

## CITY COUNCIL PROCEEDINGS

April 14, 2021

The City Council of the City of David City, Nebraska, met in open public session at 7:00 p.m. in the lower level of the David City Auditorium at 699 Kansas Street, David City, Nebraska. The Public had been advised of the meeting by publication of notice in The Banner Press on April 8, 2021, 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 on the City's website. No new items were added to the agenda during the twenty-four hours immediately prior to the opening of the Council meeting. The meeting was held at the City Auditorium due to the COVID-19 pandemic so as to incorporate social distancing strategies. [It is recommended that individuals be kept at least 6 feet apart.]

Present for the meeting were: Council members Kevin Hotovy, Tom Kobus, Jessica Miller, Bruce Meysenburg, Pat Meysenburg, John Vandenberg, City Attorney Jim Egr, City Administrator Clayton Keller and City Clerk Tami Comte. Mayor Alan Zavodny was absent.

Also present for the meeting were Deputy City Clerk Lori Matchett, Interim Water Supervisor Aaron Gustin, Special Projects Coordinator Dana Trowbridge, Park/Auditorium employee Nathan Styskal, Darci Betzen, Banner-Press reporter Molly Hunter and Sheriff Tom Dion. Attending via Zoom were Kerry Butzke of Butzke Insurance and Stephen Granger of Granger Architecture.

The meeting opened with the Pledge of Allegiance.

Council President Kevin Hotovy informed the public of the "Open Meetings Act" posted on the north wall of the meeting room and asked those present to please silence their cell phones.

Council member Jessica Miller made a motion to approve the minutes of the March 24, 2021 meeting as presented. Council Member Pat Meysenburg seconded the motion. The motion carried. Tom Kobus: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Jessica Miller: Yea, John Vandenberg: Yea, Kevin Hotovy: Yea Yea: 6, Nay: 0

Council member Pat Meysenburg made a motion to approve the claims as presented. Council Member Tom Kobus seconded the motion. The motion carried. Tom Kobus: Yea, Kevin Hotovy: Yea Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Jessica Miller: Yea, John Vandenberg: Yea  
Yea: 6, Nay: 0

Council President Hotovy asked if there were any comments under committee and officers reports.

Council member Jessica Miller said, "The thing I'd like to address is on the auditorium and parks departments. They have listed that they are needing workforce hours. They are having a hard time finding employees to fill in. There's not help there. So, I just want it on the record that I think that the departments need to come back together, as a team. I know in the past that, like, the water department and the power plant helped with mowing and they did

teamwork and I think we need to reconsider some of that and see where we can help across the board instead of just in emergency situations.”

Council member Tom Kobus said, “I don’t think that the other departments have enough time, either.”

Council President Kevin Hotovy said, “It’s no secret that workforce is short right now.”

Council member Jessica Miller said, “I understand that. I just want on the record that in the past they have helped out and it’s gone smooth and I think that we need to see where we can come together, instead of being just in emergencies. They have great teamwork in emergencies, don’t get me wrong. They do an excellent job. I just think that there’s times that they could help each other out.”

Council member Tom Kobus made a motion to approve the committee and officer’s reports as presented. Council Member Pat Meysenburg seconded the motion. The motion carried. Tom Kobus: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Hotovy: Yea, Jessica Miller: Yea, John Vandenberg: Yea  
Yea: 6, Nay: 0

City Attorney Jim Egr asked Council President Hotovy if he would consider postponing his resignation until the next meeting since Mayor Zavodny is under the weather at the present time.

Council President Hotovy stated that he thought that it was best if he resigned now and he felt that the remaining Council members could handle things until the Mayor has recovered.

Council member Pat Meysenburg made a motion to accept the resignation of Kevin Hotovy as Council President and Ward 2 Council member, effective immediately, and declare a Council seat vacancy in Ward 2. Council Member Tom Kobus seconded the motion. The motion carried. Tom Kobus: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Jessica Miller: Yea, John Vandenberg: Yea, Kevin Hotovy: Abstain  
Yea: 5, Nay: 0, Abstain: 1

March 31, 2021

City of David City  
557 4<sup>th</sup> Street  
David City, NE 68632

Mayor Zavodny,

Due to my relocation outside of the 2<sup>nd</sup> Ward, please accept this letter as my formal resignation from my position of Council President, and from my elected office of Councilman 2<sup>nd</sup> Ward of David City. This resignation is effective March 31, 2021.

I have enjoyed the past 6 years, and wish nothing but the best to you, the council, employees, and constituents of David City.

Please know, you will always have an advocate in your corner, and if there is ever anything I can do to help, don't hesitate to ask.

Sincerely,

Kevin Hotovy

The Council members voted for Council President by secret ballot with Council member Tom Kobus receiving two votes, Council member Bruce Meysenburg receiving two votes and Council member John Vandenberg receiving one vote. Council member Bruce Meysenburg declined the nomination and therefore, Council member Tom Kobus was elected as Council President.

Council President Tom Kobus presided over the remainder of the meeting.

Council member Pat Meysenburg made a motion to accept the resignation of Janis Cameron from the Planning Commission, effective immediately. Council Member Bruce Meysenburg seconded the motion. The motion carried.

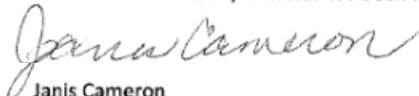
Tom Kobus: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Jessica Miller: Yea, John Vandenberg: Yea  
Yea: 5, Nay: 0

April 1, 2021

Mayor Alan Zavodny, City Administrator Clayton Keller, Chairman Jim Masek and members of the David City Planning Commission:

It's been a good ride! I've truly enjoyed being on the David City Planning Commission. But plans change and I am resigning the position, effective April 1, 2021.

I am excited about all that is happening in David City. Our short-term plan is moving to Lincoln and eventually to Iowa. It's been fun to be in on parts of city government.

  
Janis Cameron

City Council Proceedings

April 14, 2021

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Council member Pat Meysenburg made a motion to accept the resignation of James M. Egr as City Attorney, effective May 1, 2021. Council Member Jessica Miller seconded the motion. The motion carried.

Tom Kobus: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Jessica Miller: Yea, John Vandenberg: Yea

Yea: 5, Nay: 0

*Egr, Birkel & Wollmer, P.C.*

*Attorneys at Law  
465 - 4<sup>th</sup> St.  
P.O. Box 46*

*David City, NE 68632  
Telephone: 402-367-3139  
Toll Free: 1-866-859-1306  
Fax: 402-367-3900*

*James M. Egr  
Timothy J. Wollmer  
Joanna M. Uden  
James L. Birkel (Of Counsel)*

*jamesegr@egrbirkel.com  
timwollmer@egrbirkel.com  
joannauden@egrbirkel.com  
jamesbirkel@egrbirkel.com*

April 5, 2021

Mayor and City Council Members,

Re: Resignation As City Attorney and Suggestion for Replacement

Dear Mayor and City Council Members,

It has been my privilege for 36 ½ years to be City Attorney and I believe it is time for me to let someone else step into the City Attorney's position effective May 1, 2021.

My Office has been bringing Joanna Uden along in the practice of Municipal Law and she has taken hold of the practice very well and has been doing a more and more work for the City and our other Municipal clients. I would stay on in my office to continue mentoring Ms. Uden and being a source of information for her and because of this would ask that you consider naming Ms. Uden as my successor as City Attorney. Hopefully, the City staff who have had the pleasure to do work with Ms. Uden would agree she is competent, is qualified, has a great personality, and would continue the good job our office has shown as a City Attorney's Office.

Thank you again for the privilege to serve the City of David City for 36 ½ years. I hope you will consider my suggestion of Joanna Uden as my successor. Should you have any questions, please do not hesitate to contact me.

Very truly yours,

EGR, BIRKEL & WOLLMER, P.C.

  
James M. Egr

JME/bnr

Council member Jessica Miller made a motion to appoint Joanna Uden as the City Attorney, effective May 1, 2021. Council Member Pat Meysenburg seconded the motion. The motion carried.

Tom Kobus: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Jessica Miller: Yea, John Vandenberg: Yea

Yea: 5, Nay: 0

Council member John Vandenberg made a motion to Approved progress estimate # 6 for Kirkham Michael in the amount of \$4,048.58 for the 93Y Fuel Project. Council Member Pat Meysenburg seconded the motion. The motion carried.

Tom Kobus: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Jessica Miller: Yea, John Vandenberg: Yea

Yea: 5, Nay: 0



Pete Ricketts, Governor

April 12, 2021

Ms. Tami Comte  
City Clerk  
City of David City  
P.O. Box 191  
David City, NE 68632-0191

Subject: David City Municipal Airport  
David City, Nebraska  
Project No. 3-31-0025-M01 (13)  
Financial

Dear Ms. Comte:

Attached is a copy of Progress Estimate No. 6 in the amount of \$4,048.58 due Kirkham, Michael & Associates, Inc. We have reviewed and approved the estimate. If you agree, sign and date the estimate. **Please pay Kirkham, Michael** and send them a copy of the estimate. Retain one copy for your files. **Scan and return a copy to Barb at this office.**

A Summary of Project Costs cannot be prepared until a Federal Grant has been executed. If you have any questions, please contact our office.

Sincerely,

NDOT - DIVISION OF AERONAUTICS

Barbara Atkins  
Accountant

John R. Selmer, P.E., Director  
Department of Transportation

MAILING ADDRESS  
PO Box 94759  
Lincoln, NE 68509-4759

PHYSICAL ADDRESS  
1500 Highway 2  
Lincoln, NE 68502

PHONE 402-471-4407  
EMAIL [NDOT.ContactUs@nebraska.gov](mailto:NDOT.ContactUs@nebraska.gov)

Aeronautics Division  
3431 Aviation Road, Ste. 100  
Lincoln, NE 68524-1000  
OFFICE 402-471-2371  
FAX 402-471-2906

Navigational Aids Office  
Kearney Municipal Airport  
5085 Airport Road  
Kearney, NE 68847  
OFFICE 308-865-5696  
FAX 308-865-5697

[dot.nebraska.gov](http://dot.nebraska.gov)



RECEIVED

APR 9 2021

NEBRASKA DIVISION  
 OF AERONAUTICS

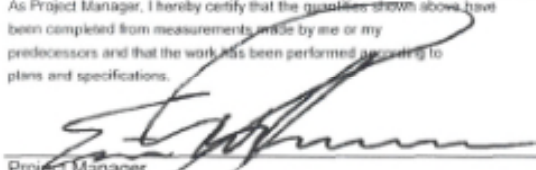
NDOT-DIV OF AERONAUTICS

4 COPIES TO NDOT DIVISION  
 OF AERONAUTICS

Sponsor: <u>City of David City</u>	Estimate No. <u>6</u>	Date: <u>April 7, 2021</u>
<u>P.O. Box 191</u>	Invoice: <u>92391</u>	
<u>David City, Nebraska 68632</u>	KM Project No.: <u>2010235</u>	
Contractor: <u>Kirkham Michael</u>	AIP Project No.: <u>3-31-0025-013</u>	
<u>5621 NW 1st Street, Suite 400</u>	Name of Project: <u>93Y Fuel Project</u>	
<u>Lincoln, Nebraska 68521</u>	Date of Contract: <u>October 14, 2020</u>	

CONTRACT QUANTITIES	ITEM NO.	DESCRIPTION	ESTIMATED QUANTITIES TO DATE	UNIT	AMOUNT
34,092.86	A	Design Phase	100%	hourly	\$ 34,092.86
7,122.82	B	Bid Phase	57%	hourly	\$ 4,050.59
30,895.67	C	Construction Phase	0%	hourly	
7,134.13	D	Close Out Phase	0%	L/S	

As Project Manager, I hereby certify that the quantities shown above have been completed from measurements made by me or my predecessors and that the work has been performed according to plans and specifications.

  
 Project Manager 4/7/21  
 Date

Approved for payment as per Project Engineer's Certification   
 NDOT Project Engineer 4/9/2021  
 Date

Grand Total	\$ 38,143.45
Less Retained	\$ -
Less Previous Estimates	\$ 34,094.87
Due Contractor This Estimate	\$ 4,048.58

APPROVED: \_\_\_\_\_  
 Airport Sponsor Date



April 7, 2021

City of David City  
 P.O. Box 191  
 David City, Nebraska 68632

Estimate No.: 6  
 Invoice: 92391  
 File: 2010235

Attention: Clayton Keller

Professional engineering services in connection with the design phase for the David City Airport 93Y Fueling system per the contract signed October 14, 2020.

March 6, 2021 through April 2, 2021

<u>Classification</u>	<u>Hours</u>	<u>Rates</u>	<u>Amounts</u>
T. Thompson, Design Manager	6.0	\$ 34.50	\$ 207.00
R. Garber, Sr. Engineer	3.5	\$ 46.63	\$ 163.21
J. Olson, Cad Tech		\$ 26.25	\$ -
S. Beauchamp, Cad Tech		\$ 24.50	\$ -
Subtotal	9.5		\$ 370.21
 <u>Direct Non-Salary Costs</u>			
Postage		\$ -	
Subtotal		\$ -	
 Direct Salary Costs			
			\$ 370.21
Overhead (182.07%)			
			\$ 674.03
			\$ 1,044.24
 Direct Non-Salary Costs			
			\$ -
 Total Cost			
			\$ 1,044.24
Fixed Fee (12%)			
			\$ 109.01
			\$ 1,153.25
 Subtotal			
Subconsultant			
			\$ 1,153.25
 <b>AMOUNT DUE PER CONTRACT MAX</b>			
			<b>\$ 1,110.32</b>



April 7, 2021

City of David City  
 P.O. Box 191  
 David City, Nebraska 68632

Estimate No.: 6  
 Invoice: 92391  
 File: 2010235

Attention: Clayton Keller

Professional engineering services in connection with the bid phase for the David City Airport 93Y Fueling system per the contract signed October 14, 2020.

