

**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 **18th day of April, 2018**, 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 6th day of April, 2018.

AGENDA AS FOLLOWS:

1. Roll Call;
2. Pledge of Allegiance; _____
Mayor Alan Zavodny
3. Inform the Public about the location of the Open Meetings Act and the Citizens Participation Rules; _____
Council President Gary D. Smith
4. Minutes of the March 14th and March 26th, 2018 meeting of the Mayor and City Council; _____
Council member Thomas J. Kobus
5. Consideration of Progress Estimate #8 for Constructors, Inc. in the amount of \$99,235.60; _____
Council member Dana E. Trowbridge
6. Consideration of Claims;
7. Committee and Officer Reports; _____
Council member Kevin N. Hotovy
8. Presentation by Craig Reinsch, Olsson Associates, concerning the April 3, 2018 bid opening concerning the WWTP Improvements – OA Project #009-1925; _____
Council member Patrick J. Meysenburg
9. Consideration of awarding a bid for the Wastewater Treatment Plant Improvements; _____
Council member John P. Vandenberg
10. Discussion with Miller & Associates Consulting Engineers, P.C. concerning the bids received for the Park Shelter and Restroom/Shower Facility; _____
City Clerk Joan E. Kovar
11. Consideration of awarding a bid for the Park Shelter and Restroom/Shower Facility; _____
City Clerk Joan E. Kovar
12. Consideration of authorizing Mayor Zavodny to sign the proposed compliance order, accepting revisions concerning the noncompliance issues at the Wastewater Treatment Plant; _____
City Clerk Joan E. Kovar

13. Consideration of authorizing the purchase of an 8x7 Aqua-Aerobics decanter with fiberglass float, for a unit price of \$18,946.38 plus freight;
14. Consideration of authorizing approximately \$2,000 for purchasing gravel or crushed rock for the roads and driving lanes at the Wastewater Treatment Plant;
15. Consideration of Resolution No. 3 – 2018 subdividing the property owned by Joan Riha (140' x 124.92') legally described as David City W 100' of S 25' of Lot 3 and W 100' of Lot 6, and the E 40' of S 25' of Lot 3 & E 40' of Lot 6, Block 6, Miles 2nd Addition, into two tracts;
16. Consideration of reappointing Catherine Marie Hoeft to another 5 - year term as a Commissioner on the David City Housing Authority - Board of Commissioners;
17. Consideration of two (2) appointments to the Planning Commission, a regular member and an alternate member, each to serve three (3) year terms, effective May 1, 2018;
18. Consideration of Ordinance No. 1285, on the second (2nd) reading only, annexing the Brian and Mistyn Kozisek property located at the corner of 14th & C Streets legally described as follows: A parcel of land located in the South Half of the Southwest Quarter of Section 20, Township 15 North, Range 3 East of the 6th P.M., Butler County, Nebraska, being described as follows: Referring to the Southeast corner of the South half of the Southwest Quarter of said Section 20; thence S90°00'00"W on the south line of said South Half of the Southwest Quarter, a distance of 1544.86 feet to the east right of way line of 14th Street and the Southeast corner of East David City, an addition to the City of David City, Nebraska; thence N00°58'30"W, on said east right of way line and the east line of said addition, a distance of 594.00 feet to the northwest corner of a tract of land as described in film book 2011, Page 1512 and recorded in the office of the Register of Deeds, for Butler County, Nebraska, and the point of beginning, thence continuing N00°58'30"W (assumed bearing) on said east lines, a distance of 273.28 feet, thence S89°59'34"E, a distance of 163.50 feet; thence S00°58'30"E parallel with said east lines, a distance of 270.66 feet to the north line of said tract of land; thence N89°54'39"W, on said north line, a distance of 163.43 feet to the point of beginning, containing 1.02 acres, more or less; (Passed on 1st reading 3/14/18)
19. Consideration of the following:
 - 1) Don Prochaska reported that he hit a chuck hole on "O" Street and has submitted a bill for compensation in the amount of \$465.72;
 - 2) Brandy Pavel's son hit a hole in the alley behind Renee's Store, and ruined his oil pan;
 - 3) Connie Colter reported that Michelle & Robert Day, 221 G Street, had a plugged sewer line in December. Connie claims that the City hadn't maintained the sewer line, so she feels the City should be responsible.
20. Consideration of Resolution No. 4 – 2018 adjusting rental rates and supply costs for the street department;
21. Status of employees' union effort / Nebraska Commission of Industrial Relations;
22. Adjourn.

April 18, 2018

The City Council of the City of David City, Nebraska, met in open public session 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 April 12th, 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 Smith, Thomas Kobus, Pat Meysenburg, Kevin Hotovy, Dana Trowbridge, and John Vandenberg, City Attorney Jim Egr, and City Clerk Joan Kovar.

Also present for the meeting were: Craig Reinsch of Olsson Associates, Larry Griffiths, Pam Kabourek, Jeff Hilger, Planning Commission members Janis Cameron and Jim Vandenberg, Sheriff Marcus Siebken, Building Inspector Ray Sueper, Sewer Supervisor Travis Hays, Sewer Operator C.J. Novak, and Park/Auditorium Supervisor Bill Buntgen.

The meeting opened with the Pledge of Allegiance.

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

The minutes of the March 14th, and March 26th, 2018 meetings of the Mayor and City Council were approved upon a motion by Council member Trowbridge and seconded by Council member Kobus. Voting AYE: Council members Hotovy, Smith, Meysenburg, Kobus, Trowbridge, and Vandenberg. Voting NAY: None. The motion carried.

Council member Trowbridge made a motion to approve Progress Estimate #8 for Constructors, Inc., in the amount of \$99,235.60. Council member Kobus seconded the motion. Voting AYE: Council members Hotovy, Smith, Meysenburg, Vandenberg, Kobus, and Trowbridge. Voting NAY: None. The motion carried.

Council member Kobus stated: "#1 - I feel that Al Hottovy should be present at all Council meetings, #2 - I think that the Council should get the reports of the compaction tests that are going on; I saw some stuff that I don't agree on."

Mayor Zavodny asked for consideration of claims. Council member Smith made a motion to authorize the payment of claims and Council member Meysenburg seconded the motion. Voting AYE: Council members Kobus, Trowbridge, Vandenberg, Hotovy, Smith, and Meysenburg. Voting NAY: None. The motion carried.

Mayor Zavodny asked for any comments or questions concerning the Committee and Officer Reports.

Building Inspector Ray Sueper introduced Maxwell Kathol, who has applied for the City Administrator position.

Maxwell Kathol stated: "Thank you, I appreciate the opportunity to introduce myself. I am a Nebraska native, my last name is Kathol (pronounced Cawtil) so I come up from the Hartington area. Professionally I'm a Management Administrator and in the medium of Economic and Community Development, so city administration is definitely in my forte or career path, hopefully. I've had great success so far. I was raised in Plattsmouth, Nebraska. I've worked professionally in Crete, Nebraska, which is where I got to meet Mr. Sueper. I was kind of the right hand of the City Administrator for three years as the Director of Economic Development, and working with Ray in the permit process but seeing it from preliminary project details, to submission of formal RFP's, to recruitment efforts, infrastructure detail, etc., etc. A lot of experience with grant programs, as well, and looking to continue that. My forte has typically been in Cities of the 1st Class and larger, your guys' opening definitely took my full attention because of your level of education and then the level of security that you have in your community. Those are some of the quality of life enhancements that my family and I are looking for. I am a family man and I would move my family to the community. I would like to hear more about the position. I decided to come up here to see how everybody works together and see how things are getting done."

Building Inspector Ray Sueper stated: "The RFP's (request for proposals) for the demolition of the Milda Grey property, 897 5th Street, have gone to the newspaper for publication, so we will be taking bids at the next month's council meeting for the demolition of that house. My office has been fairly busy with correction orders, we've issued some fines but haven't had great success in collecting those fines and those have gone to the City Attorney's Office at this point. I didn't know what the status of that was at this point. Jim do you have any information on that?"

City Attorney Jim Egr stated: "They are pending."

Mayor Zavodny asked if Ray wanted to talk about the Matt Thomas project. (located between "L" to "O" east of 11th Street)

Building Inspector Ray Sueper stated: "It is my understanding that they are behind schedule quite a bit. They ran into some ground water issues with their houses so we had them on hold until they get some engineering reports and soil tests back to me. They did have some very inclement weather this winter that slowed things down. The framers did excellent work out there on the ones they did manage to get done. They didn't suffer any quality set-backs, everything is going in very well and very high-quality builds. On the utility pole, as far as I know, they have contracted with Butler County to move it. I don't have a time frame on it, but it is in the works. We, Mike (Davis) of Olsson Associates, and in addition to Craig, we did a walk-through of the project and handed Obrist a fairly substantial list of things to work on, correct, and they took that pretty well to heart and they are working on it this week. Olsson's did a fantastic job of making them aware of every detail that needed to be corrected so I am very happy with their performance on our behalf. (Craig stated that Gilmore was also there for the walk through, as the engineer of record.)

