could swing it at this point. Now, what I would say that we should do, since it's on the agenda is open the bids and given that there's only three people here tonight, I think we should table any decision."

Deputy Clerk Comte stated that the bids were in the packet.

Council member Trowbridge said, "The bids were apples and oranges and the dollars are significantly apart, but there are some reasons for that as you delve into the specifics of each bid."

Mayor Zavodny said, "See, that's the other complicated factor that we have. We don't have the expertise to be able to put together a bid spec that allows for an apples to apples bid, which I think we really do need. Let's just do this, for tonight's purposes, let's just table this item."

Council member Hotovy made a motion to table consideration of the bids received for the engineering services concerning the proposed "O" Street paving and drainage improvements. Council member Trowbridge seconded the motion. Voting AYE: Council members Hotovy, Trowbridge, Kobus and Mayor Zavodny. Voting NAY: None. Council members Vandenberg, Smith and Meysenburg were absent. The motion carried.

Mayor Zavodny said, "That brings us to item no. 14 and we're going to have a presentation on the Treat property."

David Levy, attorney with Baird Holm, said, "Good evening Mr. Mayor, City Council members. I am David Levy with Baird Holm law firm. I have my colleague Lindsay Lundholm with me tonight. We appreciate the opportunity to work on this project for the City. I wanted to give you a little bit of an update. Tonight, we've been engaged a little less than two months on this and it probably feels like we haven't made much progress. I wanted to let you know what we have been doing. Lindsay is the expert in the eminent domain piece of this so I'm going to have her talk to you in a little bit more detail about how that will go and I do have a couple more items of guidance that we need from you and then we can really move forward in earnest with that piece of it. We were doing some legal research. This is a little bit of a unique exercise with eminent domain taking, essentially, a private residence and potentially reselling it or taking it for the purpose of what some might characterize as economic development. There are limits on both of those in state law and so before we got any farther down the road we wanted to make sure that we could see a clear path that we were comfortable with to take advantage of or make use of exceptions in statute to those limits. We're comfortable that we can do that in parts, as you may know, especially the economic development piece of that exception is for elimination and prevention of blight and substandard conditions. That's the same phrase that is in the community development law tax increment financing and you've adopted a blight and substandard study for that block so that's opened that exception and made it applicable here. So, that's what we've been doing the last couple of months. As I mentioned, Lindsay's going to be leading the next phase of this which is the actual eminent domain and the first step in that is good faith negotiations with the property owner. State law requires us to do that and so I think

I'll turn it over to Lindsay and we need a little bit of guidance from you including what you think we should offer for that. We thought about having that discussion in closed session but quite frankly I think that open session is fine. I think we're comfortable with that. The city has gotten an appraisal already of the property which is great that I think will help inform that decision and that direction from the Council. So, Lindsay, I'll let you go ahead."

Lindsay Lundholm said, "Statute clearly requires us to engage in good faith negotiations. As a precondition to exercising the power of eminent domain and quite frankly, our advice to you is to attempt to do that both to establish what you'd need to do in a court proceeding but also if you could negotiate successfully with the Treats for the purchase of the property now, that's the most efficient and cost effective way to get the property and be done and the number that you offer, in terms of where you go in a good faith negotiation, will be probative in the court proceeding of your exercise of good faith and attempt to resolve this at the outset so our recommendation is that we try and engage the Treats in the way that we think might be most likely to see that this is inevitable and fighting the eminent domain process is not going to be successful and is going to be a waste of time and money. I think that Ray has had significant communication with them and we would recommend that we perhaps try to work through him on an informal basis to reach out and see if we can get anywhere just through conversations. If that is unsuccessful then we will send a letter. I'm thinking that we do this pretty short order and then if after good faith negotiation, more than one documentation, more than one letter showing them the proposal that we've made to purchase the property and we need authority from you folks as to a number, whether you want to be right at that appraisal or something slightly higher. We are at about \$60,000, I believe, and then the tax assessed value I think you've got \$118,000 there so, in that good faith negotiation we need the authority to make some sort of offer for the purchase of the property. If we are unsuccessful there, then we will file a lawsuit that authorizes us to enter on the land and there is a court proceeding that will provide for the appointment of multiple appraisers and the court will set a value for the property and will gain title to it that way. We sort of just march through the statutory steps there of eminent domain. It gives the Treats an opportunity, after we file the petition to condemn, to come in and fight us on whether the value is correct. There's all sorts of time built in to appeal. Again, that's more expensive, that's more burdensome getting to the number that would allow you to purchase the property right at the outset at the good faith negotiation phase is really the quickest and most efficient way to resolve this. Telling you how long this will take, of course, I don't have the crystal ball. We will work diligently to make everything happen quickly but it could be over in very short order if they decide not to fight us in the process. I can't predict what they'll do. Are there any questions that you have about the process or thoughts as to where to start negotiations?"