March 6, 2021 through April 2, 2021

<u>Classification</u>	<u>Hours</u>	<u>Rates</u>	<u>Amounts</u>
T. Thompson, Design Manager	2.0	\$ 34.50	\$ 69.00
R. Garber, Sr. Engineer	14.0	\$ 46.63	\$ 652.82
J. Olson, Cad Tech		\$ 26.25	\$ -
S. Beauchamp, Cad Tech	8.5	\$ 24.50	\$ 208.25
Subtotal	24.5		\$ 930.07
 <u>Direct Non-Salary Costs</u>			
Postage		\$ -	
Subtotal		\$ -	
 Direct Salary Costs			
			\$ 930.07
Overhead (182.07%)			
			\$ 1,693.38
			\$ 2,623.45
Direct Non-Salary Costs			
			\$ -
 Total Cost			
			\$ 2,623.45
Fixed Fee (12%)			
			\$ 314.81
 Subtotal			
			\$ 2,938.26
Subconsultant			
			\$ -
 <b>AMOUNT DUE THIS INVOICE</b>			
			<b>\$ 2,938.26</b>

City Council Proceedings

April 14, 2021

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Council member Bruce Meysenburg made a motion to Approved progress Estimate #3 for Bierman Contracting, Inc. for the final invoice of \$5,880.00 for the downtown lighting project.

Council Member Pat Meysenburg seconded the motion. The motion carried.

Tom Kobus: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Jessica Miller: Yea, John Vandenberg: Yea

Yea: 5, Nay: 0



Phone: 402-364-4749 Fax: 402-364-4658

P.O. Box 1887-2560 E. 29th Ave.  
 Columbus, NE 68601

**INVOICE**

<b>CUSTOMER</b>		<b>MISC</b>	
NAME	City of David City	DATE	4/9/2021
ADDRESS	557 4th Street, P.O. Box 191	INVOICE NO.	215404 - 3
CITY	David City STATE NE ZIP 68632	JOB NO.	20-028
ATTENTION	Clayton Keller	CONTACT	Matt Heavican

QUANTITY	DESCRIPTION	UNIT PRICE	TOTAL
1 LS	David City Downtown Holiday Lighting Project Labor and materials due for final punch list completion per contract dated 10-14-2020	\$ 5,880.00	\$ 5,880.00
<b>Contract Summary:</b>			
	Original Contract:	\$ 58,800.00	
	Previously Invoiced:	\$ (52,920.00)	
	This Invoice:	\$ (5,880.00)	
	Remaining Balance To Be Invoiced:	\$ -	
<i>Thank You!</i>			

**TERMS:** Accounts due 30 days after date of invoice. A service charge of 1.33% per month will be added to accounts 30 days or more past due. Minimum monthly service charge of \$1.00. A charge of \$5 will be added for each additional billing. A collection fee will be assessed for all accounts submitted to a collection agency or for which a lien must be filed.

SUBTOTAL	\$ 5,880.00
SHIPPING	
0.00% TAX	
<b>TOTAL</b>	<b>\$ 5,880.00</b>

THE PROFESSIONAL CHOICE

Cody Wickham with DA Davidson said, "I'm here to answer questions about the next couple of items, this one in particular. We are always monitoring the debt for refinancing opportunities and I met with Tami and Clayton last week regarding these bonds which are callable, meaning that you can refinance them with no penalty but because they are so short, they only go out to 2024 and there's not very much left in terms of size, they just didn't make a good candidate for refinance, so they did have a little bit higher rates, at least higher than what the market is experiencing. They are in the mid to high twos. It was determined that the real opportunity would lie in paying these off early. Again, you are past your call date so you could refinance but to do so would be pretty much a wash, it wouldn't garner any savings so the other opportunity would be to pay these off early and save approximately \$13,260 in interest. So, if you have some cash sitting around that's probably not earning very much in this environment then that would be a better use of those funds."

Council member Bruce Meysenburg introduced Resolution No. 5-2021 and moved for its passage and adoption to call the General Obligation Various Purpose Bonds. Council Member Jessica Miller seconded the motion.

Tom Kobus: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Jessica Miller: Yea, John Vandenberg: Yea

Yea: 5, Nay: 0 The motion carried and Resolution No. 5-2021 was passed and adopted as follows:

**RESOLUTION NO. 5-2021**

**A RESOLUTION CALLING  
GENERAL OBLIGATION VARIOUS PURPOSE BONDS, SERIES 2014,  
DATE OF ORIGINAL ISSUE – AUGUST 15, 2014,  
FOR REDEMPTION PRIOR TO MATURITY**

"BE IT RESOLVED by the Mayor and City Council of the City of David City, Nebraska (the "City"), as follows:

Section 1. That the following outstanding bonds of the City are hereby called for redemption on May 20, 2021:

General Obligation Various Purpose Bonds, Series 2014, date of original issue – August 15, 2014, in the principal amount of One Hundred Ninety-five Thousand Dollars (\$195,000), becoming due and bearing interest as follows:

<u>Maturing August 15:</u>	<u>Principal Amount:</u>	<u>Interest Rate:</u>	<u>CUSIP</u>
2022	\$ 65,000*	2.40%	238554 DE6
2024	130,000	2.80	238554 DG1

\* Partial amount for this maturity

Said bonds are hereinafter referred to as the "Redeemed Bonds."

The Redeemed Bonds are subject to redemption at any time on or after August 15, 2019, at par plus accrued interest to the date fixed for redemption. Said Redeemed Bonds were issued by the City for the purpose of retiring the City's Bond Anticipation Notes, Series 2012B, dated August 14, 2012, and to pay issuance costs of the Redeemed Bonds.

Section 2. Said Redeemed Bonds shall be presented for payment at the office of the City Treasurer, in David City, Nebraska, as Paying Agent and Registrar (the "Paying Agent") of the Redeemed Bonds.

Section 3. A copy of this resolution shall be filed immediately with the Paying Agent, not less than thirty days prior to said date fixed for redemption. The Paying Agent is hereby directed to mail notice to all registered owners of the Bonds to be redeemed not less than thirty days prior to the date fixed for redemption in accordance with their authorizing resolution and to take all other actions deemed necessary in connection therewith.

PASSED AND APPROVED this 14<sup>th</sup> day of April, 2021.

CITY OF DAVID CITY, NEBRASKA

ATTEST:

By: \_\_\_\_\_  
Council President Tom Kobus

\_\_\_\_\_  
City Clerk Tami L. Comte

(Seal)

Cody Wickham from D.A. Davidson said, "These are the Bond Anticipation Notes from 2020 that were issued to serve as interim financing until that project was complete. Because of State Statutes, you can't go to long term financing until you have a certificate of completion. We have that now signed off on from the engineer and given that interest rates remain such a favorable position right now, it makes sense to convert those to long term debt. We looked going out the maximum allowable, which is fifteen years with this particular type of general obligation various purpose bonds, projecting an average interest rate of 1.587%, so your annual payments would be approximately forty thousand dollars per year. If you wish to move forward with that, you'll see me again in a couple of weeks and we'll have the Ordinance and proceedings necessary to move that project forward, or the financing for it, I should say."

Council member Bruce Meysenburg made a motion to approve the conversion of Bond Anticipation Notes to Long Term Bonds for the Timpfe TIF Project. Council Member John Vandenberg seconded the motion. The motion carried.  
Tom Kobus: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Jessica Miller: Yea, John Vandenberg: Yea  
Yea: 5, Nay: 0

Tax Increment Financing (TIF) Report 2020

COUNTY: 12 BUTLER

Project Name: TIF GDC PROPERTIES, LLC  
 City: DAVID CITY Project Date: 2019  
 School: DAVID CITY 56 TIF-ID# 12-6008  
 Location: Lots 1-16 Zegers 1st Addition David City PID 120008742  
 Description: TIF funds used for site acquisition, site preparation and storm sewer, lift station and sanitary sewer, street paving and curb and gutter, electric lines and lighting, right of way landscaping, engineering, architecture and legal fees associated with a new commercial development.

Year	Base Value	Excess Value	Tax Rate	TIF Base Tax	TIF Excess Tax
2019	137,240	0	1.666354	2,286.90	0.00
2020	132,690	0	1.669509	2,215.27	0.00
Total				4,502.17	0.00

Current Year	Base Value	Excess Value
Residential	132,690	0
Commercial	0	0
Industrial	0	0
Other	0	0

Project Name: TIF INDUSTRIAL PARK EXPANSION & INFRASTRUCTURE U  
 City: DAVID CITY Project Date: 2020  
 School: DAVID CITY 56 TIF-ID# 12-6008  
 Location: PIN 120008673 and 120008176 in David City, Nebraska  
 Description: TIF funds used for replacement and upgrade to industrial park electrical lines, water mains, sanitary and storm water mains and site acquisition needed to support the construction of a world class corporate headquarters, research and development facility, branch facility and manufacturing expansion of Temple Inc. as well as other industrial and commercial endeavors.

Year	Base Value	Excess Value	Tax Rate	TIF Base Tax	TIF Excess Tax
2020	7,068,650	6,089,990	1.669509	118,011.75	101,672.94
Total				118,011.75	101,672.94

Current Year	Base Value	Excess Value
Residential	0	0
Commercial	0	0
Industrial	7,068,650	6,089,990
Other	0	0

$\$100,656.21$   
 $\times 15 \text{ years}$   


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 $\$1,509,843.15$  (over)

$101,672.94 \times 99\% =$   
 $\$100,656.21$

Project Name: TIF NORTHWEST INDUST PARK  
 City: DAVID CITY Project Date: 2012  
 School: DAVID CITY 56 TIF-ID# 12-6003  
 Location: All lots 1, 3, 4, 5, 6 & 7; South 73rd Lot 8; West 254 ft of North 70th Lot 8; West 254 ft Lots 9, 10, 11, 12 and 13; and portion of vacated S Street lying north of and adjacent to Lot 13; all in Block 1, Schmidt's Addition to David City approx. 16.70 acres  
 Description: Street and other infrastructure to accommodate industrial expansion.

Year	Base Value	Excess Value	Tax Rate	TIF Base Tax	TIF Excess Tax
2012	886,995	528,400	1.928159	17,141.24	10,148.82
2013	886,995	1,417,820	1.945117	18,403.00	26,182.28
2014	886,995	1,430,690	1.738422	15,454.48	24,871.42
2015	886,995	1,718,720	1.703678	15,147.39	29,294.90
2016	886,995	1,718,720	1.599457	14,192.42	27,438.62
2017	886,995	1,718,720	1.623229	14,430.42	27,898.76
2018	886,995	1,718,720	1.623745	14,436.01	27,997.64
2019	886,995	1,718,720	1.666354	14,813.80	28,639.96
2020	886,995	2,782,810	1.669509	14,841.85	46,125.36
Total				136,809.61	248,478.78

Current Year	Base Value	Excess Value
Residential	0	0
Commercial	0	0
Industrial	886,995	2,782,810
Other	0	0

Additional  $\$19,431.17 \times 99\% =$   
 $\$19,256.86$

Anticipation Bond =  $\$520,000$   
 + Interest  
 + Any misc. fees  
 = 15 year TIF Bond  
 @ anticipated 1.75% rate  
 = Annual Payment

Annual Revenue =  $\$100,656.21$   
 - TIF Bond payment  
 = Annual \$ available to retire bond loan





**SOURCES AND USES OF FUNDS**

CITY OF DAVID, NEBRASKA  
GENERAL OBLIGATION VARIOUS PURPOSE BONDS, SERIES 2014  
Cash Defeasance as of 8/15/2021  
Assumes Non-Rated, BQ, 2024 Final Maturity  
[ Preliminary -- for discussion only ]

Dated Date            08/01/2021  
Delivery Date        08/01/2021

**Sources:**

<hr/>	
Other Sources of Funds:	
Cash Defeasance	196,531.11
	<hr/>
	196,531.11
	<hr/>

**Uses:**

<hr/>	
Refunding Escrow Deposits:	
Cash Deposit	196,531.11
	<hr/>
	196,531.11
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**SUMMARY OF BONDS REFUNDED**

CITY OF DAVID, NEBRASKA  
 GENERAL OBLIGATION VARIOUS PURPOSE BONDS, SERIES 2014  
 Cash Defeasance as of 8/15/2021  
 Assumes Non-Rated, BQ, 2024 Final Maturity  
 [ Preliminary -- for discussion only ]

Bond	Maturity Date	Interest Rate	Par Amount	Call Date	Call Price
Series 2014 GOVP Bonds, 2024:					
TERM22	08/15/2022	2.400%	65,000.00	08/01/2021	100.000
TERM24	08/15/2023	2.800%	65,000.00	08/01/2021	100.000
	08/15/2024	2.800%	65,000.00	08/01/2021	100.000
			195,000.00		



**ESCROW REQUIREMENTS**

**CITY OF DAVID, NEBRASKA**  
**GENERAL OBLIGATION VARIOUS PURPOSE BONDS, SERIES 2014**  
Cash Defeasance as of 8/15/2021  
Assumes Non-Rated, BQ, 2024 Final Maturity  
[ Preliminary -- for discussion only ]

Dated Date            06/01/2021  
Delivery Date        06/01/2021

<b>Period Ending</b>	<b>Interest</b>	<b>Principal Redeemed</b>	<b>Total</b>
06/01/2021	1,531.11	195,000.00	196,531.11
	1,531.11	195,000.00	196,531.11



**PRIOR BOND DEBT SERVICE**  
 CITY OF DAVID, NEBRASKA  
 GENERAL OBLIGATION VARIOUS PURPOSE BONDS, SERIES 2014  
 Cash Defeasance as of 8/15/2021  
 Assumes Non-Rated, BQ, 2024 Final Maturity  
 [ Preliminary -- for discussion only ]

Period Ending	Principal	Coupon	Interest	Debt Service	Annual Debt Service
08/15/2021			2,600	2,600	
02/15/2022			2,600	2,600	
08/01/2022					5,200
08/15/2022	65,000	2.400%	2,600	67,600	
02/15/2023			1,820	1,820	
08/01/2023					69,420
08/15/2023	65,000	2.800%	1,820	66,820	
02/15/2024			910	910	
08/01/2024					67,730
08/15/2024	65,000	2.800%	910	65,910	
08/01/2025					65,910
	195,000		13,260	208,260	208,260



**SUMMARY OF UNREFUNDED BONDS**

CITY OF DAVID, NEBRASKA  
GENERAL OBLIGATION VARIOUS PURPOSE BONDS, SERIES 2014  
Cash Defeasance as of 8/15/2021  
Assumes Non-Rated, BQ, 2024 Final Maturity  
[ Preliminary -- for discussion only ]

