

CITY COUNCIL PROCEEDINGS
April 26, 2023

The City Council of the City of David City, Nebraska, met in open public session at 7:00 p.m. in the meeting room of the City Office at 490 "E" Street, David City, Nebraska. The Public had been advised of the meeting by publication of notice in The Banner Press on March 16, 2023, 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.

Present for the meeting were: Mayor Jessica Miller, Council President Bruce Meysenburg, Council members Kevin Woita, Pat Meysenburg, Jim Angell, Keith Marvin, Tom Kobus, City Attorney Michael Sands, and Interim City Administrator/City Clerk Tami Comte.

Also present for the meeting were: Deputy Clerk Lori Matchett, Police Chief Marla Schnell, Electric Supervisor Pat Hoeft, Street Supervisor Chris Kroesing, Street Foreman Nick Zrust, Power Plant Supervisor John Smaus, Special Projects Coordinator Dana Trowbridge, Alan Zavodny, Ethan Joy and Matt Kalin with JEO Engineering, Randy Kirkpatrick and Brad Swerczek with K-Tech Project Services, Eric Johnson with Kirkham Michael, Kyle Overturf with AMGL , P.C., Jan Sypal, Ruth Thoendel, Monica Heller, Matt Treadway with Treadway Ag, Police Officer Christopher Baete, Police Officer Tristan Hilger, and Police Officer Anthony Whitmore.

The meeting opened with the Pledge of Allegiance.

Mayor Jessica Miller informed the public of the "Open Meetings Act" posted on the west wall of the meeting room and asked those present to please silence their cell phones. Mayor Miller read the speaking guidelines for the City Council meeting. She also reminded the public that if they speak tonight in front of the Council that they must state their name and address for the record.

Council member Pat Meysenburg made a motion to approve the minutes of the April 12, 2023 meeting of the Mayor and City Council as presented. Council Member Kevin Woita seconded the motion. The motion carried.

Jim Angell: Yea, Tom Kobus: Yea, Keith Marvin: Abstain (Without Conflict), Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Woita: Yea
Yea: 5, Nay: 0, Abstain (Without Conflict): 1

Mayor Jessica Miller presented a five-year certificate of appreciation to Street Foreman Nick Zrust for his five years of service to the City of David City.

Randy Kirkpatrick introduced himself and his colleague Brad Swerczek of K-Tech Project Services. Randy told the Mayor and Council that they are owners' representative services, and they work on the City's behalf. They have ten people on staff, and they have worked on small projects and large projects. They will work as much or as little as the Council wants.

Council member Keith Marvin made a motion to accept the proposal for services for K-Tech Project Services. Council Member Bruce Meysenburg seconded the motion. The motion carried.

Jim Angell: Yea, Tom Kobus: Nay, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Nay, Kevin Woita: Yea
Yea: 4, Nay: 2

OWNER'S REPRESENTATIVE SERVICES AGREEMENT

This OWNER'S REPRESENTATIVE SERVICES AGREEMENT ("Agreement") is made and entered into as of April 26, 2023 (the "Effective Date"), by and between the CITY OF DAVID CITY, a municipal corporation ("CITY"), and OWNER'S REPRESENTATIVE Kirkpatrick Industries, Inc., d/b/a KTECH, a Nebraska corporation ("REPRESENTATIVE").

RECITALS:

- A. CITY wishes to retain the services of an experienced and qualified OWNER'S REPRESENTATIVE to provide Owner's Representation Services as needed and as requested.
- B. OWNER'S REPRESENTATIVE represents that it is qualified to perform those services.

AGREEMENT:

1. SERVICES TO BE PERFORMED BY OWNER'S REPRESENTATIVE

- A. OWNER'S REPRESENTATIVE will provide the services listed in the Scope of Services attached as Exhibit A. OWNER'S REPRESENTATIVE warrants that all work and services set forth in the Scope of Services will be performed in a competent, professional and satisfactory manner.