David Levy said, "Do you want us to start with the appraised price or something different is really what we're looking for and I think that anywhere in that range would be a good faith. The appraisal was very thorough and very well done. So, that would be a wholly appropriate place to start. Like Lindsay said, any other questions you have we are happy to answer."

Council member Kobus said, "Worst case scenario, how long would it take?"

Lindsay Lundholm said, "The very worst case scenario would be that the Treats exercise every right of appeal and you would go up to the court of appeals. That could be very lengthy. But, it's quite unlikely."

David Levy said, "It's unlikely and the way that Nebraska law works for eminent domain is that you obtain title to the property very quickly and then really the fight is over the number."

Lindsay Lundholm said, "Yes. It's only over the value of the property."

David Levy said, "And we're not talking about a large sum of money here. It's not millions of dollars. We're not talking about something that is extraordinarily unusual and therefore difficult to value. It's a very unique and wonderful property but it is a single family residence."

Mayor Zavodny said, "Ok. A couple of things that I have – I thought that you explained that very clearly. My first reservation is, not to disparage Ray's skills, but I don't think that putting him in that position, considering the fact that he's had to be dealing with them through this whole process, probably is not a good idea. Is there an agent that we could use or would you be willing to negotiate?"

Lindsay Lundholm said, "We can approach them. Absolutely. The only reason why I brought that up as a possibility is that maybe they'd be more agreeable having communicated with him."

Mayor Zavodny said, "I was hoping that you would say that because you're going to make sure that legally we're protected in how you approach them. If the Council is ok with that, I think that is the best course of action."

David Levy said, "That is by far the more typical approach. It was just that because they are from out of town and we can tell that they are hard to communicate with that might be easier. The typical approach is that you would authorize us to reach out and make an offer of some amount."

Lindsay Lundholm said, "I think that the best case scenario for you is if they accept an offer that you make at the outset and then you don't have to go through a proceeding."

Council member Trowbridge said, "That's a wonderful thought."

Lindsay Lundholm said, "I always recommend that you don't have to pay me my bill, because it's in your best interest."

Council member Trowbridge said, "And I respect your optimism, but I've been around these people for ten years. It won't be quick, it won't be clean and it won't be easy."

Council member Hotovy said, "I don't think that a number can stray very far from that appraisal because the problem is that if we can get title to the property, then we still have to sell it. You're not going to be able to sell it for very darn much above the appraisal."

David Levy said, "Ray was kind enough to walk down there with us. We were here at 6:55 p.m. and we walked down to the property."

Council member Hotovy said, "If we had someone that wanted to take a mortgage out on the property, you're going to get 85% of the appraised value is what you can borrow."

Council member Trowbridge said, "We're dealing with people who probably aren't going to take a mortgage out."

Building Inspector Ray Sueper said, "He's right. If you go to a bank you're only going to be able to borrow 85% of the appraised value."

Council member Hotovy said, "That's why I'm saying, to protect the City's interest in this, to keep from taking a bath on it, that we don't want to go very far from the appraised value."

Mayor Zavodny said, "Given that discussion, here's what I'm going to throw out as an option for you. Item one is to have you (David Levy and Lindsay Lundholm) negotiate on our behalf, and item two is and I want to preface this by saying that I thought the appraisal was great, but there were limitations because they weren't able to get into the house. That appraisal might have been less had they gotten inside the house. So, that's a risk. So, for me, unless someone feels significantly different, I think that we start at the \$60,000. Unless you want to choose a different number."

City Attorney Jim Egr said, "I think it would be good to explain to the Council that if you go through a condemnation proceeding that the court appoints three appraisers. Explain that procedure to the Council because they've never been through that before."