Bond	Maturity Date	Interest Rate	Par Amount
Series 2014 GOVP Bonds, 2024: TERM22	08/15/2021	2.400%	60,000.00
			60,000.00



**UNREFUNDED BOND DEBT SERVICE**

CITY OF DAVID, NEBRASKA  
 GENERAL OBLIGATION VARIOUS PURPOSE BONDS, SERIES 2014  
 Cash Defeasance as of 8/15/2021  
 Assumes Non-Rated, BQ, 2024 Final Maturity  
 [ Preliminary -- for discussion only ]

Period Ending	Principal	Coupon	Interest	Debt Service	Annual Debt Service
08/15/2021 08/01/2022	60,000	2.400%	720	60,720	60,720
	60,000		720	60,720	60,720



One and Six Year Plan Summary

City/Village: David City  
 Year: 2021

Plan Year	Project No.	Location	Description	Estimated Cost
One	M-238-134	Oak Street from "C" St. to "D" St.	Exist. asphalt street to 27' wide 6" concrete street.	\$ 97,000.00
One	M-238-139	11th St. from Kansas St. to Cemetery	Exist. gravel street to 27' wide 6" concrete street (NIC bridge)	\$ 240,000.00
One	M-238-145	"A" St. culvert-bridge structure near the East Corporate Limits	Existing bituminous street with asphalt overlay	\$ 117,000.00
One	M-238-146	"O" St. from 4th St. to 12th St.	Exist. asphalt street to 27' wide 6" concrete street. See 6/19 Estimate	\$ 1,164,000.00
One	M-238-154	"E" St. from 12th St. to 14th St.	Existing asphalt street to 27' wide 6" concrete street	\$ 214,000.00
One	M-238-163	"B" St. from 3rd St. to 4th St.	Existing asphalt street to 27' wide 6" concrete street	\$ 82,000.00
One	M-238-171	"M" Street from 10th to 11th Street	Existing asphalt street to 28' wide 6" concrete street	\$ 62,000.00
One	M-238-172	"I" Street from 10th to 11th Street	Existing asphalt street to 28' wide 6" concrete street	\$ 84,000.00
Six	M-238-122	"H" St. from BNRR to County Road M	Existing gravel street to 27' wide 6" concrete street	\$ 378,000.00
Six	M-238-125	5th St. from Kansas St. to Park Trail	Existing gravel street to 27' wide 6" concrete street	\$ 148,000.00
Six	M-238-126	10th St. from Kansas St. to Iowa St.	Existing gravel road to 27' wide 6" concrete street	\$ 199,000.00
Six	M-238-129	"K" St. from 7th St. to 8th St.	Existing asphalt street to 28' wide 6" concrete street	\$ 80,000.00
Six	M-238-137	"B" St. from 9th St. to 10th St.	Existing asphalt street to 27' wide 6" concrete street	\$ 80,000.00
Six	M-238-138	"H" St. from 3rd St. to BNRR	Existing asphalt road to 27' wide 8" concrete street	\$ 80,000.00
Six	M-238-148	11th St. from "D" St. to "H" St.	Existing asphalt street to 32' wide 8" concrete street	\$ 1,459,000.00
Six	M-238-149	"A" St. from BNRR to County Road "M"	Existing asphalt street to 27' wide 8" concrete street	\$ 573,000.00
Six	M-238-151	11th St. from "H" St. to "A" St.	Existing asphalt street to 32' wide 8" concrete street	\$ 1,444,000.00
Six	M-238-157	"J" St. from 6th St. to 9th St.	Existing asphalt street to 27' wide 6" concrete street	\$ 377,000.00
Six	M-238-167	"M" Road from "A" St. to "C" St.	Existing asphalt street to 27' wide 6" concrete street	\$ 189,000.00
Six	M-238-168	"G" St. from 3rd St. to 4th St.	Existing asphalt street to 24' wide 6" concrete street	\$ 76,000.00
Six	M-238-169	"C" St. from 10th St. to 10th St.	Existing asphalt street to 24' wide 6" concrete street	\$ 121,000.00
Six	M-238-170	12th St. from "C" St. to "D" St.	Existing asphalt street to 24' wide 6" concrete street	\$ 93,000.00
Six	M-238-173	Kansas Street from 4th to 11th Street	Existing asphalt street to 28' wide 6" concrete street	\$ 816,000.00
Total				\$ 8,173,000.00

Council President Tom Kobus stated that the next item on the agenda was consideration/discussion of funding options to pave "O" Street.

Council President Kobus said, "I have a few comments about this. I don't know if we really need to consider this at this time with all that we have going on around the city. We need to put more camping spots in and we need to do a few more things. I'm one hundred percent for this if Frontier Coop wants to help finance it because ninety-five percent of this road is going to be their traffic and it is a residential district road right now, right? I don't know if concrete is going to get any cheaper or not down the line."

Council member Pat Meysenburg said, "My concern is when I came on board with the City Council and we looked at this there was a one point eight million dollar quote that they gave us and now they're talking one point four million. How can we do it cheaper now than we could four years ago?"

City Administrator Clayton Keller said, "I think that a lot of numbers were thrown around over the last few years. Just in the last year and a half since I've been here, I've heard anywhere from one point two to two point four. So, why there's been a bunch of numbers thrown around, I don't know. This is the estimate that Olsson is presenting us right now - one point one six million dollars for the project to go from 5<sup>th</sup> Street all the way to 12<sup>th</sup> Street on "O" Street with 8" thick concrete and it includes curb, gutter, storm sewer, and I believe it includes sidewalks. Dave Ziska, when he put this together, said that he was trying to estimate high, which is why when we put this together for you tonight, we estimated even higher at one point eight million, because that number was most commonly thrown about. But that is a great idea to approach Frontier Coop to see if they would be willing to help us. This is the time for us to talk about this. This is a discussion."

Special Projects Coordinator Dana Trowbridge said, "I don't think that there's anybody in the room this evening that would argue that "O" Street is one of the worst streets in town as far as condition and certainly needs some attention. I'm a bit confused, like Councilman Meysenburg, with hearing the one point eight million estimate in the last several years as to what it might take and then we're talking about a one point one and a one point two as the engineer's new estimate and, I believe, that it's a different engineer that we had the first time around when this was estimated by Olsson. So, it's somewhere between one point two and one point eight million dollars. The question that I have is are we building a super highway for eighty to a hundred thousand pound loads or are we building a residential street with the dollars that we propose spending for this? I'm also confused as to why we put sidewalks into this estimate because sidewalks, normally, are not included in street projects. The cost of a sidewalk today is twenty-four dollars per running foot in David City, Nebraska. We propose to ask the residents along "O" Street for a twenty-five dollar per running foot paving assessment to pay for the curb and gutter. One dollar doesn't buy a lot of curb and gutter, so we might have to revisit the number that we're going to ask the people that live along the street on a running foot basis. It needs to be done. We need to figure out – is it a residential street or is it a commercial street? Is it a short cut across David City to the elevator to put it in plain English and who is willing to pay the difference between residential costs and commercial costs? I don't know. Maybe the elevator would like to participate with us. We could ask."

Council President Tom Kobus said, "I think that would be a good option, if they would pay the difference between the 6" concrete and the 8" concrete. That might be a thing to consider, that they would consider."

Council member Bruce Meysenburg said, "If we're going to do anything, when you're going to put in a 6" street in residential, we've found that you can't make it a no truck route



because we don't have the authority to do it. Number one, you don't have the policing to do it, the Sheriff is not going to do it because he doesn't have the weigh scales or anything. So, you just as well make it 8" and make it truck ready anyway. In the gist of things that's probably the best way to do it, as far as I'm concerned."

Council President Tom Kobus said, "There are ways to get around that. A lot of towns don't have the scales and that type of thing. If the police stop the semis and they are loaded and if they're only rated for a certain pound load, they can send them to a scale and that takes care of that. There's a scale uptown; there's a scale at Yanka. I can see what you're saying."

Council member Jessica Miller said, "So, how are you going to make sure that they get weighed? Wouldn't you have to escort them?"

Sheriff Tom Dion said, "I do not have the authority to do that. We would have to call DOT and have them come and do something. They could do the weigh-ins. I just don't have the authority to do that. My guys don't have the training to do that."

Council President Tom Kobus said, "Yea. I understand."

Council member Jessica Miller said, "I think the best option would be to go with the 8".

City Administrator Clayton Keller said, "The biggest question surrounding "O" Street is how do we pay for it? We have Cody here tonight to answer any questions that you guys have on how we can pay for this. If you want to discuss what we want "O" Street to look like, I can bring Dave Ziska back out about that. This is what we told him to give us when he did the 1-and-6 Year Street Plan a couple of weeks ago. But if you want to see something different, I can get him back out here and we can have that conversation. You don't have to make a decision on this tonight. What you can do is ask questions and Cody is here because we've come up with a couple of ideas on how we could pay for "O" Street."

Special Projects Coordinator Dana Trowbridge said, "Maybe we should have a discussion about the agenda item which is how do we pay for it. We haven't had that discussion yet. I think we have sufficient reserves to put toward this project. We have highway allocation funds that are unspoken for moving forward, and I think the norm is to give half to a project similar to this, am I correct? That is about \$160,000 a year, somewhere in there. We have some COVID money coming from the federal government that I believe is tagged for infrastructure."

City Administrator Clayton Keller said, "Not for streets."

Special Projects Coordinator Dana Trowbridge said, "Ok. We've got other places that we can use that."

City Administrator Clayton Keller said, "Those funds can only be used for water, sewer and broadband."

Special Projects Coordinator Dana Trowbridge said, "I think we need to have that discussion. Can we afford this? Can we pay for it and how do we pay for it?"

Council member Pat Meysenburg said, "I agree with Tom. I think we have too many projects going on at this time with the water plant project and the wastewater project. Those are two big projects that we have going at this time that need to be completed before we worry about "O" Street."

Special Projects Coordinator Dana Trowbridge said, "We've got some hills to climb but we've also got some good things going on, Pat. From some TIF monies coming in, we have the ability to do a workforce housing projects in this community which will probably open a lot of eyes as to what we can do as a Community Redevelopment Authority. We can do some really fun things."

Council member Jessica Miller said, "Cody, what are our options?"

Cody Wickham from DA Davidson said, "So far my discussions with Clayton and Tami on this it sounds like you do have some different options at your disposal. Kind of the traditional way of doing it would be the notes that we're going to be taking out next week where you would create a Street Improvement District and assessments can be made on the benefitting owners that are abutting the street improvements and then after interim financing you would switch to long-term bonds. What else has been discussed is your electric fund has some monies that are built up and, like anybody right now, they aren't earning much in interest so one of the other options that you could do is inter-fund borrow from your electric utility fund and use that to pay for the improvements and the City could set up a repayment plan from your general fund to your electric fund and that could be a better use of those proceeds. The reimbursement Resolution that is actually the next item and is something that serves as kind of a protection in place. If you go that route and borrow from the electric fund, that way, for example, down the line it's determined that the electric has its own projects that it needs to tackle, you can go back and go ahead and issue long-term bonds and reimburse yourselves from the proceeds that were expended. So, the reimbursement Resolution is just a cover-your-tail and allow you more flexibility should you decide to use bonds. Really, we haven't talked about doing bonds for this yet but you have options, I guess, is the best way to put it."

Council member Bruce Meysenburg said, "Well, I guess my feeling on the whole thing is that this road has been in bad shape for forty years. Nothing has ever been done to it and we just keep shoving it ahead and shoving it ahead. Sooner or later, we're going to have to bite the bullet. There's always going to be projects but it's going to have to get done sometime so, I guess, pick your battle – when do you want to do it."

Council member Jessica Miller said, "I'm kind of looking at it as doing "O" Street and doing it to code, with the sidewalks for residential, wouldn't that push us ahead for more building out that way and creating more residential?"

Special Projects Coordinator Dana Trowbridge said, "That's where it's going to happen anyway, correct."

Council member Jessica Miller said, "So, it needs to get done."

Special Projects Coordinator Dana Trowbridge said, "The question was in what form. Are we doing eight to ten inches of reinforced or are we doing a six-inch road?"

Council member Jessica Miller said, "A better option, I feel, would be the eight inch because there's no way that you're going to stop trucks from going on that road."

City Administrator Clayton Keller said, "We have enough to cover the cost of this project."

Council member Jessica Miller said, "With some reserves, though, in case there's a tornado and we need that money?"

City Administrator Clayton Keller said, "Yes. I'm very protective of that, yes. What would happen and this is the idea that we've come up with and I think it's the best idea-the street department borrows money from the electric department and we do it in the form of a bond. The way that we pay for that bond is that we use part of our highway allocation money that the state gives us each year. We've been doing that, in a sense, for another project and that project is finally paid off. Now we have that portion of highway allocation funds that we can either put right into the street department for maintenance of streets or we can put it toward another project. We might as well put it toward another project since that's what we've been doing. For this year's budget year, I actually did go ahead and set aside that portion of those funds to start a kitty, so to speak, for the "O" Street project, so we've already got a little bit built up."

City Clerk Comte said, "Clayton, didn't Dave say that this wouldn't be a 2021 project? By the time it's engineered it would be at least 2022."

City Administrator Clayton Keller said, "By the time we get the funding and get it going it would be at least next summer, at the earliest. Are there any questions of how that would work? So, if I understand correctly, Cody, this Resolution that's the next item is just, essentially, to open up that option for us as a statement of intent?"

Cody Wickham from DA Davidson said, "That's correct. I just went through a similar transaction with the City of Wahoo with their Chestnut Street project where they had the reimbursement resolution in place, not knowing if they were even going to need it, but they did exactly what you're doing, they borrowed from their electric utility fund and was actually being paid back at a rate of 1.5% and then it was determined that we could actually do slightly better with bonds so they did actually wind up rolling that loan into their general obligation bonds and then they paid the district back. Right now, your electric fund is earning interest at .75%. Even with as low as bond rates are right now, you're not going to do better than that. The cheapest cost of capital is what you are looking for here so that's a good option in front of you. So this, again, is just to cover your tail in case something changes down the line and you need to replenish those coffers."

Council President Tom Kobus said, "Any other questions? If not, we'll move to item number seventeen."