Mayor Zavodny stated: "Over the past month, maybe 6 weeks there has been a fair amount of concern shared with me about the security of our schools and I know that Sheriff Siebken has been addressing that and working on that a lot. Could you give us just a really brief status update on kind of where we with that?"

Sheriff Siebken stated that they have scheduled a meeting, for adults, and provided a meeting notice as follows: *With tragic events happening all over the United States, we as a*

Sheriff's Office, want you as a business member, church member and citizen of Butler County to be prepared in the event of an active shooter. That's why the Butler County Sheriff's Office has teamed up with the Nebraska State Patrol to host this special two-hour community forum. This forum will prepare you in the event an active shooter would ever take place in our community. This two-hour program will be held at the David City High School Gym, on April 25, 2018, at 7:00 p.m. It is our hope that we, as a community, never see a tragic event like this in Butler County but we want to take a proactive stance and be prepared. This event is open to anyone and we hope to see you there.

Council member Hotovy made a motion to accept the Committee and Officers Reports as presented. Council member Vandenberg seconded the motion. Voting AYE: Council members Kobus, Smith, Meysenburg, Trowbridge, Vandenberg, and Hotovy. Voting NAY: None. The motion carried.

Craig Reinsch of Olsson Associates stated: "We did open bids for the Wastewater project on April 3rd. The bids came in ranging from \$2.47 million to \$2.95 million which was substantially higher than our anticipated price. Alternate bids for a different lagoon cover material (Alternate Bid 1) and replacement of valves in the existing pumping station (Alternate Bid 2) were also included for consideration. The apparent low was Eriksen Construction of Blair, Nebraska, and it is my understanding they did the work for the 1997 plant upgrades so they were interested in coming back and doing this as well. Eriksen's deduct for Alternate Bid 1 was such that it is recommended to continue with the original cover specified in the base bid. Eriksen's price for Alternate Bid 2 to replace 6 valves in the existing active lift station was \$12,000 which is less than estimated. The total of the Base Bid and Alternate Bid 2 is \$2.481 million. We are aware that this is quite above the estimate. We have talked with USDA, there are contingencies that will cover that within the project funding. What that will do though is that will shrink eligible funds for the south part of the collection system that we were hoping to do. We are starting to see a trend. One of the hardest parts for us to estimate is how busy people are, steel prices, etc. When we talked to Eriksen to try to figure out where things were, they let us know that this is the third covered lagoon project that they've bid within the month in the area. So, I wish I had better news for you at this time, but that is the status of the bids.

OLSSON ASSOCIATES		WASTEWATER TREATMENT PLANT IMPROVEMENTS DAVID CITY, NEBRASKA - 2018			BID TABULATION 3-Apr-2018 OA #005-1925 1:30 p.m. Page 1 of 1	
CONTRACTOR	Eriksen Construction Co Inc Blair, Nebraska	Weiss Construction Co, LLC dba/PWC - Detroit, MI	Obrist & Co., Inc. Columbus, Nebraska			
Item No.	ITEM	Lump Sum	Lump Sum	Lump Sum	Lump Sum	
	Base Bid: Work shall consist of general construction of a Wastewater Treatment Plant:					
	TOTAL BASE BID:	\$2,469,000.00	\$2,701,645.00	\$2,960,000.00		
	Similar to Base Bid with Alternate Anaerobic Lagoon Cover Material:					
	TOTAL ALTERNATE BID 1:	Deduct -\$7,500.00	Deduct \$21,774.00	No Bid		
	Removal & Replacement of 7 Gates Valves (GV-1 to GV-7 in the Existing Lift Station Ranging in sizes from 6-12 Inches):					
	TOTAL ALTERNATE BID 2:	Add \$12,000.00	Add \$32,000.00	\$24,260.00		
	Substantially Complete On or Before:	May 1, 2019	May 1, 2019	May 1, 2019		
	Complete and Ready for Final Payment On or Before:	August 15, 2019	August 15, 2019	August 15, 2019		
	Addendum No. 1	March 23, 2018	March 23, 2018	March 23, 2018		
	Addendum No. 2	March 28, 2018	March 28, 2018	March 28, 2018		
	Addendum No. 3	March 30, 2018	March 30, 2018	March 30, 2018		
	USDA Documents:	Yes	Yes	Yes		
	Named Equipment:	Yes	Yes	Yes		
	Bid Guarantee:	5% Bid Bond	5% Bid Bond	5% Bid Bond		
	Remarks:					

Craig Reinsch of Olsson Associates stated: "We are recommending that you award to Ericksen for the base bid and alternate bid #2 to replace those valves, so \$2,481,000.00, but we are recommending, should you choose to do so, we are recommending that you do so contingent upon USDA funding approval. There are some loose ends that we found out about that I will talk about next. So, USDA came back, as you know they authorized us to at least go out for bid, they submit to what's called The Office of General Council with all of the things that we've prepared, and then they sometimes have comments that we need to address. They had two comments, most of them have to do with the agreement between the City and Henningsen, and they wanted USDA to have this signature line and to modify some language that was basically, it talked about modifying the agreement to a term of 40 years, but being able to split it 25 / 15, where the initial agreement would be twenty-five, thereafter, shall be renewed for an additional period of not less than fifteen. I know the Council had talked about having a twenty year term, really its' not much there as far as modifying it, but then I let them know that the agreement is currently open for discussion between us and Henningsen, and so they have said "should the Council decide, you can award tonight, but construction shouldn't begin until that agreement is in place and they have had a chance to review". So, they recommended once it gets to a point where the City and Henningsen are happy with it, to submit it to them so that they can make sure that they don't have any concerns before both parties' sign on the line. The other item to bring up I guess is you can, you don't have to make a decision tonight if you don't want to, you can consider bids for up to sixty days which gets you to the first part of June so that allows you to consider this at your May meeting should you so choose."

Mayor Zavodny stated: "USDA is very confident in your work, that it will work, and I had a question before I get into maybe where my concerns lie. The lady from USDA did talk about the time frame that we would need to adjust, so it was fairly minor about those things. I guess my biggest consternation with this is we don't have a signed agreement with Henningsen's. It seems really premature and that was one thing the lady from USDA actually agreed with me about. I think we have a few items, that I think in principal that Henningsen agrees with, but we don't have an agreement. We're looking now, we talked about 20 years, we're looking now at 25/15 or 20/20 the risk to the ratepayer is what happens, and no one can predict. If you would have told me a month ago that Younkers were going out of business.....didn't see that coming, I wouldn't have thought about it even though I've heard about all the troubles with brick and mortar and those kinds of things. We are putting an awful lot of trust in the fact that Henningsen's will continue to operate, or continue to operate here, and our only security, and it really didn't get answered for me when I asked it before is, we get what's here? What value does that have if it can't be utilized and generate revenue there, and the big rate payer is gone? So, you know maybe it's my job to be the thorn at this point, but it's a huge risk. I hear the other arguments: "You've got to have Henningsen's what's wrong with you?" "They are a big rate payer, they pay for our system". Look at the other side, what if they're not here? You can't do anything. Us, holding our breath, isn't going to do anything about it if they decide to not be here. If their business models change and the demand goes down, it's not profitable anymore, they're not going to stay here. So that's a big risk. So, I just wanted to air that tonight and I told the lady from USDA and Craig earlier this afternoon, I will say my peace, and then probably get voted down six to nothing and then we will move on."

Council member Trowbridge made a motion to table consideration of awarding a bid for the Wastewater Treatment Plant Improvements. Council member Meysenburg seconded the motion. Voting AYE: Council members Hotovy, Smith, Kobus, Vandenberg, Meysenburg, and Trowbridge. Voting NAY: None. The motion carried.

Mayor Zavodny stated: "I believe we are a ways away yet. Everybody talks about how close we are, but I think we are a ways away. What I would like to do, is identify two council members that are willing to work on this with Henningsen's and Counsel (Jim Egr) to see if we can get an agreement that is more-ready for the Council to vote on. Does that make sense? Everything that we have right now, is what Henningsen's has asked for. That is not a negotiation, it has been very one sided at this point. We have agreed on PH and 65% if you want to boil it down to what we've done in our participation to some amount and then these additional items that Mr. Mostek provided today and where we are at. So, are there two people that would be interested to work with Counsel to negotiate on our behalf?"

Council member Trowbridge and Council member Kobus volunteered to work with Counsel (City Attorney Jim Egr) concerning the Wastewater Treatment Plant Improvements and Henningsen's share.