Lindsay Lundholm said, "So, the court will appoint a panel of appraisers (3) three different ones and those folks will then determine the value of the property. It's like that panel makes the decision as to the value of the property. At the end of that, there would of course be an opportunity for an appeal from the county court to the district court, if there were errors in that, but those three appraisers would make the determination of what we would pay for the property. The other short coming I suppose in the process is if we start down this path and then decide to abandon this effort after we filed that petition, you would have a two year limitation, where you couldn't go back and try and condemn this property. So, once we file that petition, and start down the road, we would really need to stick with the process or you'd be limited for two years from trying to get the property from the Treats."

Building Inspector Ray Sueper said, "It starts at county court, not district court?"

Lindsay Lundholm said, "Yes. It starts at county court."

Building Inspector Ray Sueper said, "That widens your appeals to two levels right there."

David Levy said, "Again, at that point, the City has possession of the property and what you're fighting about is the amount of money. Not that it's a small amount of money and you've got a pretty decent range here, you've got the assessed value for tax purposes, which is about \$118,000 and you've got the appraisal. So, what you've got at risk at that point, is \$20,000 to \$40,000. Again, not a small amount of money, but it's not like the panel of appraisers is likely to come back and say that it's \$500,000."

Mayor Zavodny said, "First of all, I don't want to speak for the Council, but from our experience over time, I believe that our resolve is solid. I think that we want to proceed and are committed to doing so. Following the proper process is really why you're here. Do you have a

rough guess as to what we'll have in legal fees? Granted, appeals could make those go up but give me some idea."

David Levy said, "I don't want to be presumptuous, that you'll want us to help you convey the property to someone who's going to redevelop it and perhaps participate in that redevelopment process. If not, really, it's the eminent domain piece of it at this point."

Lindsay Lundholm said, "I would say that it would be less than \$15,000."

David Levy said, "I would say between \$15,000 - \$20,000."

Mayor Zavodny said, "So, our basis in the property would be \$60,000 for the appraisal plus up to \$20,000 for the legal fees. I think we'd be asking you to provide us a turn-key type of service. How do you feel about that?"

Council member Hotovy said, "Let's keep it rolling."

Council member Trowbridge said, "It's time to bring this to a conclusion."

Council member Hotovy said, "I understand that it's going to take a while yet but I think we should move forward."

Mayor Zavodny said, "Given the way this is worded – Counsel, if we move to engage them to negotiate on our behalf and the offer starting at \$60,000 is that an appropriate action for this evening?"

City Attorney said, "Yes."