2. TERM

Unless earlier terminated in accordance with Paragraph 4 below, this Agreement will continue in full force and effect from the Effective Date through April 26, 2026. At such time, this Agreement will automatically renew for another 3 year term unless notice is given by either party in accordance with Paragraph 4 below to terminate these services.

3. COMPENSATION

- A. OWNER'S REPRESENTATIVE's Fee.
 1. For services rendered pursuant to this Agreement, OWNER'S REPRESENTATIVE will be paid in accordance with the Compensation Schedule attached as Exhibit B.
- B. Schedule of Payment.
 1. Provided that OWNER'S REPRESENTATIVE is not in default under the terms of this Agreement, upon presentation of an invoice, OWNER'S REPRESENTATIVE will be paid the fees described in Paragraph 3.A. above, according to the Compensation Schedule. Payment will be due within 30 days after the date of the invoice.

4. TERMINATION OF AGREEMENT

- A. Termination by CITY for Convenience.
 1. CITY may, at any time, terminate the Agreement for CITY's convenience and without cause.
 2. Upon receipt of written notice from CITY of such termination for CITY's convenience, OWNER'S REPRESENTATIVE will:
 - a. cease operations as directed by CITY in the notice;
 - b. take actions necessary, or that CITY may direct, for the protection and preservation of the work; and
 - c. except for work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

3. In case of termination for CITY's convenience, OWNER'S REPRESENTATIVE will be entitled to receive payment for work executed, together with costs incurred by reason of the termination, along with reasonable overhead and profit on work not executed.
- B. Termination for Cause.
1. If either party fails to perform any term, covenant or condition in this Agreement and that failure continues for 15 calendar days after the non-defaulting party gives the defaulting party written notice of the failure to perform, this Agreement may be terminated for cause; provided, however, that if during the notice period the defaulting party has promptly commenced and continues diligent efforts to remedy the default, the defaulting party will have such additional time as is reasonably necessary to remedy the default.
 2. In the event this Agreement is terminated for cause by the default of OWNER'S REPRESENTATIVE, CITY may, at the expense of OWNER'S REPRESENTATIVE and its surety, complete this Agreement or cause it to be completed. Any check or bond delivered to the CITY in connection with this Agreement, and the money payable thereon, will be forfeited to and remain the property of the CITY. All moneys due OWNER'S REPRESENTATIVE under the terms of this Agreement will be retained by CITY, but the retention will not release OWNER'S REPRESENTATIVE from liability for the default. Under these circumstances, however, OWNER'S REPRESENTATIVE will be credited with the amount of money retained, toward any amount by which the cost of completion exceeds the Agreement Sum and any amount authorized for extra services.
 3. Termination for cause will not affect or terminate any of the rights of CITY as against OWNER'S REPRESENTATIVE or its surety then existing, or that may thereafter accrue because of the default; this provision is in addition to all other rights and remedies available to the CITY under law.
- C. Termination for Breach of Law.
1. In the event OWNER'S REPRESENTATIVE or any of its officers, directors, shareholders, employees, agents, subsidiaries or affiliates is convicted (i) of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of a contract or subcontract; (ii) under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty that currently, seriously, and directly affects responsibility as a public consultant or OWNER'S REPRESENTATIVE; (iii) under state or federal antitrust statutes arising out of the submission of bids or proposals; or (iv) of violation of Paragraph 19 of this Agreement; or for any other cause CITY determines to be so serious and compelling as to affect OWNER'S REPRESENTATIVE's responsibility as a public consultant or OWNER'S REPRESENTATIVE, including but not limited to, debarment by another governmental agency, then CITY reserves the unilateral right to terminate this Agreement or to impose such other sanctions (which may include financial sanctions, temporary suspensions or any other condition deemed appropriate short of termination) as it deems proper. CITY will not take action until OWNER'S REPRESENTATIVE has been given notice and an opportunity to present evidence in mitigation.