The following bids were received for the Park Improvements, consisting of a new park shelter and restroom/shower facility:

<i>BIDDERS</i>	<i>Item B PRE-ENGINEERED PARK SHELTER</i>	<i>Item C RESTROOM/ SHOWER FACILITY</i>	<i>TOTAL BID Items B + C</i>
Rogge General Contractors, Inc. Lincoln, NE	\$42,000.00	\$136,000.00	\$178,000.00
Bierman Contracting, Inc. Columbus, NE	\$54,670.00	\$146,080.00	\$200,928.00
Fauss Construction, Inc. Hooper, NE	\$62,000.00	\$144,500.00	\$206,500.00
Shelby Lumber Co., Inc. Shelby, NE	\$55,261.00	\$167,428.00	\$222,689.00
B-D Construction, Inc. Columbus, NE	\$66,010.00	\$164,465.00	\$230,475.00
Lacey Construction, Inc. Wahoo, NE	\$57,000.00	\$200,000.00	\$257,000.00
Green Gable Contracting, LLC Fort Calhoun, NE	\$99,267.00	\$175,775.00	\$275,042.00

Miller & Associates reviewed all proposals, no errors were noted, so it was their recommendation that the bids be accepted and the contract be awarded to Rogge General Contractors, Inc., contingent upon Land & Water Conservation Fund approval.

Council member Trowbridge stated: "My question is, where does the shortfall come from financially? What do we have \$175,000.00?"

Park Supervisor Bill Buntgen stated: "Yes" *[I think Bill thought Trowbridge meant \$170,500 when he said One Hundred Seventy Five. We actually have Grant: \$85,455; Sales Tax \$40,000; Keno \$45,000 = \$170,455.00]*

Council member Trowbridge stated: "So we're \$178,000.00 + \$15,000.00 for Miller's agreement = \$193,000.00. Where does the other \$18,000 come from? *[We are actually short \$22,500.00]*

Council member Kobus asked: "Why couldn't the shelter be bid separately? Maybe somebody around here would do it. To me, I don't know how the showers are going to work, so why have them, it's a waste of money."

Much discussion followed.

Mayor Zavodny stated: "Council members, where are you at on this? Do you like the design we have? Do we figure out how to come up with \$15,000 somewhere else? Do we start over, we're going to have some engineering....the gamble we're taking is cutting out showers and stuff is going to save us a lot more than the \$15,000 we're talking about and the additional engineering costs."

Council member Trowbridge stated: "Well if the showers take more out than we've planned on, then we have some money to spend back to re-engineer them. I agree with you, I think if we knock two shower stalls off the end of this thing, you change the price considerably. Can you give a negative change order? You can "always" add to it. Why don't we accept the bids and then we'll give them a change order?"

Mayor Zavodny stated: "That's not a terrible way to go. I like that idea. What I would recommend we do is, let's accept the low bid and pursue the change order route."

Council member Trowbridge made a motion to accept the bid of Rogge General Contractors, Inc., in the amount of \$178,000.00 for a new park shelter and restroom/shower facility, with the contingency that we are going to ask for a change order. Council member Kobus seconded the motion. Voting AYE: Council members Hotovy, Smith, Meysenburg, Vandenberg, Trowbridge, and Kobus. Voting NAY: None. The motion carried.

City Attorney Egr stated: "I went over changes and discussed them with Attorney Shane McCain, (Office of Regional Counsel, US EPA, Region 7), and it would my recommendation that the Council authorize the Mayor to sign the compliance order." *[Paragraphs 14, 15, 31, and 32 are changes that include the limits under the prior NPDES Permit (as well as the current NPDES Permit) and that clarify which alleged violations occurred under which Permit. In addition, a requirement was added for semi-annual reports in paragraph 54.]*

Council member Hotovy made a motion to authorize Mayor Zavodny to sign the proposed compliance order, accepting revisions concerning the noncompliance issues at the Wastewater Treatment Plant. Council member Trowbridge seconded the motion. Voting AYE: Council members Vandenberg, Meysenburg, Smith, Kobus, Hotovy, and Trowbridge. Voting NAY: None. The motion carried.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)	
)	Docket No. CWA-07-2018-0031
David City, Nebraska)	
)	
Respondent)	FINDINGS OF VIOLATION AND
)	ORDER FOR COMPLIANCE ON
)	CONSENT
Proceedings under Section 309(a)(3) of the)	
Clean Water Act, 33 U.S.C. § 1319(a)(3))	
)	

Preliminary Statement

1. The following Findings of Violation and Administrative Order for Compliance on Consent ("Order on Consent") are made and issued pursuant to Section 309(a)(3) of the Clean Water Act ("CWA"), 33 U.S.C. § 1319(a)(3). This Authority has been delegated by the Administrator of the U.S. Environmental Protection Agency ("EPA") to the Regional Administrator, EPA, Region 7 and further delegated to the Director of Region 7's Water, Wetlands and Pesticides Division.

2. Respondent is the city of David City, Nebraska ("Respondent" or "the City") and was at all relevant times a municipality organized under the laws of the state of Nebraska.

3. EPA, together with the Respondent enter into this Section 309(a)(3) Order for the purpose of carrying out the goals of the CWA, 33 U.S.C. § 1251 *et seq.*, to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters."

4. It is the Parties' intent through entering into this Order to address Respondent's alleged noncompliance with the CWA and violation of its National Pollutant Discharge Elimination System ("NPDES") permit. As set forth in this Order on Consent, the Parties have amicably reached agreement regarding the timeframes for Respondent to attain compliance with the CWA and its NPDES permit.

5. By entering into this Order on Consent, Respondent (1) consents to and agrees not to contest the EPA's authority or jurisdiction to issue and enforce this Section 309(a) Order on Consent, (2) agrees to undertake all actions required by the terms and conditions of this Order on Consent, and (3) consents to be bound by the requirements set forth herein. Respondent neither admits nor denies the specific factual allegations or Findings of Violation in this Order on Consent, except that Respondent admits the jurisdictional allegations herein. Respondent also

waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Order on Consent, including any right of judicial review under Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

Statutory and Regulatory Framework

6. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants, except in compliance with, *inter alia*, Section 402 of the CWA, 33 U.S.C. § 1342. Section 402 of the CWA, provides that pollutants may be discharged in accordance with the terms of an NPDES permit issued pursuant to that Section.

7. To implement Section 402 of the CWA, the EPA promulgated regulations codified at 40 C.F.R. Part 122. Under 40 C.F.R. Part 122.1, an NPDES permit is required for the discharge of pollutants from any point source into waters of the United States.

8. As defined by 40 C.F.R. § 403.3(q), a Publicly Owned Treatment Works ("POTW") includes, but is not limited to, devices and systems for storage and treatment of municipal sewage and sewers, pipes and other conveyances of wastewater.

9. The Nebraska Department of Environmental Quality ("NDEQ") is the state agency in Nebraska with the authority to administer the federal NPDES program, pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, and applicable implementing regulations. EPA retains concurrent enforcement authority with authorized state programs for violations of the CWA.

EPA's General Allegations

10. Respondent is a "person," as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

11. Respondent is the owner and/or operator of a POTW in David City, Nebraska, that includes a wastewater treatment plant ("WWTP"), consisting of two sequencing batch reactors ("SBRs") and a five-cell controlled discharge lagoon system, and a sewage collection system, which receives wastewater from various domestic and non-domestic sources, including wastewater discharged from an egg processing facility owned by Henningsen Foods, Inc.

12. The POTW discharges through Outfall 001 to Keysor Creek, an undesignated tributary to the North Fork of the Big Blue River.

13. The POTW is a "point source" that "discharges pollutants" to "navigable waters" of the United States, as these terms are defined by Section 502(14), (12) and (7) of the CWA, 33 U.S.C. § 1362(14), (12) and (7), respectively.

14. On July 1, 2010, the NDEQ issued NPDES permit number NE0021199 to the City pursuant to Section 402 of the CWA, 33 U.S.C. § 1342 ("2010 NPDES Permit"). On April 1, 2016, the NDEQ issued NPDES permit number NE0021199 to the City, which removed the

mass limits for BOD and TSS and revised the ammonia limits for Outfall 001 by including interim and final ammonia limits and a compliance schedule ("2016 NPDES Permit").

15. Part I of the City's 2010 NPDES Permit contains limitations for discharges of effluent from the City's POTW through Outfall 001 to Keysor Creek, as summarized below.