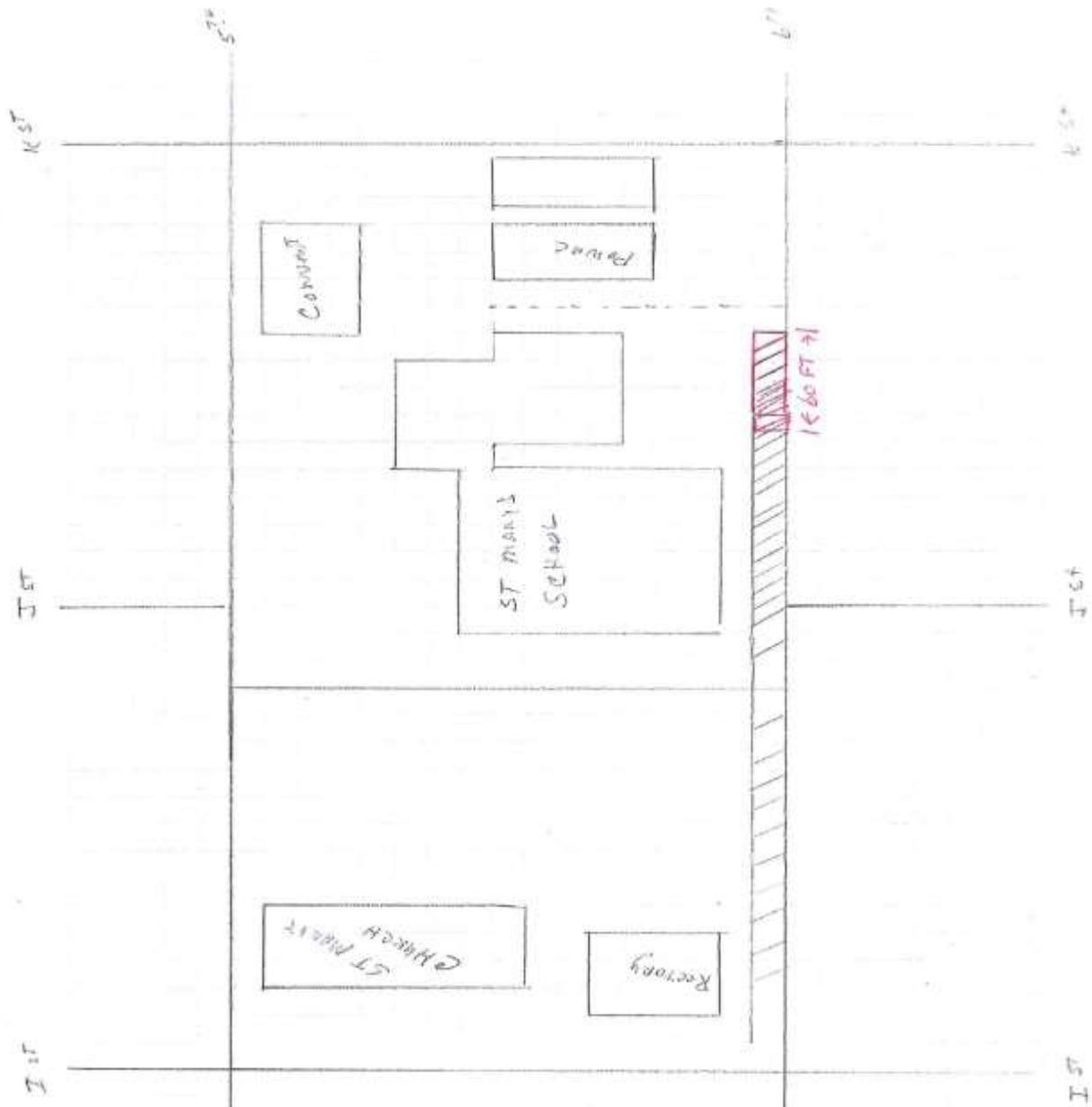
Council member Trowbridge said, "Who is the proper source of a time limitation, the buyer or the seller? Could we put, say, a 60 day limit on the sale?"

David Levy said, "Yes. We could. The only reason that I hesitated is that the constraint on that is that you want to make sure that there's no argument there that it was not a good faith offer. You can't give them three days. You're not saying that. So, yes, 60 days."

Council member Trowbridge said, "You have to have a time limit with these people."

Council member Hotovy made a motion to engage Baird Hold LLP to negotiate on the City's behalf at the value of the appraisal. Council member Trowbridge seconded the motion. Voting AYE: Council members Hotovy, Trowbridge, Kobus and Mayor Zavodny. Voting NAY: None. Council members Smith, Vandenberg and Meysenburg were absent. The motion carried.

Ken Polacek was present representing St. Mary's School. Mr. Polacek asked the Council for permission to add 60' of parking in the parquet on the east side of St. Mary's school between "J" and "K" Streets. The following is a diagram provided by Ken Polacek.



Council member Trowbridge made a motion to approve the request of St. Mary's School to add 60' of parking the east side of the school between "J" and "K" Streets. Council member Hotovy seconded the motion. Voting AYE: Council members Trowbridge, Hotovy, Kobus and Mayor Zavodny. Voting NAY: None. Council members Vandenberg, Smith and Meysenburg were absent. The motion carried.

Mayor Zavodny stated that the next item on the agenda was discussion and consideration of the removal of a hazardous tree at 353 N. 8th Street, property owned by Todd DeWispelare.

Mayor Zavodny asked Deputy Clerk Comte to give some background as to how we got here.

Deputy Clerk Comte said, "When Nick Sypal was doing some tree trimming for a neighbor and saw the branch in the tree and called Chris Kroesing and he went out and took a look at it and he came in and asked Lori to write a letter to Todd DeWispelare. Lori wrote the letter in August of 2018 and I believe that Todd called Chris Kroesing and told him that it wasn't in the budget for 2018."

Street Supervisor Chris Kroesing said, "Todd DeWispelare called me in August of 2018 and said that it wasn't in the budget for 2018. He told me that he would get it taken down the first thing in the spring. He would have the dead branch, that you guys have pictures of, it's a hazardous branch that is right above the sidewalk, he said he'd have that removed immediately. The tree hasn't been touched since."

Council member Trowbridge said, "That was August of last year?"