5. FORCE MAJEURE

If any party fails to perform its obligations because of strikes, lockouts, labor disputes, embargoes, acts of God, inability to obtain labor or materials or reasonable substitutes for labor or materials, governmental restrictions, governmental regulations, governmental control, judicial orders, enemy or hostile governmental action, civil commotion, fire or other casualty, or other causes beyond the reasonable control of the party obligated to perform, then that party's performance will be excused for a period equal to the period of that cause for failure to perform.

6. RETENTION OF FUNDS

OWNER'S REPRESENTATIVE authorizes CITY to deduct from any amount payable to OWNER'S REPRESENTATIVE (whether or not arising out of this Agreement) any amounts the payment of which may be in dispute or that are necessary to compensate CITY for any losses, costs, liabilities, or damages suffered by CITY, and all amounts for which CITY may be liable to third parties, by reason of OWNER'S REPRESENTATIVE's acts or omissions in performing or failing to perform OWNER'S REPRESENTATIVE's obligations under this Agreement. In the event that any claim is made by a third party, the amount or validity of which is disputed by OWNER'S REPRESENTATIVE, or any indebtedness exists that appears to be the basis for a claim of lien, CITY may withhold from any payment due, without liability for interest because of the withholding, an amount sufficient to cover the claim. The failure of CITY to exercise the right to deduct or to withhold will not, however, affect the obligations of OWNER'S REPRESENTATIVE to insure, indemnify, and protect CITY as elsewhere provided in this Agreement.

7. CITY REPRESENTATIVE

City Representative is designated as the "City Representative," authorized to act in its behalf with respect to the work and services specified in this Agreement and to make all decisions in connection with this Agreement. Whenever approval, directions, or other actions are required by CITY under this Agreement, those actions will be taken by the City Representative, unless otherwise stated. The City Administrator has the right to designate another City Representative at any time, by providing notice to OWNER'S REPRESENTATIVE.

8. OWNER'S REPRESENTATIVE REPRESENTATIVE(S)

The following principal(s) of OWNER'S REPRESENTATIVE are designated as being the principal(s) and representative(s) of OWNER'S REPRESENTATIVE authorized to act in its behalf with respect to the work specified in this Agreement and make all decisions in connection with this Agreement:

Connie Kirkpatrick

Randy Kirkpatrick

9. INDEPENDENT OWNER'S REPRESENTATIVE

OWNER'S REPRESENTATIVE is, and at all times will remain as to CITY, a wholly independent OWNER'S REPRESENTATIVE. Neither CITY nor any of its agents will have control over the conduct of OWNER'S REPRESENTATIVE or any of OWNER'S REPRESENTATIVE's employees, except as otherwise set forth in this Agreement. OWNER'S REPRESENTATIVE's agents and employees are not and shall not be considered employees of CITY for any purpose. OWNER'S REPRESENTATIVE may not, at any time or in any manner,

represent that it or any of its agents or employees are in any manner agents or employees of CITY. CITY has no duty, obligation, or responsibility to OWNER'S REPRESENTATIVE's agents or employees under the Affordable Care Act. OWNER'S REPRESENTATIVE is solely responsible for any tax penalties associated with the failure to offer affordable coverage to its agents and employees under the Affordable Care Act and any other liabilities, claims and obligations regarding compliance with the Affordable Care Act with respect to OWNER'S REPRESENTATIVE's agents and employees. CITY is not responsible and shall not be held liable for OWNER'S REPRESENTATIVE's failure to comply with OWNER'S REPRESENTATIVE's duties, obligations, and responsibilities under the Affordable Care Act. OWNER'S REPRESENTATIVE agrees to defend, indemnify and hold CITY harmless for any and all taxes and penalties that may be assessed against CITY as a result of OWNER'S REPRESENTATIVE's obligations under the Affordable Care Act relating to OWNER'S REPRESENTATIVE's agents and employees.

10. LICENSES AND PERMITS

OWNER'S REPRESENTATIVE warrants that it has all professional, contracting and other permits and licenses required to undertake the work contemplated by this Agreement.