Parameter	Units	Discharge Limits		Monitoring Frequency
		Monthly Average	7-Day Average	
Biochemical Oxygen Demand ("BOD")	kg/day	49.6	73.6	Monthly
	mg/L	30.0	45.0	
Total Suspended Solids ("TSS")	kg/day	147	221	Monthly
	mg/L	80.0	120.0	
		Monthly Average	Daily Maximum	
Spring Ammonia	mg/L	12.5	25.2	Monthly
	kg/day	5.47	10.97	
Summer Ammonia	mg/L	4.8	9.7	Monthly
	kg/day	5.36	10.75	
Winter Ammonia	mg/L	11.8	23.6	Monthly
	kg/day	10.3	20.13	
Acute Toxicity <i>Ceriodaphnia sp</i> <i>Pimephales promelas</i>	TUa	Report	1.0	Once/permit
		Daily Minimum	Daily Maximum	
pH	S.U.	6.5	9.0	Monthly

16. Part I of the City's 2016 NPDES Permit contains limitations for discharges of effluent from the City's POTW through Outfall 001 to Keysor Creek, as summarized below.

Parameter	Units	Discharge Limits		Monitoring Frequency
		Monthly Average	7-Day Average	
Biochemical Oxygen Demand ("BOD")	mg/L	30.0	45.0	Monthly
Total Suspended Solids ("TSS")	mg/L	80.0	120.0	Monthly
		Monthly Average	Daily Maximum	
Interim Spring Ammonia (March 1 – May 31)	mg/L	4.13	8.28	Monthly
	kg/day	5.47	10.97	
Interim Summer Ammonia (June 1 – Oct. 31)	mg/L	4.05	8.12	Monthly
	kg/day	5.36	10.75	
Interim Winter Ammonia (Nov. 1 – Feb. 28)	mg/L	7.81	15.7	Monthly
	kg/day	10.03	20.13	

Acute Toxicity <i>Ceriodaphnia sp</i> <i>Pimephales promelas</i>	TUa	Report	1.0	Once/permit
		Daily Minimum	Daily Maximum	
pH	S.U.	6.5	9.0	Monthly

17. Part IV of Respondent’s NPDES Permit requires samples to be taken annually at the head-works of the WWTP prior to the treatment system for flow, BOD, TSS and pH.

18. Paragraph 14 of Appendix A of Respondent's NPDES Permit requires that monitoring results be reported at intervals specified on Discharge Monitoring Reports (“DMRs”) submitted to NDEQ quarterly. Paragraph 14.d.iii provides that if the permittee monitors any pollutant more frequently than required by the permit using specified test procedures, the results of such monitoring shall be included in the calculation and reporting of the data submitted in the DMR.

19. Part V of Respondent’s NPDES Permit contains a compliance schedule for the construction of upgrades to the WWTP necessary to meet ammonia limits from Outfall 001.

20. The City and Henningsen entered into a Sewer Participation Service Agreement and Permit (“City-Henningsen contract”) on March 13, 1997 and again, most recently, on October 1, 2016 regarding the allocation of costs of the POTW based on usage of the treatment facility. The City-Henningsen contract contains daily maximum loading limits for BOD, TSS, and Total Kjeldahl Nitrogen (“TKN”), and flow discharged from Henningsen’s facility to the POTW, violation of which potentially subjects Henningsen to a surcharge. The 2016 City-Henningsen contract also includes an incident charge for violations of pH limits.

21. On October 31 through November 3, 2016, EPA performed a Compliance Sampling Inspection of the City’s WWTP (“Inspection”) and an Industrial User and Compliance Sampling Inspection at Henningsen’s facility under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a).

22. During the Inspection, the EPA inspector reviewed documents, including DMRs and other monitoring data collected for the time period January 2014 to September 2016, observed the City’s POTW, sampling stations, and Henningsen’s facility, and collected effluent samples.

23. The City provided information to the inspector by letter dated November 7, 2016, following the Inspection.

24. A copy of the Inspection Report was sent to the City on or about February 8, 2017.

25. On or about April 7, 2017, EPA issued a request for information to the City pursuant to the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a), requiring submittal of information regarding, among other things, reports made to the City Council concerning the operation of the POTW, communications between the City and Henningsen, and plans to address compliance with the POTW’s NPDES Permit. The City submitted its response to the information

request by letter and Statement of Certification dated April 27, 2017 (“City’s Information Request Response”).

26. On or about April 7, 2017 EPA also issued a request for information to Henningsen pursuant to the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a), requiring submittal of information regarding, among other things, discharge monitoring reports, communications between the City and Henningsen, and plans to address compliance with Henningsen’s NPDES/NPP permit. Henningsen submitted its response to the information request by letter and Statement of Certification dated May 5, 2017 (“Henningsen’s Information Request Response”).

27. Information from the Inspection, the City’s submission following the Inspection, the City’s Information Request Response, and Henningsen’s Information Request Response indicate, in part, that Respondent:

- a. Has been aware since at least January 2008, based on an engineering evaluation of the POTW by Olsson Associates, that the Henningsen facility’s discharge significantly impacts the ability of the WWTP to operate within design parameters, that discharges from the Henningsen facility can, at times, overload the WWTP and cause treatment process upset, interference, and pass through, and that upgrades to the City’s WWTP are necessary to comply with the City’s NPDES permit;
- b. Informed Henningsen by letter dated September 25, 2014 that there would be no surcharge for exceeding discharge limits in the City-Henningsen contract;
- c. Informed Henningsen by letter in September 2015 that the City’s WWTP has been overloaded, the WWTP’s sequencing batch reactors (“SBRs”) needed to get back on track, and the City would be enforcing the City-Henningsen contract going forward; and
- d. Has been working with one or more consultants to consider improvements to its WWTP and/or collection system to achieve compliance with the City’s NPDES permit.

EPA’s Findings

Count 1 Failure to Comply with Effluent Limitations

28. The facts stated in Paragraphs 1 through 27 above are re-alleged and incorporated herein by reference.

29. Part I of the Respondent’s NPDES permit establishes discharge limits and monitoring requirements for Outfall 001, as described in Paragraphs 15 and 16, above.

30. The City’s POTW effluent failed the whole effluent toxicity test in June 2015.

31. The City’s POTW effluent discharged through Outfall 001 exceeded the ammonia as nitrogen and BOD limits of its 2010 NPDES permit on multiple occasions in 2014 and 2015

including, but not limited to, the following:

- a. Ammonia as nitrogen:
 - i. Monthly average loading: June 2014, July 2014, October 2014, February 2015, March 2015, April 2015, May 2015, June 2015, December 2015;
 - ii. Daily maximum loading: June 2014, October 2014, February 2015, May 2015, June 2015, December 2015;
 - iii. Monthly average concentration: June 2014, July 2014, October 2014, December 2014, February 2015, March 2015, April 2015, May 2015, June 2015, July 2015;
 - iv. Daily maximum concentration: February 2015, March 2015, April 2015, May 2015, June 2015, July 2015;
- b. BOD:
 - i. Monthly average loading: February 2015;
 - ii. Monthly average concentration: February 2015, March 2015, April 2015;

32. Further, the City's POTW effluent discharged through Outfall 001 exceeded the ammonia as nitrogen, BOD, TSS and pH limits of its 2016 NPDES permit on multiple occasions in 2016 and 2017, including, but not limited to, the following:

- a. Ammonia as nitrogen:
 - i. Monthly average loading: May 2016, June 2016, September 2017;
 - ii. Daily maximum loading: June 2016, September 2017;
 - iii. Monthly average concentration: June 2016, September 2017;
- b. BOD:
 - i. Monthly average concentration: May 2017;
 - ii. 7-day average concentration: May 2017;
- c. TSS:
 - i. Monthly average concentration: May 2017, August 2017;
 - ii. 7-day average concentration: May 2017;
- d. pH
 - i. Daily Maximum: May 2017.

33. Each failure to comply with effluent limitations is a violation of the terms and conditions of Respondent's NPDES permit and, as such, is a violation of Sections 301(a) and 402 of the CWA, 33 U.S.C. §§ 1311(a), 1342(p).

**Count 2
Failure to Submit Monitoring Data**

34. The facts stated in Paragraphs 1 through 33 above are re-alleged and incorporated herein by reference.

35. Standard Condition 14.d.iii of Respondent's NPDES Permit requires that if the permittee monitors any pollutant more frequently than required by the permit using certain test procedures, the results of such monitoring shall be included in the calculation and reporting of

the data and submitted in the DMR.

36. The City has collected 24-hour composite samples of the WWTP influent since at least April 2015, as well as daily 24-composite samples and/or individual hourly samples at Henningsen's outfalls that discharge to the POTW. Certain samples of Henningsen's discharges that appeared high strength were analyzed further.

37. During the Inspection, the inspector obtained a copy of the spreadsheet maintained by the City that contained the WWTP influent and Henningsen monitoring data for April 2015 to October 2016. A review of this data and the DMRs submitted by the City found that the City reports one annual sample of the WWTP influent but not the additional influent monitoring data on its DMRs.

38. The failure to report additional monitoring data is a violation of the terms and conditions of Respondent's NPDES permit and, as such, is a violation of Section 402 of the CWA, 33 U.S.C. § 1342(p).