Council member Bruce Meysenburg made a motion to pass and adopt Resolution No. 6-2021 to allow the City to reimburse itself in an amount of NOT TO EXCEED \$1,800,000 from the sale of Bond Anticipation Notes, General Obligation Bonds, or Highway Allocation Pledge Fund Bonds, as related to the O Street Improvement Project. Council Member Pat Meysenburg seconded the motion. The motion carried.

Tom Kobus: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Jessica Miller: Yea, John Vandenberg: Yea  
Yea: 5, Nay: 0

**RESOLUTION NO. 6-2021**

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

Section 1. The Mayor and Council hereby find and determine that it is necessary and appropriate to declare an official intent to issue tax-exempt bond anticipation notes or bonds by the City and, in addition, the City's reasonable expectations to reimburse certain expenditures with the proceeds of such notes or bonds as proposed to be issued by the City in connection with the construction of paving, curbs, gutters, sidewalks and other related appurtenant improvements for O Street, now being or to be constructed in and for the City of David City, Nebraska; together with engineering, legal, financing and other related project costs.

Section 2. This resolution shall stand as a statement of the official intent of the City under Regulation Section 1.150-2 and for such purpose the following information is hereby given:

- (a) A general functional description of the project for which expenditures may be made and reimbursement from tax-exempt bond anticipation notes or bond proceeds provided is the construction of paving, curbs, gutters, sidewalks and other related appurtenant improvements for O Street, now being or to be constructed in the City of David City, Nebraska, all as set out in Section 1 herein.
- (b) The principal amount of notes or bonds expected to be issued by the City for that portion of improvements pertaining to this reimbursement resolution is estimated to be an amount not to exceed \$1,800,000.

PASSED AND APPROVED this 21<sup>st</sup> day of April, 2021.

ATTEST:

\_\_\_\_\_  
Council President

\_\_\_\_\_  
City Clerk Tami L. Comte

[SEAL]

City Administrator Clayton Keller said, "We've had Hartford for our long-term disability and life insurance. MetLife came to us with an identical plan, which is almost never heard of, with the same benefits at a much lower price. It makes sense to us to switch, but this is a Council decision."

Council member Jessica Miller said, "Did you look into those hours?"

City Administrator Clayton Keller said, "I tried looking through it and I couldn't find anything. Tami, she's referring to somewhere in there it talks about employees working thirty hours versus forty hours. Are you familiar with that part of the proposal?"

City Clerk Tami Comte said, "No, but with Hartford the employees have to be full-time, so I just assumed that MetLife was the same."

Kerry Butzke of Butzke Insurance spoke via Zoom and said, "I do the AFLAC for the City and I've done that for about five years and for the service on that side and I'm the one that recommended MetLife. So, you guys are talking about the hours worked and that's actually up to the city what you guys consider full-time. Anything above thirty is usually considered full-time by a majority of the companies. Did that answer your question? So, whether it's thirty or thirty-five, that's up to you guys as the city."

Council member Jessica Miller made a motion to approve changing the employees long term disability and life insurance to MetLife with the full-time cutoff to be 35 hours per week. Council Member Pat Meysenburg seconded the motion. The motion carried.

Tom Kobus: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Jessica Miller: Yea, John Vandenberg: Yea  
Yea: 5, Nay: 0



**CITY OF DAVID CITY**

**LIFE SUMMARY**

Effective: 6/1/2021

Proposal Type	PROPOSED	CURRENT	
Carrier	METLIFE	HARTFORD	
Note			
Plan Name	Life & AD&D \$15K	Life & AD&D \$15K	
Option Type	Non-Contributory	Non-Contributory	
Schedule			
Class 1	All Full-Time Employees	All Full-Time Employees	
Class 2	N/A	N/A	
Class 3	N/A	N/A	
Maximum Amount	\$15,000	\$15,000	
Guarantee Issue Amount	\$15,000	\$15,000	
Benefit Reduction Sch.	65% @ Age 65 50% @ Age 70	65% @ Age 65 50% @ Age 70	
Accelerated Benefit	N/A	N/A	
Participation	100% of Eligible^	100% of Eligible^	
Rate Guarantee	2 Years	2 Years	
<b>Dep Life Schedule</b>			
Spouse	N/A	N/A	
Spouse Guarantee Issue	N/A	N/A	
Child Birth - 14 Days	N/A	N/A	
14 Days - 6 Months	N/A	N/A	
6 Months - Max Age	N/A	N/A	
Life Rate Per \$1,000	\$0.1900	\$0.3440	
AD&D Rate Per \$1,000	\$0.0280	\$0.0300	
Life / AD&D Volume	\$354,750.00	\$360,000.00	
Monthly Employee Cost	\$77.34	\$134.64	
# Dependents	0	0	
Dependent Rate	\$0.000	\$0.000	
Monthly Dependent Cost	\$0.00	\$0.00	
<b>Combined Monthly Total</b>	<b>\$77.34</b>	<b>\$134.64</b>	

Rates and benefits are illustrative only and represent only a brief summary of the plan highlights. Final rates will be determined from effective date, actual enrollment and/or health conditions.

\*Please refer to the benefit summary for more specific details regarding this benefit.

^Please refer to the carrier proposal and/or benefit summary for more specific details.

Prepared by: Butzke Insurance, Inc.

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 LIFE Page 1



**CITY OF DAVID CITY**

**LTD SUMMARY**

Effective: 6/1/2021

Proposal Type	PROPOSED	PROPOSED		
Carrier	METLIFE	HARTFORD		
Note				
Plan Name	LTD 90 Days	LTD 90 Days		
Option Type	Contributory	Contributory		
AM Best Rating	A+	A+		
<b>Schedule</b>				
Class 1	All Full-Time Employees	All Full-Time Employees		
Class 2	N/A	N/A		
Class 3	N/A	N/A		
Percent of Benefit	60%	60%		
Elimination Period	90 Days	90 Days		
Benefit Payment Period	SSNRA	SSNRA		
Own Occupation Period	2 Years	2 Years		
Maximum Monthly Benefit	\$5,000	\$5,000		
Pre-Existing Limits	3/12	3/12		
Rate Guarantee	2 Years	2 Years		
Rate Per \$100	\$0.2560	\$0.6400		
Payroll	\$59,010.00	\$74,203.23		
Monthly Employee Cost	\$151.07	\$474.90		
# Dependents	0	0		
Dependent Rate	\$0.000	\$0.000		
Monthly Dependent Cost	\$0.00	\$0.00		
<b>Combined Monthly Total</b>	<b>\$151.07</b>	<b>\$474.90</b>		

Rates and benefits are illustrative only and represent only a brief summary of the plan highlights. Final rates will be determined from effective date, actual enrollment and/or health conditions.

\*Please refer to the benefit summary for more specific details regarding this benefit.  
 ^Please refer to the carrier proposal and/or benefit summary for more specific details.

Prepared by: Butzke Insurance, Inc.

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 LTD Page 1

City Administrator Clayton Keller stated that the Nebraska Recycling Council asked if the City would be willing to approve allowing them to reassign the City's recycling bailer to another community. Without the bailer the recycling program is completely finished and asked if the Council would rather discuss this item at the next meeting.

Council member Jessica Miller asked if City Administrator Keller wanted the item tabled and City Administrator Keller stated that he wanted them to kill the item so it could be reworded on a future agenda item.

Council member Jessica Miller made a motion to approve allowing the Nebraska Recycling Council to reassign the City's recycling bailer to another community seconded the motion. The motion was unseconded and therefore died for lack of a second.

City Administrator Clayton Keller said, "Earlier this month, the Butler County Board of Supervisors joined the Southeast Nebraska Development District, or SENDD for short. The City is now able to join because the County is a member. I would like the Council to consider joining. They have a ton of development options for us, anything from community to housing to economic development, which we are in dire need of, and even nuisance abatement. Tom Bliss, the Executive Director of SENDD, is available on Zoom right now if you have any questions."





Council member Bruce Meysenburg made a motion to approve the City of David City joining the Southeast Nebraska Development District. Council Member Pat Meysenburg seconded the motion. Council Member Pat Meysenburg seconded the motion. The motion carried.




Tom Kobus: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Jessica Miller: Yea, John Vandenberg: Yea  
 Yea: 5, Nay: 0

## BUTLER COUNTY - WHY JOIN SENDD?

Bellwood | Rising City | David City | Brainard | Abie

**About Southeast Nebraska Development District:** SENDD is in the business of "place-making". We aim to build community, develop our region and member communities, and serve Southeast Nebraska's needs.

 <p><b>COMMUNITY DEVELOPMENT SERVICES</b></p> <ul style="list-style-type: none"> <li>• Assistance with CDBG applications</li> <li>• Household Income Surveys</li> <li>• Community Needs Assessment</li> <li>• Strategic Planning</li> <li>• Project Specific Environmental Review</li> <li>• Workforce Availability Studies</li> </ul>	 <p><b>ECONOMIC DEVELOPMENT SERVICES</b></p> <ul style="list-style-type: none"> <li>• Revolving Loan Fund</li> <li>• USDA 502/504 Packaging</li> <li>• GIS Mapping/Location Intelligence</li> <li>• Economic Development &amp; Leadership Certified Community</li> </ul>	 <p><b>HOUSING SERVICES</b></p> <ul style="list-style-type: none"> <li>• Owner Occupied Rehab</li> <li>• Purchase Rehab, and Resale (PRR)</li> <li>• Nuisance Abatement</li> <li>• Down Payment Assistance</li> <li>• Housing Needs Plans</li> <li>• Housing Conditions Studies</li> <li>• Lead-Based Paint Inspections</li> </ul>	 <p><b>DISASTER RECOVERY</b></p> <ul style="list-style-type: none"> <li>• Business Resiliency Workshops</li> <li>• Flood and Floodplain Management</li> <li>• Connections to Funding Streams</li> </ul>
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<p><b>Pop. 1-1000</b>                  Ave. Membership Dues: \$377                  Ave. Housing Dues: \$90</p> 	<p><b>Pop. 1001-2000</b>                  Ave. Membership Dues: \$1583                  Ave. Housing Dues: \$449</p> 	<p><b>Pop. 2001-3500</b>                  Ave. Membership Dues: \$1968                  Ave. Housing Dues: \$668</p> 
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\*\*Average Membership and Housing Dues are based on 2020 figures. Return on Investment numbers are based on a 10 year history\*\*

Council member Bruce Meysenburg raised some concerns about the City not trying to work with Holoubek's prior to taking legal action.

Planning Commission member Keith Marvin said, "As a member of the Planning Commission, one of the things when this came to our attention was, somehow or another, it got filed. I don't know how and I don't know what, but it got filed prior to us even seeing it. So,



under State law there's two different ways, Jim, please chime in, if we don't approve a plat and the Council doesn't approve a plat, as we're allowed to by law, the Register of Deeds has a special provision in Statute that they have to accept any filing that comes to them, regardless if it's legal or not. That's kind of the issue. The other main issue that we have is there are streets that are showing out there but they are easement streets. They are not dedicated right-of-way. They are showing property lines down the center of all of the easements and that's not how it's done in town. That's how they do it out in the rural areas, two or three miles out of town. Those are some of the issues that were brought up that those things need to be fixed as well as how are we going to get water, sewer, etc. to them. Plus, we have the northwest drainage easement that runs on the west side of this property and how are we going to protect that easement for our benefit as well?"

Council member Bruce Meysenburg said, "So, who drew up the plat?"

Planning Commission member Keith Marvin said, "They hired a surveyor to do it and, the way that I understand it, it got filed with the State Surveyor, who then turned around and gave it to the County Surveyor, who gave it to the Register of Deeds and that's how it got filed."

Council member Bruce Meysenburg said, "They'd had no discussion with the city at that point?"

Planning Commission member Keith Marvin said, "Nope. We've had nothing come through the Planning Commission and I don't remember anything on the City Council agenda."

Council member Tom Kobus made a motion to approve the vacation of plat for Mark and Willow Holoubek and authorize Mayor Zavodny to sign. Council Member Pat Meysenburg seconded the motion. The motion carried.

Tom Kobus: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Jessica Miller: Yea, John Vandenberg: Yea  
Yea: 5, Nay: 0

**When Recorded, Return To:**  
Mark Holoubek  
3531 M Road  
David City, NE 68632

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## VACATION OF PLAT

THIS VACATION OF PLAT is made this \_\_\_ day of March, 2021, by Mark Holoubek and Willow Holoubek, husband and wife (collectively, "Owners").

### RECITALS:

WHEREAS, Owners are the sole owners in fee simple of the real property legally described as follows:

A tract of land located in Lots 6 and 7, David City Land and Lot Company's Suburban Lots, located in the SW1/4 of the SE1/4 of Section 18 T15N R3E of the 6th P.M., Butler County, Nebraska, described as follows:

Beginning at a Point on the south line of said Lot 7, said Point being 130.74 feet east of the SW corner of said Lot 7, and assuming the west line of said Lot 7 to have a bearing of N 0° 23' 53" E; thence N 0° 32' 08" E, 449.25 feet; thence N 89° 35' 57" W, 131.54 feet, to a point on the west line of said Lot 7; thence N 0° 23' 53" E, 788.63 feet, to the NW corner of said Lot 7; thence N 89° 43' 00" E, 638.12 feet, to the NE corner of said Lot 6; thence S 0° 20' 16" W, 796.95 feet, on the east line of said Lot 6, to a point on the north line of Sypal East Addition to David City; thence N 89° 30' 38" W, 447.27 feet, to the NW corner of said Sypal East Addition; thence S 0° 33' 20" W, 449.37 feet, to the SW corner of said Sypal East Addition; thence N 89° 27' 18" W, 60.00 feet, to the Point Of Beginning, containing 12.24 acres, more or less (the "Property").

WHEREAS, on or about December 11, 2020, that certain plat of the Property dated September 22, 2020, was erroneously filed by the Butler County Surveyor, through no fault of the Owners, and recorded as Instrument No. 20-01963, in Book 20, Page 01963, of the Register of Deeds of Butler County, Nebraska (the "Plat").