11. FAMILIARITY WITH WORK

By executing this Agreement, OWNER'S REPRESENTATIVE warrants that OWNER'S REPRESENTATIVE (a) has thoroughly investigated and considered the scope of services to be performed, (b) has carefully considered how the services should be performed, and (c) fully understands the facilities, difficulties and restrictions attending performance of the services required under this Agreement. If the services involve work upon any site, OWNER'S REPRESENTATIVE warrants that OWNER'S REPRESENTATIVE has or will investigate the site and is or will be fully acquainted with the conditions there existing, prior to commencement of the services set forth in this Agreement. Should OWNER'S REPRESENTATIVE discover any latent or unknown conditions that will materially affect the performance of the services set forth in this Agreement, OWNER'S REPRESENTATIVE must immediately inform CITY of that fact and may not proceed except at OWNER'S REPRESENTATIVE's risk until written instructions are received from CITY.

12. CARE OF WORK

OWNER'S REPRESENTATIVE must adopt reasonable methods during the term of the Agreement to furnish continuous protection to the work, and the equipment, materials, papers, documents, plans, studies and other components to prevent losses or damages, and will be responsible for all damages to persons or property, until acceptance of the work by CITY, except those losses or damages as may be caused by CITY's own negligence.

13. OWNER'S REPRESENTATIVE'S ACCOUNTING RECORDS; OTHER PROJECT RECORDS

Records of OWNER'S REPRESENTATIVE's time pertaining to the project, and records of accounts between CITY and OWNER'S REPRESENTATIVE, will be kept on a generally recognized accounting basis. OWNER'S REPRESENTATIVE will also maintain all other records, including without limitation, specifications, drawings, progress reports and the like, relating to the work and services identified in Exhibit A. All records will be available to CITY during normal working hours. OWNER'S REPRESENTATIVE will maintain these records for three years after final payment.

14. INDEMNIFICATION

OWNER'S REPRESENTATIVE will indemnify, defend, and hold harmless CITY, the City Council, each member thereof, present and future, members of boards and commissions, their officers, agents, employees and volunteers (collectively "City Affiliates") from and against any and all liability, expenses, including defense costs and legal fees, and claims for damages whatsoever, including, but not limited to, those arising from breach of contract, bodily injury, death, personal injury, property damage, loss of use, or property loss however the same may be caused and regardless of the responsibility for negligence. The obligation to indemnify, defend and hold harmless includes, but is not limited to, any liability or expense, including defense costs and legal fees, arising from the negligent acts or omissions, or willful misconduct of OWNER'S REPRESENTATIVE, its officers, employees, agents, or vendors. OWNER'S REPRESENTATIVE's obligations to indemnify, defend and hold harmless will apply even in the event of concurrent negligence on the part of City Affiliates, except for liability resulting solely from the negligence or willful misconduct of City Affiliates. Payment by CITY is not a condition precedent to enforcement of this indemnity. In the event of any dispute between OWNER'S REPRESENTATIVE and CITY, as to whether liability arises from the sole negligence of City Affiliates, OWNER'S REPRESENTATIVE will be obligated to pay for the defense of City Affiliates until such time as a final judgment has been entered adjudicating City Affiliates as solely negligent. OWNER'S REPRESENTATIVE will not be entitled in the event of such a determination to any reimbursement of defense costs including but not limited to attorney's fees, expert fees and costs of litigation.

15. NON-LIABILITY OF CITY OFFICERS AND EMPLOYEES

No officer or employee of CITY will be personally liable to OWNER'S REPRESENTATIVE, in the event of any default or breach by the CITY or for any amount that may become due to OWNER'S REPRESENTATIVE.

16. INSURANCE

A. OWNER'S REPRESENTATIVE must maintain for the duration of the Agreement at their sole expense the following insurance, which will be full coverage, not subject to self-insurance provisions:

1. Automobile Liability, including owned, non-owned and hired vehicles, with at least the following limits of liability:

- a. Primary Bodily Injury with limits of at least \$500,000 per person, \$1,000,000 per occurrence; and
- b. Primary Property Damage of at least \$250,000 per occurrence; or
- c. Combined single limits of \$1,000,000 per occurrence.