**Count 3
Unauthorized Discharges and Bypasses**

39. The facts stated in Paragraphs 1 through 38 above are re-alleged and incorporated herein by reference.

40. Respondent's NPDES Permit authorizes the discharge of pollutants only from specified outfalls, identified in the NPDES Permit as Outfalls 001, 002, and 004, to a specified water of the United States, subject to the limitations and conditions set forth in the NPDES Permit.

41. Standard Condition 15 of Respondent's NPDES Permit states that any bypass is prohibited unless it is unavoidable to prevent loss of life, personal injury, or severe property damage; there are no feasible alternatives to the bypass; and notices are submitted as required by this section of the permit.

42. On May 12 and 13, 2016, the City discharged untreated wastewater from manholes and/or other locations within the City's collection system, also known as SSOs, and bypassed 1.75 million gallons of untreated or partially treated wastewater from the City's WWTP into Keysor Creek.

43. The discharge of pollutants from any location other than a permitted outfall constitutes a violation of the conditions of Respondent's NPDES Permit and Sections 301(a) and 402(p) of the CWA, 33 U.S.C. §§ 1311(a), 1342(p).

**Count 4
Failure to Properly Operate and Maintain the POTW**

44. The facts stated in Paragraphs 1 through 43 above are re-alleged and incorporated herein by reference.

45. Paragraph 7 of Appendix A of Respondent's NPDES Permit requires that the City "at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes effective performance based on designed facility removals, effective management, adequate operator staffing and training, adequate process controls, adequate funding that reflects proper user fee schedules, adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit."

46. During the Inspection, the inspector reviewed the daily flow and rain data for the WWTP for January 2016 to September 2016 and found that the WWTP's 24-hour design flow was exceeded on 32 days and the WWTP's daily maximum flow was exceeded on 16 days during this time period, mostly in April and May 2016 when there was approximately 15 inches of rain and when the SSOs and bypass described above in Paragraph 42 occurred, indicating a significant inflow and infiltration problem in the collection system.

47. In noncompliance reports submitted to NDEQ, the City has indicated that inflow and infiltration problems in the collection system have contributed to exceedances of effluent limits in its NPDES Permit, including the following: in the report received by NDEQ on July 18, 2016, the City stated that on May 12, 2016, the cause of noncompliance with the ammonia loading limit in its NPDES Permit was storm flows; in the report received by NDEQ on July 24, 2017, the City stated that on May 8, 2017, the cause of noncompliance with the TSS concentration limit was spring turnover coupled with heavy flows and rain and the cause of noncompliance with the BOD concentration limit was extremely short SBR cycles to allow for high storm flows.

Reasonable Time to Achieve Compliance

48. Pursuant to Section 309(a)(5)(A) of the CWA, 33 U.S.C. § 1319(a)(5)(A), and having taken into account the seriousness of the violations, the EPA finds that three (3) years is a reasonable time for Respondent to achieve compliance with its Permit.

Order for Compliance on Consent

49. Based on the EPA Findings set forth above, and pursuant to Section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3), the EPA hereby ORDERS the Respondent, and the Respondent hereby AGREES, to take the actions described below.

50. In accordance with this Order, the Respondent shall immediately cease all discharges, except discharges in compliance with its NPDES Permit, and shall take all necessary actions to correct the deficiencies and eliminate and prevent recurrence of the violations cited above, and to come into compliance with all of the applicable requirements of its NPDES Permit.

51. *Compliance Plan.* By no later than sixty (60) days after the effective date of this Order, the City shall submit to the EPA, with a copy to the NDEQ, a comprehensive written plan (the "Compliance Plan") for achieving compliance with the City's NPDES Permit no later than December 31, 2020.

- a. The Compliance Plan shall describe in detail the actions to be taken or work to be completed, and how such actions or work will enable the City to achieve compliance with the effluent limitations prescribed by the City's NPDES Permit.
- b. The Compliance Plan shall include a proposed sequential milestone schedule for completing the proposed actions/work. All such actions/work shall be completed as expeditiously as possible, with a final completion date of no later than December 31, 2020.
- c. The EPA will promptly review, and may provide comments on, the City's Compliance Plan.

52. *Compliance Plan Completion.* Within thirty (30) days of completion of the final scheduled corrective action, the City shall submit a written certification to the EPA, with a copy to the NDEQ, that it has completed all actions required pursuant to this Order on Consent and achieved compliance with its NPDES Permit.

53. The EPA will promptly review submittals from Respondent. If, after review of Respondent's submittals pursuant to this Order on Consent, the EPA determines that additional corrective measures or alternative deadlines are appropriate, the EPA may seek to modify this Order on Consent pursuant to the provisions of Paragraph 64 below, or terminate this Order on Consent and initiate a separate enforcement action, as appropriate.

Reports/Submissions

54. *Reporting to EPA:* In addition to the submittals required by Paragraphs 51 and 52 above, the City shall submit to EPA, semi-annual reports describing the actions the City has taken to comply with the terms of this Order. These reports are due every April 1 and October 1 until termination of this Order pursuant to Paragraph 65 below; the first report is due October 1, 2018. Each report shall include, at a minimum:

- a. Monthly Discharge Monitoring Reports. The City shall include copies of reports submitted to NDEQ;
- b. Compliance Progress. Each report shall include a detailed update on the progress of the compliance measures, including a description of activities completed, those

scheduled for the next reporting period, and milestones met during the reporting period.

55. *Submittals.* All documents required to be submitted to EPA by this Order, including the certification statement in Paragraph 58 below, shall be submitted by electronic mail to:

bruno.jodi@epa.gov

Jodi Bruno, or her successor
U.S. Environmental Protection Agency – Region 7
Water, Wetlands and Pesticides Division
11201 Renner Boulevard
Lenexa, Kansas 66219.

56. Electronic submissions to the EPA will be deemed submitted on the date they are transmitted electronically. Any report, notification, certification, or other communication that cannot be submitted electronically to the EPA shall be submitted in hard-copy to the address provided above.

57. All documents required to be submitted pursuant to this Order shall also be submitted by mail to NDEQ to the address provided below:

Steve Goans
Water Quality Division
Nebraska Department of Environmental Quality
P.O. Box 98922
Lincoln, Nebraska 68509-8922

58. Each submission requirement of this Order shall contain the following certification signed by an authorized official, as described at 40 C.F.R. § 122.22:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

General Provisions

Effect of Compliance with the Terms of this Order for Compliance

59. Compliance with the terms of this Order shall not relieve Respondent of liability for, or preclude the EPA from, initiating an administrative or judicial enforcement action to recover

penalties for any violations of the CWA, or to seek additional injunctive relief, pursuant to Section 309 of the CWA, 33 U.S.C. § 1319.

60. This Order does not constitute a waiver or a modification of any requirements of the CWA, 33 U.S.C. § 1251 *et seq.*, all of which remain in full force and effect. The EPA retains the right to seek any and all remedies available under Sections 309(b), (c), (d), or (g) of the CWA, 33 U.S.C. § 1319(b), (c), (d) or (g), for any violation cited in this Order. Issuance of this Order shall not be deemed an election by the EPA to forgo any civil or criminal action to seek penalties, fines, or other appropriate relief under the CWA for any violation whatsoever.

Access and Requests for Information

61. Nothing in this Order shall limit the EPA's right to obtain access to, and/or to inspect Respondent's facility, and/or to request additional information from Respondent, pursuant to the authority of Section 308 of the CWA, 33 U.S.C. § 1318 and/or any other authority.

Severability

62. If any provision or authority of this Order, or the application of this Order to Respondent, is held by federal judiciary authority to be invalid, the application to Respondent of the remainder of this Order shall remain in full force and effect and shall not be affected by such a holding.

Effective Date

63. The terms of this Order shall be effective and enforceable against Respondent on the Effective Date, which is the date this Order is signed by the EPA.

Modification

64. At the EPA's sole discretion, extensions of the compliance schedule/deadlines required by this Order may be made by the EPA by written notice to Respondent, without further formal amendment to the Order. The EPA's consent for a requested extension will not be unreasonably withheld. All other modifications to this Order may only be made by mutual agreement of the Parties, pursuant to a written amendment signed by each Party.

Termination

65. This Order shall remain in effect until a written notice of termination is issued by an authorized representative of the EPA.

For the Complainant, U.S. Environmental Protection Agency:

Issued this _____ day of _____, 2018.

Karen A. Flournoy
Director
Water, Wetlands and Pesticides Division

Shane E. C. McCain
Assistant Regional Counsel
Office of Regional Counsel

For the Respondent, David City:

Signature

Date

Name

Title

Certificate of Service

I certify that on the date noted below I hand delivered the original and one true copy of this Findings of Violation and Administrative Order for Compliance on Consent to the Regional Hearing Clerk, U.S. Environmental Protection Agency, 11201 Renner Boulevard, Lenexa, Kansas 66219.