Street Supervisor Chris Kroesing said, "Yes."

Deputy Clerk Comte said, "So, the tree board met on Monday and they recommended immediate removal of the tree. I wasn't comfortable with them making that decision. I wasn't sure if they had that authority and so I asked them to recommend to the Council that you act on this. They said that was fine and that's where we are."

Street Supervisor Chris Kroesing said, "He told me when he called me on the phone, and he was furious and upset about it, that there are a lot worse trees in this town and there is nothing wrong with that tree. I told him that if it does end up falling that it would be up to him to remove it from the parquet because he was given a notice and that he would be responsible for any damage. He said that the tree was not split and there are a lot worse trees in town. I met Marc Hlavac up there and he said that the tree was split right down the middle and it needs to go."

Mayor Zavodny said, "I never appreciate the argument "this person's worse than me". We will have some expense since it's a cost share on the parquet..."

Council member Trowbridge said, "No, no, no..if you go back and you read the City code, when he was notified it was a cost share. When we get to the point that he doesn't do what he's supposed to do, we then condemn it and it becomes his baby 100%. I spent some time last evening reading it."

Mayor Zavodny said, "That's good to know."

Council member Trowbridge said, "That's my position, that 100% of the removal cost will be assessed to the property owner because they had the opportunity last August to remedy, according to code."

Mayor Zavodny said, "Do we have numbers?"

Deputy Clerk Comte said, "I got bids from March Hlavac and Nick Sypal. Marc Hlavac's bid was \$500 and Nick Sypal's bid was \$525. Both bids include everything, tree removal, stump removal and clean up."

Council member Trowbridge made a motion to have the tree removed by who can do the work the most expediently and assess the cost of the tree removal to the property owner. Council member Kobus seconded the motion. Voting AYE: Council members Trowbridge, Kobus, Hotovy and Mayor Zavodny. Voting NAY: None. Council members Vandenberg, Smith and Meysenburg were absent. The motion carried.

Mayor Zavodny stated that the next item on the agenda is the consideration of the proposed budgets for the upcoming fiscal year October 1, 2019 – September 30, 2020.

Mayor Zavodny said, "I do want to make one comment for the Council's knowledge. I did meet with the Ball Association and told them that I felt that number was coming out and that they needed to plan accordingly. I think that sent them scrambling a little bit. They're going to have to figure out what they're going to do. But, they've been notified. I also explained that this Council has been looking toward more of a rec program as soon as we get the downtown finished. It's going to take a while to pay for downtown. But, once we do that, the rec is the last part of the three-legged stool that we have to follow through 2030. Just as an update, I did put them on notice that that was coming, more than likely."

Deputy Clerk Comte said, "Did you want to leave the \$200,000 budget number for the Street Dept. in there or did you want to lower that?"

Mayor Zavodny said, "We lowered the truck budget to \$50,000."

Deputy Clerk Comte said, "So, are you thinking \$65,000?"

Street Supervisor Chris Kroesing said, "\$65,000 would also cover the planer and the truck."

Deputy Clerk Comte stated that she changed to year end budget total for the law enforcement account to reflect the invoice for the car that City Clerk Kovar received from the Sheriff's office.

Council member Trowbridge said, "This will be the last car in this cycle."

Deputy Clerk Comte said, "Yes."

Mayor Zavodny said, "I'm just going to go on record as saying that as we negotiate, moving forward, that we take the car out totally and just agree on a lump sum dollar amount, if we continue the contract."

Council member Hotovy said, "It takes the variable of the fluctuating car price out of the equation."

Mayor Zavodny said, "That's my thought."

Council member Hotovy said, "It fixes your year to year cost the same every year."

Mayor Zavodny said, "There was some, certainly no fault of theirs, not being at the full ten officers, but I don't want to get into all of that. I think we just need to negotiate moving forward, if that's an agreement that we want to continue or not. I'm glad that you pointed that out because we did need agree to do that."

Council member Hotovy asked Deputy Clerk Comte when the budget had to be submitted.

Deputy Clerk Comte said, "I have to have it to the accountant tomorrow. They wanted it last week and I told them that the Council was meeting again on July 24th so I could get it to them on July 25th. They said ok but it's pushing it."

Mayor Zavodny said, "Is there anything else as far as adjustments? Aaron, do you feel good about your capital expenditure projections as far as the water?"