WHEREAS, Owners voluntarily, and in no way as an admission of fault or liability, take the corrective to step to vacate the erroneously filed Plat and offer this Vacation of Plat pursuant to Neb. Rev. Stat. § 18-3308 for the approval of the City Council of David City, Nebraska.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Owners state as follows:

1. Owners declare that the Plat erroneously filed by the Butler County Surveyor and accepted by the Butler County Register of Deeds is void ab initio and is vacated. Pursuant to Neb. Rev. Stat. § 18-3308, the execution and recording of this written instrument shall operate to destroy the force and effect of the Plat, and any easements granted therein, and to divest all public rights in the streets, alleys, commons, and public grounds laid out or described in the Plat;

2. Owners hereby represent and warrant that: (i) Owners are the sole owners in fee simple of the Property; and (ii) Owners have full power and authority to execute and deliver this Vacation of Plat;

3. This Vacation of Plat shall run with the land and shall be binding upon Owners, their heirs, personal representatives, successors, and assigns.

[Signature page follows]

IN WITNESS WHEREOF, Owners have executed this Vacation of Plat as of the date first above written.

\_\_\_\_\_  
Mark Holoubek

\_\_\_\_\_  
Willow Holoubek

STATE OF NEBRASKA            )  
  ) ss.  
COUNTY OF BUTLER            )

The foregoing instrument was acknowledged before me on March \_\_\_\_, 2021 by Mark Holoubek and Willow Holoubek, husband and wife, Owners.

\_\_\_\_\_  
Notary Public

[City Council approval follows]

APPROVAL OF CITY COUNCIL OF DAVID CITY, NEBRASKA

IN WITNESS WHEREOF, this Vacation of Plat was approved by the City Council of David City, Nebraska on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ in accordance with the State Statutes of Nebraska.

\_\_\_\_\_  
Council President

ATTEST:

\_\_\_\_\_  
City Clerk

(City of David City SEAL)

Council President Tom Kobus stated that the next item on the agenda was consideration of a proposal with Granger Architecture to provide City Office layout designs for the building at 490 "E" Street.

City Administrator Clayton Keller said, "I think maybe we have this and the next item backwards. This item is to hire an architect to help us with the remodel of the U.S. Bank building, should you decide to approve the purchase agreement, which is the next agenda item. This architect will help us put together a plan that we could then go out and bid when we need to bid for contractors to do the work. Stephen is on Zoom if you have any questions for him. He's the architect that we are discussing right now."

Stephen Granger of Granger Architecture said, "This is Stephen Granger. The proposal that I have out there is for giving the City a couple options for some layouts to give them an idea of what they want to do and then from that layout I will be able to complete a floor plan with notes that will get sent to the Fire Marshal for their review and approval. It won't have any mechanical or electrical items designed into that layout. That's going to be dependent on a local HVAC contractor or electrical contractor through that process. The document that I will provide will let the contractor be able to bid walls, halls and doors and provide an estimate of cost for that. The HVAC and electrical would be separate items that someone else would have to take care of."

Council President Tom Kobus said, "I thought we were ok with the Fire Marshal on that building."

City Administrator Clayton Keller said, "We still need to install fire alarm systems and a fire door and a fire wall in a couple of locations."

Council member Jessica Miller said, "You have to have a stamp of approval from a licensed architect to do any remodeling to make sure that it's up to code, through the Fire Marshal's office. The mechanical, the HVAC and all of that, do you know where that stands?"

City Administrator Clayton Keller said, "All of the duct work is just fine. We won't have any issues there."

Council member Jessica Miller said, "You won't need any updates of the systems, the systems can handle the load of the building, for capacity and everything? You don't have to update the services?"

City Administrator Clayton Keller said, "The boiler just needs maintenance as it normally would. The air conditioning systems, though, that sit on the roof tops will need some major work in the next few years, if not sooner."

Council member Jessica Miller said, "The only reason that I'm asking is because when you have something like this, sometimes the mechanical is already in this design with the licensed architect so I'm just curious exactly what's going to lead us to a couple more thousands of dollars?"

City Administrator Clayton Keller said, "I'm not sure."

Stephen Granger of Granger Architecture said, "I haven't been to the building yet so I don't know the condition it is in. Once we get there, we'll know a little bit more on what is in front of us and what needs to be modified to get it to safe condition and what my role is going to be is dealing with the health, safety and welfare of the facility to make sure that it accommodates everything appropriately. If, at some point, a mechanical or electrical engineer is required to be involved, that would be discussed with the City and to let them know that we have an issue with the HVAC unit that's not providing enough fresh air to the building, so either we work with a local mechanical contractor to accommodate the needs of the building or we can spend additional funds to have a mechanical engineer provide a full set of documents for the HVAC system. I'm speculating that would probably be, depending on what type of work, that could probably be between three to seven thousand dollars additional cost for those guys to do mechanical engineering."

Darci Betzen said, "But at least you would know what you would spend on the halls, walls and doors and how much more is needed to go into the..."

Council member Jessica Miller said, "I'm just asking because I know what I'm going through right now and I know what my cost is with the mechanical engineer, the structural engineer and my architect, compared to this price. So, I'm trying to see if it's comparable instead of having it all lumped in one right now or separated. Right now, this is his services and his fees for drawing up our plan."

Special Projects Coordinator Dana Trowbridge said, "Jessica, I think that what the City is looking for right now is some guidance as to work flow, people flow, how you can see this thing working. The architect can see things that the people who work in it don't see on a daily basis and can offer some suggestions. But I'm with you, we can't just open the checkbook and go wild with consultants and engineers and etc. We need to make this building work as effectively as we can at a modest cost."

Council member Jessica Miller said, "I totally understand that."

Keith Marvin said, "I've known Stephen for a long time and he's trying to offer a service to the City at the lowest possible cost and then see what he's got in front of him and then we can move forward, instead of saying it's going to cost you thirty thousand dollars up front and you get sticker shock. He'll come to you before he sees something that needs to be handled. Sometimes, like he said, they can be handled by a local contractor and not a mechanical engineer."

Council member Bruce Meysenburg said, "What did we figure out on the roof, then?"

City Administrator Clayton Keller said, "We did finally get the roofer out and it looked okay to him but he would like to see the inside. We weren't able to see the inside the day that he was here. Once the City has access, we'll be contacting the roofer to come and see if there are any leaks."

Council President Tom Kobus said, "Do we want to do the other item first before we do this one?"

City Administrator Clayton Keller said, "That would be fine."

Council member Kobus made a motion to advance to agenda item #23 Consideration of authorizing Mayor Zavodny to sign the Option Agreement to purchase the buildings at 490 "E" Street and 593 5<sup>th</sup> Street. Council member Pat Meysenburg seconded the motion. The motion carried. Tom Kobus: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Jessica Miller: Yea, John Vandenberg: Yea  
Yea: 5, Nay: 0

City Attorney Jim Egr said, "I reviewed all of the purchase agreements and the options and we made a couple of changes and everything looks fine. The mayor should be able to go ahead and sign that on behalf of the City."

Council member Bruce Meysenburg made a motion to authorize Mayor Zavodny to sign the option agreement to purchase the buildings at 490 "E" Street and 593 5<sup>th</sup> Street. Council Member Jessica Miller seconded the motion. The motion carried. Tom Kobus: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Jessica Miller: Yea, John Vandenberg: Yea  
Yea: 5, Nay: 0

### **OPTION AGREEMENT**

THIS OPTION AGREEMENT (this "**Agreement**") is entered into as of April 14, 2021 (the "**Effective Date**"), by and between U.S. BANK NATIONAL ASSOCIATION, a national banking association ("**Seller**"), and CITY OF DAVID CITY, a Nebraska municipality ("**Buyer**").

### **RECITALS**

A. Seller is the owner of certain real property (together with all buildings and improvements located thereon, if any, the "**Property**") located at 490 E Street and 593 5<sup>th</sup> Street, in Butler County, City of David City, Nebraska, which real property is legally described on Exhibit A.

B. Buyer desires to secure from Seller the option to purchase the Property.

C. Seller is willing to grant such option to Buyer, subject to and upon the terms and conditions of this Agreement.

ACCORDINGLY, Seller and Buyer hereby agree as follows:

1. Grant of Option. Seller hereby grants to Buyer an option (the "**Option**") to purchase the Property during the Option Term (as defined in Section 2), subject to and upon the terms and conditions of this Agreement. Included in the Property shall be Seller's interest in any leases between Seller and certain tenants existing as of the Closing Date (the "Lease"), which Buyer shall assume.

2. Option Term. The term of the Option (the "**Option Term**") shall commence on the Effective Date and shall continue until 5:00 p.m. local Minneapolis, Minnesota time on the thirtieth (30<sup>th</sup>) day after the Contingency Date, unless sooner terminated as provided in this Agreement. In the event the Option Term expires without Buyer having exercised the Option by closing on the purchase of the Property, then this Agreement shall automatically expire and terminate effective as of the date and time of such expiration, and the Earnest Money (as defined in Section 3.1.3) shall be disbursed to Seller.

3. Purchase Price. The "**Purchase Price**" for the Property shall be Three Hundred Thousand and No/100 Dollars (\$300,000.00), payable as follows:

3.1. Earnest Money.

3.1.1 Initial Deposit. Within five (5) days after the date of this Agreement, Buyer shall deposit an initial earnest money deposit in the amount of Nine Thousand and No/100 Dollars (\$9,000.00) (the "**Initial Deposit**") into escrow with First American Title Insurance Company, 121 S. 8<sup>th</sup> Street, Suite 1250, Minneapolis, Minnesota 55402 ("**Title Company**") by wire transfer of immediately available funds. If Buyer fails to timely deliver the Initial Deposit, this Agreement shall immediately terminate and be of no further force or effect (subject to Section 15). As used in this Agreement, the "**Earnest Money**" shall mean the Initial Deposit, plus all interest earned on the deposit. The Earnest Money shall be non-refundable, except as otherwise expressly provided in this Agreement, and will be credited against the Purchase Price at Closing (as defined in Section 4.1).

3.2. Balance of Purchase Price. Buyer will pay the balance of the Purchase Price pursuant to Section 6.

4. Due Diligence.

4.1. Entry; Inspections. Subject to the terms of this Section 4.1, Buyer and its officers, directors, employees, shareholders, members, partners, consultants, contractors and agents (collectively, the "**Buyer Parties**") shall have the right to enter the Property during the Executory Period (as defined in Section 9 below) and during normal business hours to inspect the same, perform surveys, environmental assessments, soil and other tests and investigations consistent with the purposes of this Agreement (collectively, the "**Reports**"); provided, however, no Buyer Parties may perform a "Phase II" or other follow-

up environmental inspection or any soil or other testing that involves any borings or other invasive testing of any kind without Seller's prior written consent, which may be withheld or conditioned in Seller's sole discretion. Buyer shall (a) give Seller reasonable advance notice prior to any entry to the Property, (b) comply with the terms of any leases affecting the Property in connection with any such entry, and (c) permit Seller to have a representative present during any such entry. Buyer shall restore any damage to the Property caused by such entry or inspection and shall indemnify and hold Seller harmless from all liabilities incurred by Seller and arising out of any such entry or inspection. At all times during the performance of any such entry or inspection and prior to entering the Property pursuant to this Section 4.1, Buyer shall obtain and keep in full force and effect a policy of commercial general liability insurance with an insurance company licensed to do business in the state of where the Property is located and having a rating of at least "A-VII" by A.M. Best Company with a combined single limit of not less than Two Million Dollars (\$2,000,000.00) on an occurrence basis for bodily or personal injury or death and Three Million Dollars (\$3,000,000.00) aggregate per location, with an "umbrella" policy insuring Ten Million Dollars (\$10,000,000.00) aggregate per location, insuring all activity and conduct of Buyer and the Buyer Parties during any such entry or inspection, including property damage, personal injury or death and contractual liability coverage. Seller shall be named an insured on such insurance policy, and Buyer shall provide proof of such insurance to Seller, in a form reasonably acceptable to Seller, prior to any such entry. Buyer's obligations under this Section 4.1 shall survive Closing or any termination of this Agreement.

4.2. Examination of Title. Within a reasonable time after the Effective Date, Seller shall deliver to Buyer (a) a commitment for an ALTA owner's policy of title insurance covering the Property (the "**Title Commitment**") issued by Title Company, and (b) a copy of any survey of the Property in Seller's possession (the "**Survey**"). Buyer may perform, at its discretion and at its sole cost and expense, a survey of the Property. The Title Commitment and the Survey, if any, (together with any such update thereof) shall sometimes be referred to in this Agreement as the "**Title Evidence**". Any matters reflected on the Title Evidence shall be "**Permitted Exceptions**"; provided, however, Seller shall be obligated to remove from the title or satisfy on or before Closing any monetary lien or encumbrance of a liquidated amount (such as mortgages, mechanics liens and judgments) arising from Seller's actions or activities.

4.3. Governmental Approvals. Buyer may seek such permits, licenses, zoning, variances, subdivision, entitlements and development rights desired by Buyer for the development or use of the Property (collectively, the "**Governmental Approvals**"). Seller will reasonably cooperate with Buyer in connection with the Governmental Approvals, including executing such documents as are reasonably necessary to permit Buyer to submit application materials in connection with the Governmental Approvals. Notwithstanding the foregoing, (a) the Governmental Approvals will not be effective and will not result in a change of zoning, or cause or create any liens or encumbrances against any portion of the Property, unless and until the Closing occurs, (b) the Governmental Approvals will not result in any liability or obligation whatsoever to Seller, and (c) Seller will not be obligated to incur any out-of-pocket expenses in connection with any of the Governmental Approvals.

4.4. Confidentiality. Unless and until the Closing occurs, Buyer agrees to not disclose the Title Evidence, the Reports, or the contents of any thereof, or any information



disclosed, discovered or determined in connection with Buyer's investigations of the Property (collectively, the "**Confidential Information**") to any person or entity other than (a) Buyer's attorneys, accountants, surveyors, architects, contractors or other business consultants assisting Buyer in this transaction, third parties as required under applicable law, and Buyer's potential investors and lenders, and then only to the extent the applicable party expressly agreed to abide by the terms of this Section 4.4, (b) in response to lawful process or subpoena or order of a court of competent jurisdiction, and (c) in any filings with governmental authorities required by reason of the transactions provided for herein. Buyer will take all necessary actions to ensure that any parties to whom it furnishes such Confidential Information keep the same confidential as provided in this Section 4.4. If this Agreement is terminated or the Closing does not occur for any reason, Buyer shall promptly deliver to Seller or destroy all copies of the Confidential Information (including any provided to any third parties by or on behalf of Buyer). Buyer's obligations under this Section 4.4 shall survive any termination of this Agreement.