I further certify that on the date noted below I sent a copy of the foregoing Order for Compliance on Consent by first class certified mail, return receipt requested, to:

The Honorable Alan Zavodny
Mayor, David City
557 North 4th Street
David City, Nebraska 68632

and via first class mail to:

Steve Goans
Water Quality Division
Nebraska Department of Environmental Quality
P.O. Box 98922
Lincoln, Nebraska 68509-8922

Date

Signature

Water Supervisor Travis Hays stated that he had budgeted for the purchase of two (2) 8 x 7 Aqua-Aerobic Decanters with Fiberglass Float, for a unit price of \$18,946.38 plus freight. He is bringing this before the Council for final approval.

Council member Trowbridge made a motion to approve the purchase of two (2) 8 x 7 Aqua-Aerobic Decanters with Fiberglass Float, for a unit price of \$18,946.38, so \$37,892.76 plus freight. Council member Kobus seconded the motion. Voting AYE: Council members Smith, Hotovy, Meysenburg, Vandenberg, Kobus, and Trowbridge. Voting NAY: None. The motion carried.

Council member Hotovy made a motion to approve the purchase of approximately \$2,000 for purchasing gravel, crushed rock or concrete, for the roads and driving lanes at the Wastewater Treatment Plant. Council member Kobus seconded the motion. Voting AYE: Council members Smith, Trowbridge, Vandenberg, Meysenburg, Kobus, and Hotovy. Voting NAY: None. The motion carried.

Council member Trowbridge introduced Resolution No. 3 – 2018 subdividing the property owned by Joan Riha (140' x 124.92') legally described as David City West 100' of the South 25' of Lot 3, and W 100' of Lot 6, and the East 40' of the S 25' of Lot 3, and the E 40' of Lot 6, all in Block 6, Miles 2nd Addition, and moved for its passage and adoption. Council member Kobus seconded the motion. Voting AYE: Council members Hotovy, Smith, Vandenberg, Meysenburg, Kobus, and Trowbridge. Voting NAY: None. The motion carried and Resolution No. 3 - 2018 was passed and approved as follows:

RESOLUTION NO. 3 – 2018

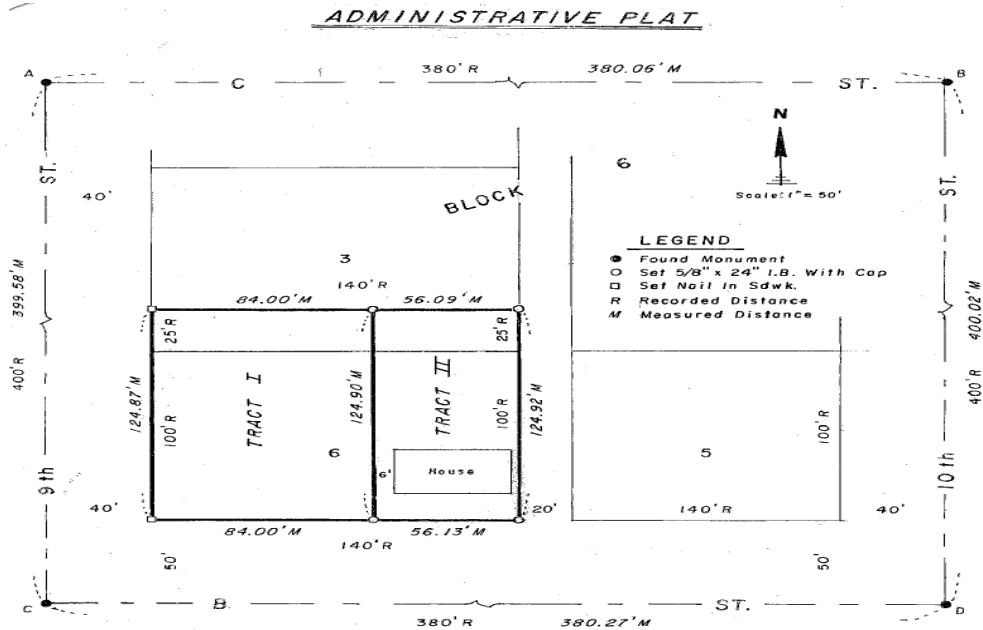
WHEREAS, Joan M. Riha, as the owner of the West 100' of the South 25' of Lot 3, and W 100' of Lot 6, and the East 40' of the S 25' of Lot 3, and the E 40' of Lot 6, all in Block 6, Miles 2nd Addition (140' x 124.92') to David City, Butler County, Nebraska, has submitted a request to divide her property into two tracts:

TRACT I DESCRIPTION

The west 84 feet of Lot 6, and the west 84 feet of the south 25 feet of Lot 3, Block 6, Miles Second Addition to David City, Butler County, Nebraska

TRACT II DESCRIPTION

Lot 6, and the south 25 feet of Lot 3, Block 6, Miles Second Addition to David City, Butler County, Nebraska; except the west 84 feet thereof



WHEREAS, there were no objections expressed concerning the request of Joan M. Riha.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF DAVID CITY, NEBRASKA, that the request of Joan M. Riha to subdivide her property legally described above into Tract I and Tract II, as legally described above, is hereby approved.

Passed and approved this 18th day of April, 2018.

Mayor Alan Zavodny

City Clerk Joan Kovar

Council member Kobus made a motion to reappoint Catherine Marie Hoefft to another 5-year term as a Commissioner on the David City Housing Authority Board of Commissioners. Council member Smith seconded the motion. Voting AYE: Council members Meysenburg, Trowbridge, Hotovy, Vandenberg, Kobus, and Smith. Voting NAY: None. The motion carried.

Mayor Zavodny stated: "Tonight I present for your consideration two names to fill vacancies on our Planning Commission, one as a regular member and one as an alternate member. For the regular member I propose to offer Pam Kabourek and for the alternate Chris Palensky.

Council member Kobus made a motion to confirm the appointments of Pam Kabourek as a regular member of the Planning Commission and Chris Palensky as an alternate member of the Planning Commission, each to serve a three (3) year term effective May 1, 2018. Council member Smith seconded the motion. Voting AYE: Council members Vandenberg, Hotovy, Meysenburg, Trowbridge, Smith, and Kobus. Voting NAY: None. The motion carried.

Council member Trowbridge made a motion to approve Ordinance No. 1285, **on the second (2nd) reading**, annexing the Brian and Mistyn Kozisek property located at the corner of 14th & "C" Streets legally described above. Council member Kobus seconded the motion. Voting AYE: Council members Meysenburg, Hotovy, Smith, Kobus, Vandenberg, and Trowbridge. Voting NAY: None. The motion carried.

ORDINANCE NO. 1285

AN ORDINANCE TO EXTEND THE BOUNDARIES AND INCLUDE WITHIN THE CORPORATE LIMITS OF, AND TO ANNEX TO, THE CITY OF DAVID CITY, NEBRASKA, THE BRIAN AND MISTYN KOZISEK PROPERTY LOCATED AT THE CORNER OF 14TH & "C" STREETS LEGALLY DESCRIBED AS FOLLOWS: A PARCEL OF LAND LOCATED IN THE SOUTH HALF OF THE SOUTHWEST QUARTER OF SECTION 20, TOWNSHIP 15 NORTH, RANGE 3 EAST OF THE 6TH P.M., BUTLER COUNTY, NEBRASKA, BEING DESCRIBED AS FOLLOWS: REFERRING TO THE SOUTHEAST CORNER OF THE SOUTH HALF OF THE SOUTHWEST QUARTER OF SAID SECTION 20; THENCE S90°00'00"W ON THE SOUTH LINE OF SAID SOUTH HALF OF THE SOUTHWEST QUARTER, A DISTANCE OF 1544.86 FEET TO THE EAST RIGHT OF WAY LINE OF 14TH STREET AND THE SOUTHEAST CORNER OF EAST DAVID CITY, AN ADDITION TO THE CITY OF DAVID CITY, NEBRASKA; THENCE N00°58'30"W ON SAID EAST RIGHT OF WAY LINE AND THE EAST LINE OF SAID ADDITION, A DISTANCE OF 594.00 FEET TO THE NORTHWEST CORNER OF A TRACT OF LAND AS DESCRIBED IN FILM BOOK 2011, PAGE 1512 AND RECORDED IN THE OFFICE OF THE REGISTER OF DEEDS, FOR BUTLER COUNTY, NEBRASKA, AND THE POINT OF BEGINNING, THENCE CONTINUING N00°58'30"W (ASSUMED BEARING) ON SAID EAST LINES, A DISTANCE OF 273.28 FEET, THENCE S89°59'34"E, A DISTANCE OF 163.50 FEET; THENCE S00°58'30"E PARALLEL WITH SAID EAST LINES, A DISTANCE OF 270.66 FEET TO THE NORTH LINE OF SAID TRACT OF LAND; THENCE N89°54'39"W ON SAID NORTH LINE, A DISTANCE OF 163.43 FEET TO THE POINT OF BEGINNING, CONTAINING 1.02 ACRES, MORE OR LESS; TO PROVIDE BENEFITS THERETO; TO PROVIDE FOR SEVERABILITY; TO CONFIRM ZONING CLASSIFICATION; TO REPEAL CONFLICTING ORDINANCES; TO PROVIDE FOR AN EFFECTIVE DATE OF THIS ORDINANCE; AND TO AUTHORIZE PUBLICATION IN PAMPHLET FORM.