Interim Water Supervisor Aaron Gustin said, "I do. We did adjust a few items the other day. There's a bunch of valves that need to be replaced and then I got ahold of Steve Rogge from Van Kirk and then John Kobus got in touch with me this evening in regards to a quote for crushed concrete for our discharge lagoon cell that's washing out. Steve Rogge, to buy our own concrete back, was going to be \$59/ton. He estimated necessity is 1,000 tons. So, if we were going to have them install it, it would be \$79/ton. Now, I reached out to Craig and he said that we could use up to 33% of our surplus of street brick in that rip rap project and that would be acceptable from DEQ. Everyone is wondering what to do with all of this extra brick. If we just do concrete, 1,000 tons for our project. John (Kobus) reached out to a contact and for them to deliver that 1,000 tons would be \$48.50/ton. It's more expensive to buy our own concrete back from a mile away. This would come up from Weeping Water and I believe that it would be crushed already from what John had told me."

Council member Trowbridge said, "What did we do with the \$10-12,000 worth of crushing that Travis had done?"

Interim Water Supervisor Aaron Gustin said, "That rip rap is still out there and I believe is going to back in..."

Council member Trowbridge said, "It's there to use?"

Interim Water Supervisor Aaron Gustin said, "Yes. It's out there. There's a pile of it."

Mayor Zavodny said, "How is that going to be put in? Who's going to do that for us?"

Interim Water Supervisor Aaron Gustin said, "If we were to do that, John believes that it would take up to two months of him, full time, doing just that."

Mayor Zavodny said, "Ok. So, I guess you got to my point. That's an added expense over what Travis did to get that put in place. When did you come in to make adjustments? A couple of days ago?"

Interim Water Supervisor Aaron Gustin said, "Yes. It was for this very project, on the wastewater side of things."

Council member Trowbridge said, "At .50 per brick, the bricks are worth \$125.00/ton sitting in a pile. Which is a whole lot different than \$79.00. So, I'm not a fan of putting bricks out there."

Interim Water Supervisor Aaron Gustin said, "A 1,000 tons at \$80 per ton and that is for Van Kirk to crush it, to bring it over, install it, the whole deal. Now, the Weeping Water quote was for them to bring it but we have to install it."

Council member Kobus said, "You don't have time to do that."

Mayor Zavodny said, "See, that's the trade off. That's not a viable option if it's gonna take one guy that can't help out on anything, with perfect weather, for two months."

Interim Water Supervisor Aaron Gustin said, "And we're talking three guys, considering that we'd have to stock pile it, load it, place it and put it in. This needs to get done soon."

Council member Trowbridge said, "We have an October deadline with EPA?"

Interim Water Supervisor Aaron Gustin said, "Yes. And their regulations dictate the size and weight of the rip rap to hold the bank at bay and to keep it from washing out."

Mayor Zavodny said, "Let's be realistic here – us installing it is really not an option. I don't think we'll get it done in time for one and we decrease our productivity significantly from doing anything else. Can they get to it in a time frame before October?"

Interim Water Supervisor Aaron Gustin said, "They are looking at, if the Council decides to do this, buying the jaw crusher and getting to work. I can confirm that with Steve Rogge in the morning but I told him that it was based on how our conversation went tonight."

Mayor Zavodny said, "I'll be honest, I think that's our only option at this juncture to get it done by October to show the good faith effort."

Council member Hotovy made a motion to approve the proposed budgets for the upcoming fiscal year October 1, 2019 through September 30, 2020. Council member Trowbridge seconded the motion. Voting AYE: Council members Hotovy, Trowbridge, Kobus and Mayor Zavodny. Voting NAY: None. Council members Vandenberg, Smith and Meysenburg were absent. The motion carried.

There being no further business to come before the Council, Council member Trowbridge made a motion to adjourn. Council member Kobus seconded the motion. Voting AYE: Council members Trowbridge, Kobus, Hotovy and Mayor Zavodny. Voting NAY: None. Council members Vandenberg, Meysenburg and Smith were absent. The motion carried and Mayor Zavodny declared the meeting adjourned at 8:08 p.m.



CERTIFICATION OF MINUTES
July 24, 2019

I, Tami Comte, duly qualified and acting Deputy City Clerk for the City of David City, Nebraska, do hereby certify with regard to all proceedings of July 24th, 2019; 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 Comte, Deputy City Clerk