5. Conditions Precedent.

5.1. Contingency Date. As used in this Agreement, the "**Contingency Date**" shall mean the earlier to occur of (a) the day Buyer gives the Preliminary Exercise Notice, and (b) first business day occurring thirty (30) days after the Effective Date.

5.2. Buyer's Conditions. Buyer's obligations under this Agreement are contingent upon the satisfaction (or waiver by Buyer) of the following conditions precedent:

5.2.1 General Contingency. On or before the Contingency Date, Buyer shall have determined that it is satisfied with its review and analysis of the Permitted Exceptions, the Reports and the results and matters disclosed by Buyer's inspection of the Property (including all physical aspects and conditions of the Property, including the repair and condition of the Improvements, the environmental condition, soils, access and utility services with respect to the Property).

5.2.2 Title. On or before the Contingency Date, Buyer shall have approved title to the Property, including the Permitted Exceptions.

5.2.3 Governmental Approvals. On or before the Contingency Date, Buyer shall have received or determined that it will receive the Governmental Approvals on a timely basis.

5.2.4 Seller's Representations. On the Closing Date, each of the representations and warranties of Seller in Section 7.2 shall be true and correct as if the same were made on the Closing Date.

5.2.5 Seller Default. On the Closing Date, Seller shall not be in default of any of its obligations under this Agreement.

If any conditions in this Section 5.2 have not been satisfied on or before the applicable date set forth in this Section 5.2 with respect to each condition, then Buyer may terminate this Agreement by notice to Seller on or before the applicable date (subject to Section 15), and Ten and No/100 Dollars (\$10.00) of the Initial Deposit shall be disbursed to Seller and

as part of the consideration for the Buyer's grant of the Option, and the balance of the Earnest Money shall be disbursed to Buyer. To the extent that any of the conditions in this Section 5.2 require the satisfaction of Buyer, such satisfaction shall be determined by Buyer in its sole and absolute discretion. The conditions in this Section 5.2 are specifically stated and for the sole benefit of Buyer. Buyer in its discretion may unilaterally waive (conditionally or absolutely) the fulfillment of any one or more of the conditions, or any part thereof, by notice to Seller. If Buyer fails to timely terminate this Agreement on or before the applicable date, then the applicable condition shall be deemed to be satisfied and waived by Buyer.

5.3. Seller's Conditions. Seller's obligations under this Agreement are contingent upon the satisfaction (or waiver by Seller) of the following conditions precedent:

5.3.1 Buyer's Representations. On the Closing Date, each of the representations and warranties of Buyer in Section 7.1 shall be true and correct as if the same were made on the Closing Date.

5.3.2 Buyer Default. On the Closing Date, Buyer shall not be in default of any of its obligations under this Agreement.

5.3.3 Preliminary Exercise Notice. On or before the Contingency Date, Buyer shall have delivered the Preliminary Exercise Notice in the form and manner set forth in Section 6.1.

If any conditions in this Section 5.3 have not been satisfied on or before the applicable date set forth in this Section 5.3 with respect to each condition, then Seller may terminate this Agreement by notice to Buyer on or before the applicable (subject to Section 15), and, subject to Section 5.2 the Earnest Money shall be disbursed to Seller. To the extent that any of the conditions in this Section 5.3 require the satisfaction of Seller, such satisfaction shall be determined by Seller in its sole and absolute discretion. The conditions in this Section 5.3 are specifically stated and for the sole benefit of Seller. Seller in its discretion may unilaterally waive (conditionally or absolutely) the fulfillment of any one or more of the conditions, or any part thereof, by notice to Buyer. If Seller fails to timely terminate this Agreement on or before the applicable date, then the applicable condition shall be deemed to be satisfied and waived by Seller.

6. Exercise of Option; Closing.

6.1 Preliminary Exercise Notice; Closing. On or before the Contingency Date, Buyer may give one (1) written notice (the "**Preliminary Exercise Notice**") to Seller that Buyer intends to exercise the Option. The Preliminary Exercise Notice shall specify a date during the Option Term (the "**Closing Date**") no sooner than ten (10) business days and no later than the expiration of the Option Term for the formal exercise of the Option in accordance with the terms hereof (the "**Closing**"). The Closing will occur through the deposit of documents, deliveries and funds into an escrow established with Title Company pursuant to Seller's and Buyer's respective closing instructions to Title Company, which instructions shall be consistent with the terms of this Agreement. Possession of the Property will be delivered to Buyer on the Closing Date, subject to the Permitted Exceptions.

6.2. Exercise Notice. Provided that Buyer has given the Preliminary Exercise Notice in accordance with Section 6.1, the Option may be exercised at any time on or before the Closing Date by Buyer (a) paying to Title Company the Purchase Price less the Earnest Money paid (such balance of the Purchase Price, the "**Exercise Payment**"), by wire transfer of immediately available funds, (b) giving Seller a written notice (the "**Exercise Notice**") of its election to do so, and (c) delivering to Title Company all of the instruments and other deliveries required pursuant to Section 6.4 with no condition to such delivery to Title Company except those expressly specified in this Agreement. Buyer's failure to satisfy conditions (a), (b) and (c) set forth in the preceding sentence shall render Buyer's attempted exercise of the Option null and void.

6.3. Seller's Closing Deliveries. No later than the Closing Date, Seller shall deliver or cause to be delivered into escrow with Title Company the following, properly completed and duly executed by Seller and notarized where applicable, and in commercially reasonable form (collectively, "**Seller's Closing Deliveries**"):

6.3.1 Deed. A quit claim deed conveying the Property to Buyer (the "**Deed**").

6.3.2 Seller's Affidavit. An affidavit of Seller regarding liens judgments, parties in possession, mechanics' or materialmen's liens and other matters affecting title to the Property which are caused by Seller, and which is otherwise consistent with the "as is" nature of this transaction and a quit claim conveyance of the Property.

6.3.3 FIRPTA. A transferor's certification stating that Seller is not a "foreign person", "foreign partnership", "foreign trust" or "foreign estate" as those terms are defined in Section 1445 of the Internal Revenue Code, and containing such additional information as may be required thereunder.

6.3.4 Declaration of Restrictions. Seller's counterpart to the Declaration of Restrictions in the form attached hereto as Exhibit B.

6.3.4 Assignment of Lease. Assignments of Lease in a form reasonably acceptable to Buyer and any security deposits held pursuant to the Lease.

6.3.5 Miscellaneous. Any customary closing documents in commercially reasonable form and substance and consistent with this Agreement which (a) Title Company may reasonably determine are necessary to evidence the authority of Seller to enter into and perform this Agreement and the documents and instruments required to be executed and delivered by Seller pursuant to this Agreement, or (b) may be required of Seller under applicable law, including any revenue or tax certificates or statements.

6.3.6 Settlement Statement. A settlement statement consistent with this Agreement.

6.4. Buyer's Closing Deliveries. No later than the Closing Date, Buyer shall deliver or cause to be delivered into escrow with Title Company, in addition to any other items required by this Agreement, the following, properly completed and duly signed by

Buyer and notarized where applicable, and in commercially reasonable form (collectively, **"Buyer's Closing Deliveries"**):

6.4.1 Purchase Price. The balance of the Purchase Price by wire transfer of immediately available funds.

6.4.2 Assignment of Lease. Buyer's counterpart to the Assignment of Lease.

6.4.3 Miscellaneous. Any customary closing documents in commercially reasonable form and substance and consistent with this Agreement which (i) Title Company may reasonably determine are necessary to evidence the authority of Buyer to enter into and perform this Agreement and the documents and instruments required to be executed and delivered by Buyer pursuant to this Agreement, or (ii) may be required of Buyer under applicable law, including any revenue or tax certificates or statements.

6.4.4 Settlement Statement. A settlement statement consistent with this Agreement.

6.5. Adjustments and Prorations. The following adjustments will be made to the Purchase Price at Closing:

6.5.1 Real Estate Taxes. General real estate taxes applicable to any of the Property due and payable in the year of Closing shall be prorated between Seller and Buyer on a daily basis as of the Closing Date based upon a calendar year, with Seller being responsible for those allocable to the period prior to the Closing Date and Buyer being responsible for those allocable to the Closing Date and subsequent thereto. If there is any tax refund or rebate related to the year of Closing, the refund or rebate (after deducting the fees and other costs attributable to such refund or rebate) will be allocated between Seller and Buyer on the same basis as proration of taxes under this Section 6.5.1.

6.5.2 Assessments. All special assessments (and charges in the nature of or in lieu of such assessments) levied or constituting a lien with respect to any of the Property payable in the year of Closing shall be prorated between Seller and Buyer on a daily basis as of the Closing Date based upon a calendar year, with Seller being responsible for those installments and applicable portions thereof allocable to the period prior to the Closing Date and Buyer being responsible for all installments and applicable portions thereof allocable to the Closing Date and subsequent thereto. Buyer shall be responsible for special assessments levied after the Effective Date.

6.5.3 Title Costs. Seller will pay the basic premium for the owner's policy of title insurance issued to Buyer with an insured amount not in excess of the Purchase Price. Buyer will pay all costs of and premiums any title insurance policy it desires with respect to the Property in excess of such basic premium, including the costs of any endorsements and extended coverages. Buyer will pay all costs for any Survey. Buyer will pay all premiums for any loan policies of title insurance.

Seller and Buyer will each pay one-half of any Closing fee payable to Title Company acting as escrow agent in connection with this transaction.

6.5.4 Recording Costs. Buyer will pay the cost of recording the Deed, and any other documents to be recorded in connection with the Closing.

6.5.5 Transfer Taxes. Buyer will pay any state deed or transfer tax imposed in connection with the recording of the Deed. Buyer will pay any mortgage registry tax regarding any mortgage given by Buyer on the Property in connection with this transaction.

6.5.6 Operating Expenses. Seller will pay all utility and other operating expenses of the Property relating to the period prior to the Closing Date, and Buyer will pay all expenses of the Property relating to the period from and after the Closing Date. Seller agrees to have all meters with respect to any such utilities read as of the Closing Date.

6.5.7 Other Closing Costs. All other Closing costs will be allocated between Seller and Buyer in accordance with the customary practice for commercial real estate transactions in county and state where the Property is located.

6.6. Strict Adherence. Each of the requirements set forth in this Agreement with respect to the Earnest Money, the Option Term, the exercise of the Option and Closing have been fully negotiated and agreed to, and strict adherence to such requirements is a condition of this Agreement and shall be the sole responsibility of Buyer.

## 7. Representations and Warranties.

7.1. Representations and Warranties by Buyer. Buyer represents and warrants to Seller that:

7.1.1 Authority. Buyer is a Nebraska municipality. Buyer has the requisite power and authority to enter into and perform this Agreement and the documents to be executed by Buyer in connection with this transaction. This Agreement and such documents have been or will be duly authorized by all necessary action on the part of Buyer and have been or will be duly executed and delivered on the part of Buyer. The execution, delivery and performance by Buyer of this Agreement and such documents does not conflict with or result in a violation of Buyer's organizational documents or any agreement, judgment, order, or decree of any court or arbiter to which Buyer is a party or is subject.

7.1.2 Prohibited Persons and Transactions. Neither Buyer nor any of its affiliates is, nor will they become, a person or entity with whom U.S. persons or entities are restricted from doing business under regulations of the Office of Foreign Asset Control ("**OFAC**") of the Department of the Treasury (including those named on OFAC's Specially Designated and Blocked Persons List) or under any statute, executive order (including the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism) or other governmental action and does

not, to its actual knowledge, engage in any dealings or transactions or be otherwise associated with such persons or entities.

### 7.1.3 Related Parties.

7.1.3.1 Buyer is not (i) an executive officer, director or Principal Shareholder of Seller, U.S. Bancorp or any subsidiary of either entity or (ii) a Company that is Controlled by any person or entity described in (i).

7.1.3.2 "Principal Shareholder" means any person or entity that directly or indirectly, or acting through or in concert with one or more persons, owns, controls, or has the power to vote more than 10 percent of any class of voting securities of Seller, U.S. Bancorp or any subsidiary of either entity.

7.1.3.3 "Company" means any corporation, partnership, business or other trust, association, joint venture, pool syndicate, sole proprietorship, unincorporated organization, or other business entity.

7.1.3.4 "Control" means directly or indirectly, or acting through or in concert with one or more persons (i) owning, controlling, or having the power to vote 25% or more of any class of a Company's voting securities; (ii) controlling in any manner the election of a majority of a Company's directors; or (iii) having the power to exercise a controlling influence over a Company's management or policies.

7.2. Representations and Warranties by Seller. Seller represents and warrants to Buyer that:

7.2.1 Authority. Seller is a national banking association. Seller has the requisite power and authority to enter into and perform this Agreement and the documents to be executed by Seller in connection with this transaction. This Agreement and such documents have been or will be duly authorized by all necessary action on the part of Seller and have been or will be duly executed and delivered on the part of Seller. The execution, delivery and performance by Seller of this Agreement and such documents does not conflict with or result in a violation of Seller's organizational documents or any agreement, judgment, order, or decree of any court or arbiter to which Seller is a party or is subject. Seller has not entered into any purchase agreements, contracts for deed, rights of first refusal, options or the like whereby someone other than Buyer has a right to acquire all or any part of the Property.

7.2.2 FIRPTA. Seller is not a "foreign person", "foreign partnership", "foreign trust" or "foreign estate" as those terms are defined in Section 1445 of the Internal Revenue Code.

7.2.3 Litigation. To the actual knowledge of the Seller, there is no litigation pending or threatened against the Property, or against Seller in a manner that would affect Seller's ability to perform its obligations under this Agreement.

The “**actual knowledge of the Seller**” and similar terms mean the actual, present consciousness of Leah Maurer, without any duty of inquiry or investigation. If Buyer proceeds to Closing notwithstanding Buyer’s knowledge of any breach or untruth of any representation or warranty by Seller, Buyer is deemed to have waived the breach or untruth at Closing. All representations and warranties of Seller set forth in this Section 7.2 above shall survive Closing for a period of six (6) months.