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

SECTION 1: It is hereby found and determined by the Mayor and City Council that:

- (a) The parcel of land located in the South Half of the Southwest Quarter of Section 20, Township 15 North, Range 3 East of the 6th P.M., Butler County, Nebraska, being described as follows: Referring to the Southeast corner of the South half of the Southwest Quarter of said Section 20; thence S90°00'00"W on the south line of said South Half of the Southwest Quarter, a distance of 1544.86 feet to the east right of way line of 14th Street and the Southeast corner of East David City, an addition to the City of David City, Nebraska; thence N00°58'30"W, on said east right of way line and the east line of said addition, a distance of 594.00 feet to the northwest corner of a tract of land as described in film book 2011, Page 1512 and recorded in the office of the Register of Deeds, for Butler County, Nebraska, and the point of beginning, thence continuing N00°58'30"W (assumed bearing) on said east lines, a distance of 273.28 feet, thence S89°59'34"E, a distance of 163.50 feet; thence S00°58'30"E

- parallel with said east lines, a distance of 270.66 feet to the north line of said tract of land; thence N89°54'39"W, on said north line, a distance of 163.43 feet to the point of beginning, containing 1.02 acres, more or less, is urban and suburban in character and contiguous and adjacent to the corporate limits of said city;
- (b) Police, fire, and snow removal benefits will be immediately available thereto, and City electricity, water, and sewer will be available as provided by law;
 - (c) The Zoning classification of such territory as shown on the official zoning map of the City of David City, Nebraska, is hereby confirmed;
 - (d) There is a unity of interest in the use of such territory with the use of lots, lands, streets, and highways in the City, and the community convenience and welfare and the interest of said City will be enhanced through incorporating such territory within the corporate limits of said City.

SECTION 2: That the boundaries of the City of David City, Nebraska, be and hereby are, extended to include within the corporate limits of said City the contiguous and adjacent territory described in Section 1 (a) above.

SECTION 3: That a certified copy of this Ordinance, together with the map of the territory, be filed on record in the offices of the County Clerk of Butler County, Nebraska.

SECTION 4: That said territory is hereby annexed to the City of David City, Nebraska.

SECTION 5: That any ordinance or section of any ordinance passed and approved prior to or subsequent to the passage, approval, and publication or posting of this ordinance and in conflict with its provisions, is hereby appealed.

SECTION 6: This Ordinance shall be published in pamphlet form and shall take effect and be in full force from and after its passage, approval, and publication or posting as required by law.

PASSED on 2nd reading only, April 18, 2018.

Don Prochaska, 875 "O" Street, reported that when he was driving down "O" Street between 4th & 9th, he hit a pot hole which ruined the left rear tire of his vehicle. He submitted a bill in the amount of \$465.72. City Clerk Kovar submitted his claim with the League Association of Risk Management and following is their response:

Joan,

Thank you for speaking with me today regarding the recent claim for Donald Prochaska.

As we discussed, potholes are common occurrences this time of year, and as long as the City is taking steps to fill the holes in a timely manner, **it leaves no liability on the part of the City for damages other people may incur**, should they hit a pothole.

Vehicle operators must maintain lookout when traveling down the roadway, and that includes watching for road hazards, such as a pothole.

When we received these claims, we contact the city for investigation and then advise the other party of lack of liability or negligence and formally deny the claims to those parties.

If you have any other questions please feel free contact me at 515-251-1731.

Best Regards,
Nancy Muetzel
Claim Adjuster
LARM

Mayor Zavodny stated that the Street Department employees, Chris Kroesing and Mat Asche, have continually been patching "O" Street and doing everything possible to keep the potholes filled. Mayor Zavodny stated that we can show good faith that we have been trying to keep the road in repair and in good condition.

As you cannot make a negative motion, Council member Meysenburg made a motion to approve the claim for Don Prochaska in the amount of \$465.72.

Mayor Zavodny stated: "There is a motion on the floor, is there a second?" "Again, is there a second to the motion?" "Hearing none, again for the 3rd and last time, is there a second to the motion?" "Hearing none, the motion dies for lack of a second."

Brandy Pavel called the City Office to report that her son lives in the apartments above Renee Kosch's business "Renee's Same As It Ever Was" at 530 5th Street. He parks in the alley behind the building and hit a hole in the alley and ruined his oil pan. They want to be reimbursed for the repairs.

Council member Trowbridge made a motion to approve the claim of Brandi Pavel for her son's ruined oil pan. Council member Smith seconded the motion. Voting AYE: Council member Trowbridge. Voting NAY: Council members Meysenburg, Hotovy, Vandenberg, Kobus, and Smith. The motion failed.

Connie Colter called Friday, April 6th, to report that her daughter and son-in-law, Michelle & Robert Day, who live at 221 G Street, had a plugged sewer line last December. They hired Todd Wright, a plumber from Dwight to fix the problem. Connie is claiming that this was a City sewer problem, they did not maintain the sewer line, and they should be reimbursed for the repairs.

Water Supervisor Travis Hays investigated this claim. Travis talked to the plumber who stated that the house at 221 G Street has an old, long, deep, sewer line. It was their private line that was plugged and when they were working on it they could hear the sewer flowing in the City sewer, so it was not the City's problem. It was their private line that was plugged. It was also noted that Connie said a new sewer line had been installed not too long ago and they should have had the option to tap on to the new line. This was actually a private "water" line that had been installed.

Council member Hotovy made a motion to approve the claim of Michelle & Robert Day, 221 G Street, for sewer repairs.

Mayor Zavodny asked: "Is there a second?" "Again, is there a second to the motion?" "Hearing none, again for the 3rd and last time, is there a second to the motion?" "Hearing none, the motion dies for lack of a second."

Council member Hotovy introduced Resolution No. 4 – 2018 adjusting rental rates and supply costs for the street department and moved for its passage and adoption. Council member Meysenburg seconded the motion. Voting AYE: Council members Kobus, Smith, Vandenberg, Trowbridge, Meysenburg, and Hotovy. Voting NAY: None. The motion carried and Resolution No. 4 - 2018 was passed and approved as follows:

RESOLUTION NO. 4 - 2018

WHEREAS, the Mayor and City Council of the City of David City, Nebraska, have in the inventory of the City various pieces of equipment, and

WHEREAS, City Staff have occasion to use this equipment to carry out nuisance abatement, grant related activities, and other activities of an unusual manner, and

WHEREAS, the City does assume certain expenses related to abatement of nuisances, maintenance of the public right of ways, and other situations, and

WHEREAS, the City has determined a need to change the rental charges for vehicle and equipment rentals and supplies as charged by the Street Department.

NOW, THEREFORE BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF DAVID CITY, NEBRASKA that the following list of charges for the use of City equipment and other City expenses, when said use shall be billed to another party, are hereby adopted. Equipment charges do not include the cost of the operator, mileage, and maintenance, which are additional separate charges.