2. Workers' Compensation coverage as required by the Labor Code of the State of Nebraska and, if workers' compensation is required, employer's liability insurance with minimum limits of \$1,000,000 per occurrence or occupational illness. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the CITY for all work performed by the OWNER'S REPRESENTATIVE, its employees, and agents.

B. The insurance provided by OWNER'S REPRESENTATIVE will be primary and non-contributory.

C. CITY, the City Council and each member thereof, members of boards and commissions, every officer, agent, official, employee and volunteer must be named as additional insureds under the automobile and general liability policies.

D. OWNER'S REPRESENTATIVE must provide certificates of insurance including all required amendatory endorsements (or copies of the applicable policy language effecting coverage required by this clause) indicating appropriate coverage, to the City Clerk of the City of DAVID CITY before the commencement of work.

E. Each insurance policy required by this Paragraph must contain a provision that no termination, cancellation or change of coverage can be made without notice to the CITY.

F. If the OWNER'S REPRESENTATIVE maintains broader coverage and/or higher limits than the minimums shown above, the CITY requires and shall be entitled to the broader coverage and/or the higher limits maintained by the OWNER'S REPRESENTATIVE. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the CITY.

G. The procuring of insurance shall not be construed as a limitation on liability nor as full performance of the indemnification provisions of the OWNER'S REPRESENTATIVE.

H. OWNER'S REPRESENTATIVE hereby grants to CITY a waiver of any right to subrogation which any insurer of said OWNER'S REPRESENTATIVE may acquire against the CITY by virtue of the payment of any loss under such insurance. OWNER'S REPRESENTATIVE agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the CITY has received a waiver of subrogation endorsement from the insurer.

17. SUFFICIENCY OF INSURERS

Insurance required by this Agreement will be satisfactory only if issued by companies admitted to do business in Nebraska, rated "A" or better in the most recent edition of Best's Key Rating Guide, and only if they are of a financial category Class VII or better, unless these requirements are waived by the Risk Manager of CITY ("Risk Manager") due to unique circumstances. In the event the Risk Manager determines that the work or services to be performed under this Agreement creates an increased or decreased risk of loss to CITY, the OWNER'S REPRESENTATIVE agrees that the minimum limits of any insurance policies or performance bonds required by this Agreement may be changed accordingly upon receipt of written notice from the Risk Manager; provided that OWNER'S REPRESENTATIVE will have the right to appeal a determination of increased coverage by the Risk Manager to the City Council of CITY within 10 days of receipt of notice from the Risk Manager.

18. CONFLICT OF INTEREST

A. No officer or employee of the CITY may have any financial interest, direct or indirect, in this Agreement, nor may any officer or employee participate in any decision relating to the Agreement that affects the officer or employee's financial interest or the financial interest of any corporation, partnership or association in which the officer or employee is, directly or indirectly interested, in violation of any law, rule or regulation.

B. No person may offer, give, or agree to give any officer or employee or former officer or employee, nor may any officer or employee solicit, demand, accept, or agree to accept from another

person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation or any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any way pertaining to any program requirement, contract or subcontract, or to any solicitation or proposal.

19. NOTICE

A. All notices, requests, demands, or other communications under this Agreement will be in writing. Notice will be sufficiently given for all purposes as follows:

1. Personal delivery. When personally delivered to the recipient, notice is effective on delivery.
2. First Class mail. When mailed first class to the last address of the recipient known to the party giving notice, notice is effective three mail delivery days after deposit in a United States Postal Service office or mailbox.
3. Certified mail. When mailed certified mail, return receipt requested, notice is effective on receipt, if delivery is confirmed by a return receipt.
4. Overnight delivery. When delivered by an overnight delivery service, charges prepaid or charged to the sender's account, notice is effective on delivery, if delivery is confirmed by the delivery service.
5. Facsimile transmission. When sent by fax to the last fax number of the recipient known to the party giving notice, notice is effective on receipt. Any notice given by fax will be deemed received on the next business day if it is received after 5:00 p.m. (recipient's time) or on a non-business day.
6. Addresses for purpose of giving notice are as follows:

OWNER'S REPRESENTATIVE: 14121 Ames Avenue, Omaha, NE 68164

CITY: 490 E Street, David City, NE 68632

B. Any correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified, will be deemed effective as of the first date the notice was refused, unclaimed or deemed undeliverable by the postal authorities, messenger or overnight delivery service.