8. Sale “As Is”.

8.1. Buyer’s Obligations. SUBJECT TO THE TERMS OF THIS AGREEMENT, BUYER WILL CONDUCT SUCH INSPECTIONS AND INVESTIGATIONS OF THE PROPERTY (INCLUDING ITS PHYSICAL AND ENVIRONMENTAL CONDITION) AS IT DEEMS NECESSARY TO PROCEED WITH THE CLOSING AND THIS TRANSACTION, AND ASSUMES THE RISK THAT ADVERSE MATTERS, INCLUDING THE DISCLAIMED MATTERS (AS DEFINED IN SECTION 8.2), MAY NOT HAVE BEEN REVEALED BY BUYER’S INSPECTIONS AND INVESTIGATIONS. SUCH INSPECTIONS AND INVESTIGATIONS OF BUYER WILL BE DEEMED TO INCLUDE AN ENVIRONMENTAL AUDIT OF THE PROPERTY, AN INSPECTION OF THE PHYSICAL COMPONENTS AND GENERAL CONDITION OF ALL PORTIONS OF THE PROPERTY, SUCH STATE OF FACTS AS AN ACCURATE SURVEY AND INSPECTION OF THE PROPERTY WOULD SHOW, PRESENT AND FUTURE ZONING AND LAND USE ORDINANCES, RESOLUTIONS AND REGULATIONS OF THE CITY, COUNTY AND STATE WHERE THE PROPERTY IS LOCATED AND THE VALUE AND MARKETABILITY OF THE PROPERTY.

8.2. Disclaimers. BUYER ACKNOWLEDGES AND AGREES THAT, EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, (A) BUYER HAS NOT RELIED UPON AND WILL NOT RELY UPON, EITHER DIRECTLY OR INDIRECTLY, ANY REPRESENTATION OR WARRANTY OF SELLER IN CONNECTION WITH THE PROPERTY OR THIS TRANSACTION, (B) SELLER WILL SELL AND CONVEY TO BUYER, AND BUYER WILL ACCEPT THE PROPERTY “AS IS”, “WHERE IS”, AND “WITH ALL FAULTS” ON THE CLOSING DATE, AND THERE ARE NO ORAL AGREEMENTS, WARRANTIES OR REPRESENTATIONS, COLLATERAL TO OR AFFECTING THE PROPERTY BY SELLER OR ANY THIRD PARTY, AND (C) SELLER DOES NOT, BY THE EXECUTION AND DELIVERY OF THIS AGREEMENT, AND SELLER WILL NOT, BY THE EXECUTION AND DELIVERY OF ANY DOCUMENT OR INSTRUMENT EXECUTED AND DELIVERED IN CONNECTION WITH CLOSING, MAKE ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, OF ANY KIND OR NATURE WHATSOEVER, WITH RESPECT TO THE PROPERTY AND ALL SUCH WARRANTIES ARE HEREBY DISCLAIMED. WITHOUT LIMITING THE GENERALITY OF THE PROVISIONS OF THIS SECTION 8.2, BUYER ACKNOWLEDGES AND AGREES THAT, EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, SELLER MAKES, AND WILL MAKE, NO EXPRESS OR IMPLIED WARRANTY AS TO (I) MATTERS OF TITLE, (II) ZONING, (III) TAX CONSEQUENCES, (IV) PHYSICAL OR ENVIRONMENTAL CONDITION (INCLUDING LAWS, RULES, REGULATIONS, ORDERS AND REQUIREMENTS PERTAINING TO THE USE, HANDLING, GENERATION, TREATMENT, STORAGE OR DISPOSAL OF ANY TOXIC OR HAZARDOUS WASTE OR TOXIC, HAZARDOUS OR REGULATED SUBSTANCE, AND FURTHER INCLUDING THE COMPREHENSIVE ENVIRONMENTAL RESPONSE AND COMPENSATION AND LIABILITY ACT, THE

RESOURCE CONSERVATION AND RECOVERY ACT, THE CLEAN WATER ACT, THE SOLID WASTE DISPOSAL ACT, THE FEDERAL WATER POLLUTION CONTROL ACT, THE OIL POLLUTION ACT, THE FEDERAL CLEAN AIR ACT, THE FEDERAL INSECTICIDE, FUNGICIDE AND RODENTICIDE ACT, EACH AS MAY BE AMENDED FROM TIME TO TIME, AND INCLUDING ANY AND ALL REGULATIONS, RULES OR POLICIES PROMULGATED THEREUNDER AND ALL APPLICABLE LOCAL LAWS, ORDINANCES, AND REGULATIONS, (V) VALUATION, (VI) GOVERNMENTAL APPROVALS, GOVERNMENTAL REGULATIONS, ENTITLEMENT STATUS OR ANY OTHER MATTER OR THING RELATING TO OR AFFECTING THE PROPERTY, (VII) THE USE, INCOME POTENTIAL, EXPENSES, OCCUPANCY STATUS, OPERATION OR CHARACTERISTICS OF THE PROPERTY OR ANY PORTION OF THE PROPERTY, INCLUDING WARRANTIES OF SUITABILITY, HABITABILITY, MERCHANTABILITY, DESIGN OR FITNESS FOR ANY SPECIFIC PURPOSE OR FOR A PARTICULAR PURPOSE, OR GOOD OR WORKMANLIKE CONSTRUCTION, (VIII) THE NATURE, MANNER, CONSTRUCTION, CONDITION, STATE OF REPAIR OR LACK OF REPAIR OF ANY OF THE BUILDINGS, STRUCTURES OR IMPROVEMENTS, ON OR UNDER THE SURFACE, WHETHER OR NOT LATENT, OBVIOUS, VISIBLE OR APPARENT, (IX) THE NATURE OR QUALITY OF CONSTRUCTION, STRUCTURAL DESIGN OR ENGINEERING OF THE PROPERTY, (X) THE SOIL CONDITIONS, DRAINAGE, FLOODING GEOTECHNICAL AND SEISMIC CHARACTERISTICS, ACCESS, UTILITIES OR OTHER CONDITIONS EXISTING IN, ON OR UNDER THE PROPERTY, (XI) THE PRESENCE OR EXISTENCE OF MOLD OR OTHER ORGANISMS, LEAD BASED PAINT OR WATER PENETRATION IN OR ABOUT THE BUILDINGS, STRUCTURES OR IMPROVEMENTS, OR (XII) ANY OTHER STATE OF FACTS THAT EXISTS WITH RESPECT TO ANY OF THE PROPERTY (COLLECTIVELY, **"DISCLAIMED MATTERS"**),

8.3. Waiver and Release. EXCEPT WITH RESPECT TO THE EXPRESS AGREEMENTS, REPRESENTATIONS, WARRANTIES AND OBLIGATIONS OF SELLER UNDER THIS AGREEMENT, BUYER AND ANYONE CLAIMING BY, THROUGH OR UNDER BUYER HEREBY FULLY AND IRREVOCABLY WAIVES AND RELEASES SELLER AND EACH OF ITS SHAREHOLDERS, EMPLOYEES, OFFICERS, MANAGERS, REPRESENTATIVES, AGENTS, SUCCESSORS AND ASSIGNS (EACH, A **"RELEASED PARTY"**) FROM ANY AND ALL CLAIMS THAT IT MAY NOW HAVE OR HEREAFTER ACQUIRE AGAINST ANY RELEASED PARTY FOR AND AGAINST ANY AND ALL ANY LIABILITIES, WHETHER DIRECT OR INDIRECT, KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, ARISING FROM OR RELATED TO ANY OF THE PROPERTY, INCLUDING ANY OF THE DISCLAIMED MATTERS.

8.4. Limitation of Seller's Liability. ANY PARTY SEEKING TO ENFORCE ANY DUTY, OBLIGATION, LIABILITY OR RESPONSIBILITY OF SELLER ARISING UNDER THIS AGREEMENT WILL RELY ON AND LOOK SOLELY TO THE PROPERTY AND ANY INCOME OR PROCEEDS FROM THE PROPERTY. SELLER WILL HAVE NO LIABILITY FOR THE PERFORMANCE OF ANY DUTIES OR OBLIGATIONS OF SELLER UNDER THIS AGREEMENT BEYOND ITS INTEREST IN THE PROPERTY AND ITS PROCEEDS. BUYER WILL NOT SEEK TO ENFORCE ANY CLAIM OR JUDGMENT OBTAINED BY BUYER AGAINST SELLER AGAINST ANY PROPERTY OF SELLER OTHER THAN ITS INTEREST IN THE PROPERTY AND ITS PROCEEDS, AND BUYER WILL LOOK SOLELY TO, AND RELY SOLELY ON, THAT INTEREST AND THOSE PROCEEDS FOR ENFORCEMENT AND SATISFACTION OF ANY CLAIM OR



JUDGMENT. BUYER AGREES THAT THE DIRECTORS, OFFICERS, PARTNERS, MEMBERS, OWNERS AND EMPLOYEES OF SELLER HAVE NO PERSONAL LIABILITY UNDER THIS AGREEMENT, AND BUYER WAIVES ITS RIGHT TO SUE ANY OF THEM PERSONALLY OR INDIVIDUALLY.

9. Executory Period. After the Effective Date until the date of Closing or earlier termination of this Agreement (the "**Executory Period**"), Seller shall operate, maintain and manage the Property in a manner generally consistent with the manner in which Seller has operated and maintained the Property prior to the Effective Date.

10. Casualty. If all or part of the Improvements are damaged or destroyed during the Executory Period by any fire or other casualty, then (a) this Agreement shall remain in effect, (b) the Property shall be conveyed at Closing in its damaged condition, and (c) Seller shall have no obligation to repair or restore the Property or reduce the Purchase Price.

11. Eminent Domain. If eminent domain proceedings are commenced against all or a material part of the Property during the Executory Period, then Buyer shall have the option to terminate this Agreement (subject to Section 15), and receive a refund of the Earnest Money as its sole remedy, which option shall expire upon the earlier of (a) ten (10) business days after Buyer receives written notice of the proceedings, or (b) the Closing Date. If Buyer does not timely exercise such termination option, or if less than a material part of the Property is subject to such proceeding, then (w) this Agreement shall remain in effect, (x) the remaining Property shall be conveyed at Closing subject to the eminent domain proceeding, (y) Seller shall have no obligation to restore the Property or reduce the Purchase Price (except as provided below), and (z) Seller shall give to Buyer at Closing either (i) a credit against the Purchase Price in the amount of the award received by Seller in the case of a completed condemnation, or (ii) an assignment of all of Seller's rights in the eminent domain proceeding in the case of a pending proceeding. For purposes of this Section 11, "**material**" means a value equal to twenty percent (20%) or more of the Purchase Price.

12. Assignment; Third Party Beneficiaries. This Agreement is made solely for the benefit of the parties hereto and their respective successor and assigns. No rights, privileges or immunities of either Seller or Buyer under this Agreement shall inure to the benefit of any third-party, nor shall any third-party be deemed to be a beneficiary of any of the provisions contained in this Agreement. Buyer may not fully or partially assign or transfer this Agreement or any interest therein in any manner whatsoever without Seller's prior written consent, which may be given, conditioned or withheld in Seller's sole and absolute discretion. Notwithstanding the foregoing, Seller's consent shall not be required for an assignment by Buyer of all of Buyer's rights and obligations under this Agreement to (a) any parent, subsidiary or other affiliate of Buyer, or (b) to any person or entity which succeeds to the business of Buyer as a result of any reorganization, joint venture, merger or consolidation of Buyer. Buyer must give Seller not less than ten (10) business days' prior notice of any proposed assignment of this Agreement (even if permitted under this Section 12); which notice shall be accompanied by a copy of the assignment (and an assumption of this Agreement) and documents evidencing the formation, ownership, good standing and authority of the assignee to assume and perform the Buyer's obligations under this Agreement. No assignment or transfer of Buyer's rights or obligations under the Agreement (even if permitted under this Section 12 or consented to by Seller) shall operate to modify or relieve Buyer of its obligations under the Agreement.

13. Default and Remedies.

13.1. Default By Seller. If Seller defaults under this Agreement and such default continues for ten (10) days following notice from Buyer to Seller specifying the default (provided that no notice or cure period shall be required with respect to any default of any obligations to be performed at Closing), Buyer may exercise one of the following as its sole, exclusive and mutually-exclusive remedies, either (a) terminate this Agreement by giving written notice to Seller, in which event Buyer shall be entitled to immediate refund of the Deposits, or (b) seek specific performance of this Agreement. If Buyer proceeds to Closing notwithstanding any defaults by Seller, Buyer shall be deemed to have waived such defaults.

13.2. Default By Buyer. If Buyer defaults under this Agreement and such default continues for ten (10) days following notice from Seller to Buyer specifying the default (provided that no notice or cure period shall be required with respect to any default of any obligations to be performed at Closing), Seller may terminate this Agreement by giving written notice to Buyer, in which event Seller shall be entitled to immediate payment of the Earnest Money as liquidated damages (Seller and Buyer each hereby agreeing that determining Seller's actual damages would be difficult, and the Earnest Money is a reasonable estimate of Seller's damages). Notwithstanding the foregoing, Seller may enforce any provisions of this Agreement which survive Closing, and Seller may recover from Buyer its reasonable fees and costs of enforcing those provisions.

13.3. Nature of Remedies. Seller's and Buyer's respective remedies as set forth in this Section 13 are their sole and exclusive remedies, except with respect their respective obligations that expressly survive Closing or termination under this Agreement. Seller and Buyer each hereby waive any right to sue the other or recover any costs or other damages whatsoever except as expressly provided in this Section 13 (except with respect to obligations that expressly survive Closing or termination as provided under this Agreement).

13.4. Limitations Period on Suits and Proceedings. If either Seller or Buyer is entitled to commence any action or other proceeding to seek specific performance of this Agreement, or to recover any fees, costs or other amounts expressly recoverable under this Section 13, the applicable party must do so within sixty (60) days after the earlier of (a) the date that party obtains actual knowledge of the defaulting party's default, or (b) the date of termination of this Agreement, or such party shall be deemed to have irrevocably waived the related claims and shall be barred from asserting the related claims.