The following rates will be in effect:

Street Department - Charges

Labor:

Labor\$33.50 / hour
Labor / Overtime\$50.00 / hour

Vehicles:

Pickup Trucks\$20.00 / hour
Pickup Trucks with Snow Plow.....\$25.00 / hour
Pickup Trucks with Salt Spreader.....\$25.00 / hour
Pickup Trucks with Snow Plow and Salt Spreader\$30.00 / hour
Dump Trucks Single Axle.....\$35.00 / hour
Dump Trucks Single Axle with Snow Plow\$40.00 / hour
Dump Trucks Twin Axle\$50.00 / hour
Dump Trucks Twin Axle with Snow Plow.....\$55.00 / hour
All other vehicles.....\$1.00 / per mile

Equipment:

John Deere Loader\$100.00 / hour
John Deere Loader with Snow Blower\$150.00 / hour
John Deere Motor Grader\$100.00 / hour
Johnson Street Sweeper.....\$150.00 / hour
Bobcat\$35.00 / hour
Bobcat with Jack Hammer\$50.00 / hour
Bobcat with Stump Grinder.....\$85.00 / hour
Concrete Saw\$50.00 / hour
(Plus, Blade Cost)
Sand Compaction Plate\$30.00 / day
Riding Mowers (all) (not including labor).....\$80.00 / hour

3010 JD Tractor & Batwing Mower.....	\$120.00 / hour
Salt Spreader.....	\$10.00 / hour
Paint Sprayer.....	\$50.00 / hour
(Plus, per use fee of \$20.00 will be added to the rental)	
Tree Spade.....	\$50.00 / hour

Supplies

Gravel (delivered)	\$13.50 / yard
Gravel (picked up).....	\$11.00 / yard
Sand (delivered).....	\$6.50 / yard
Sand (picked up).....	\$4.50 / yard
Dirt (delivered)	\$6.00 / yard
Dirt (picked up).....	\$5.00 / yard
Dirt Junk.....	\$4.00 / yard
Screened Rock	\$26.50 / yard
Cold Patch	\$150.00 / yard
Asphalt Millings.....	\$6.00 / yard
Downtown Street Brick.....	Not currently for sale
D.C. residents.....	10¢ / each
Dealers, etc.....	25¢ / each
Lettering for Street Name Signs	\$0.50 / each
2" post caps	\$11.00 / each
24" Street Sign Blanks	\$20.50 / each
30" Street Sign Blanks.....	\$23.00 / each
36" Street Sign Blanks.....	\$27.00 / each
Cross piece.....	9.50 / each
Mosquito Spray – Biomit.....	\$90.00 / gal.

Culverts:

Culvert prices change so rapidly that an exact price cannot be set on a yearly basis. Please contact the Street Department for pricing. The City of David City will charge a \$5.00 administrative fee for each culvert ordered through the Street Department.

David City Municipal Airport:

T-Hangar.....	\$40.00 / month
Shop Hangar.....	\$65.00 / month
2017 T-Hangar.....	\$100.00 / month
Storage Unit.....	\$115.00 / month
- (Advertise for bids with a minimum bid of \$115.00 month)	

All equipment or vehicle rentals are at a minimum of 1-hour rental. An employee of the City of David City shall accompany the rental, and the labor is a separate charge.

Dated this 18th day of April, 2018.

 Mayor Alan Zavodny

 City Clerk Joan E. Kovar

The following letter was received from the Nebraska Commission of Industrial Relations:

NEBRASKA COMMISSION OF INDUSTRIAL RELATIONS

INTERNATIONAL BROTHERHOOD)
OF ELECTRICAL WORKERS,)
LOCAL UNION NO. 1536,)
Petitioner,)
v.)
CITY OF DAVID CITY,)
NEBRASKA,)
Respondent.)

Case No. 1459
Rep. Case No. 537

NOTICE TO EMPLOYEES

NEBRASKA COMMISSION
OF INDUSTRIAL RELATIONS
FILED

MAR 07 2018

CLERK

You are hereby notified that the International Brotherhood of Electrical Workers, Local Union No. 1536 has filed a Petition, Docket No. 1459, Representation Case No. 537, in this Commission, requesting the Commission to determine the appropriate bargaining unit, to hold a certification election and, should a majority of those voting vote for the Petitioner, to certify it as the exclusive bargaining agent for the employees in the unit.

You are further notified that the bargaining unit claimed to be appropriate by petitioner is as follows:

All permanent full time and regular part time employees in the City of David City, Nebraska including, but not limited to, those occupying the following classifications: Power Plant Operator I, Power Plant Operator II, Power Plant Operator III, Power Plant Supervisor, Apprentice Lineman, Line Worker II, Line Worker I, Line Foreman, Electric Supervisor, Water/Sewer Operator I, Water/Sewer Operator I w/Gr VI, Water/Sewer Operator II, Water/Sewer Operator II w/Gr VI, Water/Sewer Operator II w/Gr VI, Waste Water Pit Operator, Water Supervisor w/Gr VI, Wastewater Supervisor w/Gr VI, Laborer I, Laborer II, Maintenance Worker I, Maintenance Worker II, Street Foreman, Street Superintendent, excluding clerical and temporary employees.

You are further notified that any employee within the bargaining unit claimed to be appropriate by International Brotherhood of Electrical Workers, Local Union No. 1536, or any interested labor organization, may appear or state an interest in the proceedings at any time within 14 business days from the date of this notice. Any person or labor organization desiring to appear or state an interest in the proceedings should do so by directing communications to:

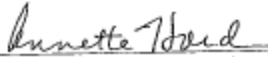
Annette Hord, Clerk
Commission of Industrial Relations
301 Centennial Mall South
P.O. Box 94864
Lincoln, NE 68509-4864

Entered March 7, 2018.

NEBRASKA COMMISSION OF INDUSTRIAL RELATIONS

Joel E. Carlson, Commissioner

By


Annette Hord, Clerk

DAVID J. PARTSCH
PRESIDING OFFICER
1518 CENTRAL AVE.
NEBRASKA CITY, NE 68410
(402) 873-9044

SARAH S. PILLEN
3214 25TH ST.
COLUMBUS, NE 68601
(402) 584-0407

JOEL E. CARLSON
200 WEST BENJAMIN AVE.
NORFOLK, NE 68702
(402) 371-3100

WILLIAM G. BLAKE
1248 "O" ST.
SUITE 600
LINCOLN, NE 68508
(402) 475-1075

DALLAS D. JONES
1248 "O" St.
Suite 600
Lincoln, NE 68508
(402) 475-1075



STATE of NEBRASKA

**NEBRASKA COMMISSION
OF INDUSTRIAL RELATIONS**

COMMISSION OF INDUSTRIAL RELATIONS
301 CENTENNIAL MALL SOUTH
P.O. BOX 94864
LINCOLN, NE 68509-4864

PHONE NO. (402) 471-2934
FAX NO. (402) 471-8537
TRS USERS 800-833-7352 (TTY)
E-MAIL: industrial.relations@nebraska.gov
www.ncir.nebraska.gov

ANNETTE HORD
CLERK/ADMINISTRATOR

ASHLEA R. WHITNEY
LEGAL COUNSEL/DEPUTY CLERK

**NOTICE OF ELECTION
TO CERTAIN EMPLOYEES OF:
CITY OF DAVID CITY, NEBRASKA**

This Commission has ordered a mail ballot election for employees in the following unit:

All permanent full time and regular part time employees in the City of David City, Nebraska including, but not limited to, those occupying the following classifications: Power Plant Operator I, Power Plant Operator II, Power Plant Operator III, Power Plant Supervisor, Apprentice Lineman, Line Worker II, Line Worker I, Line Foreman, Electric Supervisor, Water/Sewer Operator I, Water/Sewer Operator I w/Gr VI, Water/Sewer Operator II, Water/Sewer Operator II w/Gr VI, Water/Sewer Operator II w/Gr VI, Waste Water Pit Operator, Water Supervisor w/Gr VI, Wastewater Supervisor w/Gr VI, Laborer I, Laborer II, Maintenance Worker I, Maintenance Worker II, Street Foreman, Street Superintendent, excluding clerical and temporary employees.

**A LIST OF ELIGIBLE VOTERS IS ALSO POSTED ALONG WITH THIS NOTICE
PLEASE CHECK THIS LIST**

The Commission will be sending on April 9, 2018 a mail ballot packet with instructions to your home.

Please call the Commission at (402) 471-2934 if you believe you are an eligible voter but did not receive the mail ballot packet or if your address is incorrect.

A handwritten signature in cursive script that reads "Annette Hord".

Annette Hord, Clerk

NOTE: To request this Notice or election materials in an alternate form, call us at 402-471-2934 no later than seven days prior to the sending date noted above.

City Attorney Egr stated: "They voted, they will count the ballots Monday of next week, and we will find out. That's where that's at."

There being no further business to come before the Council, Council member Hotovy made a motion to adjourn. Council member Trowbridge seconded the motion. Voting AYE: Council members Meysenburg, Smith, Kobus, Vandenberg, Trowbridge, and Hotovy. Voting NAY: None. The motion carried and Mayor Zavodny declared the meeting adjourned at 8:28 p.m.



CERTIFICATION OF MINUTES
April 18, 2018

I, Joan Kovar, duly qualified and acting City Clerk for the City of David City, Nebraska, do hereby certify with regard to all proceedings of April 18th, 2018; that all of the subjects included in the foregoing proceedings were contained in the agenda for the meeting, kept continually current and available for public inspection at the office of the City Clerk; that such subjects were contained in said agenda for at least twenty-four hours prior to said meeting; that the minutes of the meeting of the City Council of the City of David City, Nebraska, were in written form and available for public inspection within ten working days and prior to the next convened meeting of said body; that all news media requesting notification concerning meetings of said body were provided with advance notification of the time and place of said meeting and the subjects to be discussed at said meeting.

Joan Kovar, City Clerk