C. Either party may change its address or fax number by giving the other party notice of the change in any manner permitted by this Agreement.

20. PROHIBITION AGAINST ASSIGNMENT AND SUBCONTRACTING

This Agreement and all exhibits are binding on the heirs, successors, and assigns of the parties. The Agreement may not be assigned or subcontracted by either CITY or OWNER'S REPRESENTATIVE without the prior written consent of the other.

21. INTEGRATION; AMENDMENT

This Agreement represents the entire understanding of CITY and OWNER'S REPRESENTATIVE as to those matters contained in it. No prior oral or written understanding will be of any force or effect with respect to the terms of this Agreement. The Agreement may not be modified or altered except in writing signed by both parties.

22. INTERPRETATION

The terms of this Agreement should be construed in accordance with the meaning of the language used and should not be construed for or against either party by reason of the authorship of this Agreement or by any other rule of construction that might otherwise apply. To the extent that the terms of the Scope of Services or the Proposal are inconsistent with the terms of this Agreement, the terms of this Agreement shall control.

23. SEVERABILITY

If any part of this Agreement is found to be in conflict with applicable laws, that part will be inoperative, null and void insofar as it is in conflict with any applicable laws, but the remainder of the Agreement will remain in full force and effect.

24. TIME OF ESSENCE

Time is of the essence in the performance of this Agreement.

25. GOVERNING LAW; JURISDICTION

This Agreement will be administered and interpreted under the laws of the State of Nebraska. Jurisdiction of any litigation arising from the Agreement will be in DAVID CITY County, Nebraska.

26. COMPLIANCE WITH STATUTES AND REGULATIONS

OWNER'S REPRESENTATIVE will be knowledgeable of and will comply with all applicable federal, state, county and city statutes, rules, regulations, ordinances and orders.

27. WAIVER OF BREACH

No delay or omission in the exercise of any right or remedy by a non-defaulting party on any default will impair the right or remedy or be construed as a waiver. A party's consent or approval of any act by the other party requiring the first party's consent or approval will not be deemed to waive or render unnecessary the other party's consent to or approval of any subsequent act. Any waiver by either party of any default must be in writing and will not be a waiver of any other default concerning the same or any other provision of this Agreement.

28. ATTORNEY'S FEES

Except as provided for in Paragraph 14, in any dispute, litigation, arbitration, or other proceeding by which one party either seeks to enforce its rights under this Agreement (whether in contract, tort or both) or seeks a declaration of any rights or obligations under this Agreement, the prevailing party will be awarded reasonable attorney's fees, together with any costs and expenses, to resolve the dispute and to enforce any judgment.

29. EXHIBITS

All exhibits identified in this Agreement are incorporated into the Agreement by this reference.

- Exhibit A Scope of Services
- Exhibit B Compensation Schedule

30. OWNER'S REPRESENTATIVE'S AUTHORITY TO EXECUTE

The persons executing this Agreement on behalf of OWNER'S REPRESENTATIVE warrant that (i) OWNER'S REPRESENTATIVE is duly organized and existing; (ii) they are duly authorized to execute this Agreement on behalf of OWNER'S REPRESENTATIVE; (iii) by so executing this Agreement, OWNER'S REPRESENTATIVE is formally bound to the provisions of this Agreement; and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which OWNER'S REPRESENTATIVE is bound.