13.5. Attorney's Fees. Each of the parties will pay its own attorney's fees with respect to this Agreement and this transaction, except that a party defaulting under this Agreement or any closing document will pay the reasonable attorneys' fees and court costs at trial and on any appeal incurred by the non-defaulting party to enforce its rights regarding such default.

14. Notices. Any notice required or permitted to be given by this Agreement will be in writing and will be given by nationally recognized overnight courier, or by certified or registered mail, return receipt requested, postage prepaid. Notices so given shall be deemed received when actually received or when delivery is confirmed or refused. Notices may also be given by e-mail, and will be effective at the time of sending at the e-mail address specified below by 5:00 p.m. Central Time on a business day (and otherwise as of the next business day), provided the notice-giving party also sends notice by one of the physical methods permitted above on the same date

as sending the e-mail, time being of the essence. Any notice required to be given under this Agreement shall be addressed as follows:

Seller: U.S. Bank National Association  
800 Nicollet Mall, 15th Floor  
BC-MN-H15F  
Minneapolis, MN 55402  
Attn: Corporate Real Estate

with a copy to: U.S. Bank National Association  
800 Nicollet Mall, 21st Floor  
BC-MN-H21N  
Minneapolis, MN 55402  
Attn: Corporate Counsel, Corporate Real Estate

Buyer : City of David City  
557 North 4<sup>th</sup> Street  
P.O. Box 191  
David City, NE 68632  
Attn: Clayton Keller

I.

II. Any party may, by notice to the others, specify a different address for notice purposes.

15. Termination. If this Agreement is terminated pursuant to the terms hereof, then (a) the respective rights of Buyer and Seller arising out of this Agreement shall immediately cease with the exception of obligations that expressly survive termination under this Agreement, and (b) within ten (10) days after such termination notice, Buyer shall (i) deliver to Seller a true, correct, complete and legible copy of the Reports, if any, to the extent not previously delivered to Seller, and (ii) execute, acknowledge, and deliver to Seller a quit claim deed with respect to the Property in order to remove any cloud of this Agreement from Property (provided that the failure to give such deed or termination shall not affect the termination of this Agreement). Buyer's obligations under this Section 15 shall survive termination of this Agreement, and Seller may recover from Buyer its reasonable legal fees and costs of enforcing the provisions of this Section 15.

16. Tax Deferred Exchange. Seller and/or Buyer may elect to dispose of or acquire (as the case may be) any of the Real Property in connection with the completion of a tax-deferred exchange under Section 1031 of the Internal Revenue Code of 1986, as amended. Each party agrees to take such steps as the other may reasonably require in order to complete such tax-deferred exchange, including accepting payment of all or a portion of the Purchase Price from a third party.

17. Brokers. Seller and Buyer each represents and warrants to the other that it has not retained or dealt with any broker entitled to a commission or other fee in connection with this transaction except for Cushman & Wakefield, which is acting as Seller's agent, and \_\_\_\_\_, which is acting as Buyer's agent (collectively, "**Broker**"). If the Closing occurs, Seller will pay a commission to Broker in accordance with a separate agreement with Broker. Seller and Buyer shall indemnify, defend (with counsel reasonably acceptable to the indemnified party) and hold the other party harmless against all claims (and any related liabilities) made by any person other

than Broker alleging to have represented or assisted the indemnifying party and to thereby be owed a commission or fee in connection with the signing or consummation of this Agreement. The indemnity obligations under this Section 17 shall survive Closing or any termination of this Agreement.

18. No Liens. Buyer may not record this Agreement or any memorandum of this Agreement against the title to the Property or in other public records. Buyer may not record a lien, notice of lis pendens or other instrument against the title to the Property except in connection with a timely- and properly-filed specific performance action permitted under this Agreement, and Buyer waives any other right to do so at law or in equity. This Agreement is not, and does not convey, any interest in or lien against the Property.

19. Waiver of Jury Trial. SELLER AND BUYER EACH IRREVOCABLY WAIVE ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY PROCEEDING ARISING OUT OF OR RELATING TO THIS TRANSACTION.

20. Miscellaneous. This Agreement may be signed in counterparts and evidenced by facsimile, PDF format or similarly-imaged pages. Buyer and Seller each acknowledge and agree that it has had an opportunity to receive the advice of such counsel and other advisors as it desires before entering into this Agreement. Time is of the essence of this Agreement. This Agreement will be governed by and construed under and in accordance with the laws of the state where the Property is located. This Agreement contains the entire agreement between the parties hereto with respect to this transaction, supersedes any prior oral negotiations or agreements. Subject to Section 12, this Agreement is binding upon the parties hereto and their respective legal representatives, successors and permitted assigns. No amendment, modification or waiver of the provisions of this Agreement will be effective unless it is in writing and signed by the party against whom it is to be enforced. All decisions requiring the “approval” or “agreement” of any party hereto shall be made in writing the applicable party. If any part of this Agreement is held to be illegal, invalid or unenforceable, the remainder of this Agreement will be unaffected and continue in full force and effect. Seller’s preparation of this Agreement and submission of this Agreement for the review or execution by any party is not an offer by Seller to sell the Property, and this Agreement is not binding upon Seller or Buyer until it has been signed by Seller and Buyer. The section headings and other captions are for ease of reference only, and are not otherwise part of this Agreement. Any reference to a section of this Agreement includes its subsections and parts.

21. Rules of Construction. In interpreting this Agreement, the following rules of construction shall be used.

21.1. Construction. The rule of strict construction shall not apply to this Agreement. This Agreement shall not be interpreted in favor of or against either Buyer or Seller merely because of their respective efforts in preparing it.

21.2. Captions, Gender, Number, and Language of Inclusion. The article and section headings in this Agreement are for convenience of reference only and shall not define, limit or prescribe the scope or intent of any term of this Agreement. As used in this Agreement, the singular shall include the plural and vice versa, the masculine, feminine, and neuter adjectives shall include one another, and the following words and phrases shall have the following meanings: (a) “**including**” shall mean “including but not limited to”; (b) “**terms**” shall mean “terms, provisions, duties, covenants, conditions, representations, warranties, and indemnities”; (c) “**any of the Property**” or “**any of the Property**” shall

mean “the Property or any part thereof or interest therein” or “the Property or any part thereof or interest therein”, as the case may be; (d) “**rights**” shall mean “rights, duties, and obligations”; (e) “**liabilities**” shall mean “liabilities, obligations, damages, fines, penalties, claims, demands, costs, losses, charges, liens, judgments, actions, causes of action, and expenses, including reasonable attorneys’ fees”; (f) “**incurred by**” shall mean “imposed upon or suffered or incurred or paid by or asserted against”; (g) “**applicable law**” shall mean “all applicable federal, state, county, municipal, local, or other laws, statutes, codes, ordinances, rules, and regulations”; (h) “**about the Property**” or “**about the Property**” shall mean “in, on, under, or about the Property” or “in, on, under, or about the Property”, as the case may be; (i) “**operation**” shall mean “use, non-use, possession, occupancy, condition, operation, maintenance, or management”; and (j) “**this transaction**” shall mean “the purchase, sale, and related transactions contemplated by this Agreement”.

21.3. Time Periods. Any reference in this Agreement to the time for performance of obligations or elapsed time shall mean consecutive days, months or years, as applicable. In the event the time for performance of any obligation hereunder expires on the day that is not a business day, the time for performance shall be extended to the next business day. A “**business day**” means any day that is not Saturday, Sunday or a federal or state holiday.

22. Escrow Provisions.

22.1. Earnest Money. Title Company will hold and disburse the Earnest Money in accordance with the terms of this Agreement, unless otherwise directed by the mutual written direction of the parties.

22.2. Duties of Title Company. The sole duties of Title Company will be those described herein, and Title Company will be under no obligation to determine whether the parties hereto are complying with any requirements of law or the terms of any other agreements among said parties. Title Company may conclusively rely upon and will be protected in acting upon any notice, consent, order or other document believed by it to be genuine and to have been signed or presented by the proper party or parties, consistent with reasonable due diligence on Title Company’s part. Title Company may consult the advice of counsel with respect to any issue concerning the interpretation of its duties hereunder. Title Company will have no duty or liability to verify any such notice, consent, order or other document, and its sole responsibility will be to act as expressly set forth in this Agreement. Title Company will be under no obligation to institute or defend any action, suit or proceeding in connection with this Agreement. If any dispute arises with respect to the disbursement of any money, Title Company may continue to hold the money, or commence an interpleader action in a court of competent jurisdiction and remit the money to that court.

*[Remainder of page intentionally left blank]*

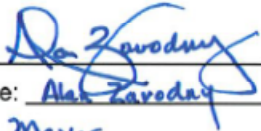
[David City, Nebraska]  
Site Nos. 7702 & 7703

**SIGNATURE PAGE  
TO  
OPTION AGREEMENT**

Seller and Buyer executed this Agreement as of the Effective Date.


**"Buyer"**

CITY OF DAVID CITY,  
a Nebraska municipality

By:   
Name: Alan Zarodny  
Its: Mayor

**"Seller"**

U.S. BANK NATIONAL ASSOCIATION,  
a national banking association

By:   
Name: Malik Cavallo  
Its: VP  
Digitally signed  
by malik cavallo  
Date: 2021.04.16  
13:56:39 -05'00'

**JOINDER BY TITLE COMPANY**

FIRST AMERICAN TITLE INSURANCE COMPANY is executing this Agreement in its capacity as Title Company only, and by such execution is only agreeing to act strictly in accordance with the terms of this Agreement that govern the duties and obligations of Title Company, including being the designated party to comply with any reporting requirements specified in Section 6045 of the United States Internal Revenue Code (and any related regulations regarding such reporting obligations) in relation to this transaction.

FIRST AMERICAN TITLE INSURANCE COMPANY

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_, 2021

**EXHIBIT A**  
**LEGAL DESCRIPTION OF PROPERTY**

All that certain real property situated in the County of Butler, State of Nebraska, described as follows:

Parcel 1:

DAVID CITY LOTS 1-3 BLK 18 ORIG TOWN

APN: 1200-00742

Parcel 2:

DAVID CITY LOTS 23,24 & PT OF LOT 22 & E1/2 OF VAC ALLEY ADJ LOTS 23 & 24 & PT OF LOT 22 BLK 18 ORIG TOWN

APN: 1200-00812

**EXHIBIT B**  
**DECLARATION OF RESTRICTIONS**

[See following 3 pages.]

**WHEN RECORDED, MAIL TO:**

U.S. Bank National Association  
Attn: \_\_\_\_\_  
U.S. Bancorp Center  
BC-MN-H21R  
800 Nicollet Mall  
Minneapolis, Minnesota 55402

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**DECLARATION OF RESTRICTIONS**

This Declaration of Restrictions is made as of the \_\_\_\_\_ day of \_\_\_\_\_ 2021 (the "Effective Date"), by U.S. BANK NATIONAL ASSOCIATION, a national banking association ("Bank").

**A. RECITALS**

Bank owns certain real property situated in Butler County, Nebraska, more particularly described in Exhibit A hereto (the "Property").

In connection with Bank's intended sale of the Property on this date, Bank desires to declare that the Property may not be used for certain uses for the benefit of Bank.

NOW, THEREFORE, Bank hereby declares that no portion of the Property may be used or occupied for the principal purpose, or any uses ancillary thereto (including, but not limited to parking and advertising), of a retail bank, credit union, savings and loan, money store, or mortgage or loan origination or for the placement, operation or maintenance of an automated teller machine or similar device. These restrictions shall run with the Property as covenants running with the land or as equitable servitudes, as the case may be, and shall constitute a burden on the Property for the benefit of Bank for a period of three (3) years from the Effective Date.

*[Remainder of page intentionally left blank.  
Signature and acknowledgment pages follow]*

IN WITNESS WHEREOF, Bank has executed this Declaration of Restrictions as of the day and year first written above.

OWNER: **U.S. BANK NATIONAL ASSOCIATION**

By: \_\_\_\_\_  
Name: Malik Cavallo  
Title: Vice President



STATE OF MINNESOTA        )  
  )    ss.  
COUNTY OF HENNEPIN

On this \_\_\_\_ day of \_\_\_\_\_, in the year 2021, before me, a Notary Public in and for said State, personally appeared Malik Cavallo, known or identified to me to be the Vice President of U.S. Bank National Association, a national banking association, who executed the instrument, on behalf of said national banking association.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

**EXHIBIT A TO**  
**DECLARATION OF RESTRICTIONS**

**Legal Description of the Property**

Council member Pat Meysenburg made a motion to approve the proposal with Granger Architecture to provide City Office Layout Designs for the building at 490 "E" Street. Council Member John Vandenberg seconded the motion. The motion carried.

Tom Kobus: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Jessica Miller: Yea, John Vandenberg: Yea  
Yea: 5, Nay: 0

Council member Bruce Meysenburg made a motion to go into Executive Session to discuss possible litigation regarding the wastewater treatment facility. Council Member Pat Meysenburg seconded the motion. The motion carried.

Tom Kobus: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Jessica Miller: Yea, John Vandenberg: Yea  
Yea: 5, Nay: 0

Council President Tom Kobus stated, "Now at 8:09 p.m. we are going into executive session to discuss possible litigation concerning the Wastewater Treatment Facility." Council President Tom Kobus, all of the Council members, City Administrator Keller, City Attorney Egr, Interim Water Supervisor Aaron Gustin, and City Clerk Tami Comte went into executive session at 8:09 p.m.

City Attorney Jim Egr stated that a motion and second was not needed to come out of executive session. Therefore, Council President Kobus declared the City Council out of executive session at 8:26 p.m.

There being no further business to come before the Council, Council member Jessica Miller made a motion to adjourn. Council Member Pat Meysenburg seconded the motion. The motion carried and Council President Tom Kobus declared the meeting adjourned at 8:27 p.m. Tom Kobus: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Jessica Miller: Yea, John Vandenberg: Yea, Yea: 5, Nay: 0

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CERTIFICATION OF MINUTES

April 14, 2021

I, Tami Comte, duly qualified and acting City Clerk for the City of David City, Nebraska, do hereby certify with regard to all proceedings of April 14, 2021; 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.

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Tami Comte, City Clerk