31. PUBLIC RECORDS ACT

Any documents submitted by the OWNER'S REPRESENTATIVE; all information obtained in connection with the CITY's right to audit and inspect the OWNER'S REPRESENTATIVE's documents, books, and accounting records pursuant to paragraph 13 OWNER'S REPRESENTATIVE's Accounting Records; Other Project Records; become the exclusive property of the City. All such documents become a matter of public record and shall be regarded as public records. Exceptions will be those elements in the Nebraska Public Records Act and which are marked "trade secret", "confidential", or "proprietary". The CITY shall not in any way be liable or responsible for the disclosure of any such records including, without limitation, those so marked, if disclosure is required by law, or by an order issued by a court of competent jurisdiction. In the event the CITY is required to defend an action on a Public Records Act request for any of the aforementioned documents, information, books, records, and/or contents of a proposal marked "trade secret", "confidential", or "proprietary", the OWNER'S REPRESENTATIVE agrees to defend and indemnify the CITY from all costs and expenses, including reasonable attorney's fees, in action or liability arising under the Public Records Act.

CITY OF DAVID CITY,
("City")

By: Jessica J Miller

Title: Mayor

Print: Jessica J Miller

Kirkpatrick Industries, Inc. d/b/a KTECH
("Representative")

By: Randy Kirkpatrick

Title: Vice President

Print: Randy Kirkpatrick

Attachments:

- Exhibit A Scope of Services
- Exhibit B Compensation Schedule

EXHIBIT A
SCOPE OF SERVICES

The scope of services shall include general owner's representation for the City of David City, Nebraska as agreed to and defined by the City of David City and the City Administrator.

The owner's representative services shall include, but not be limited to, the following:

- A. When required, be present at City Hall for meetings.
- B. Develops and maintains good working relationships with other city departments, other jurisdictions, and the public.
- C. Analyze projects for compliance with the City's General Comprehensive Plan, zoning ordinance, Design Guidelines, applicable specific plans and other policies.
- D. Review and process ministerial applications and discretionary entitlements, such as: Plan Checks, Zoning Clearances, Sign Permits, Use permits, Variances, Design Review, Tentative Maps, and General Plan and Zoning amendments.
- E. Compiles and analyzes data on economic, social, environmental, and physical factors affecting land use.
- F. Communicate with developers, engineers, property owners, contractors and other individuals to discuss, advice, explain processes and suggest improvements regarding potential projects, pre-applications, development applications, feasibility analysis, conceptual development plans and code interpretation;
- G. Ability to write Planning Commission and City Council staff reports, resolutions, ordinances, conditions of approval, and give oral presentations.
- H. Attend public hearings and community meetings as necessary.
- I. Analyze projects for environmental compliance.
- J. Ability to review projects and provide comments within timelines specified by the City
- K. Provide strong emphasis on the management of multiple projects and competing priorities while maintaining quality, meeting schedules and staying within budget.
- L. Answer public inquiries by telephone, email, mail or in person regarding property zoning and/or General Plan land uses, application submittal requirements, etc.
- M. Facilitation of special projects.

EXHIBIT B
COMPENSATION SCHEDULE

The compensation to be provided to Kirkpatrick Industries, Inc. d/b/a KTECH for the owner's representative services as described in Exhibit A shall be on an hourly basis as follows:

\$150.00/hour	Senior Executive
\$125.00/hour	Manager
\$110.00/hour	Coordinator
\$85.00/hour	Administrative

Kyle Overturf with AMGL, P.C. introduced himself and presented an overview of the 2021-2022 audit.



To the Honorable Mayor and City Council
City of David City
David City, Nebraska

We have audited the financial statements of the governmental activities, the business-type activities, each major fund, and the aggregate remaining fund information of the City of David City for the year ended September 30, 2022, and have issued our report thereon dated March 31, 2023. Professional standards require that we provide you with information about our responsibilities under generally accepted auditing standards, as well as certain information related to the planned scope and timing of our audit. We have communicated such information in our letter to you dated October 6, 2022. Professional standards also require that we communicate to you the following information related to our audit.

Significant Audit Findings

Qualitative Aspects of Accounting Practices

Management is responsible for the selection and use of appropriate accounting policies. The significant accounting policies used by the City of David City are described in Note A to the financial statements. No new accounting policies were adopted and the application of existing policies was not changed during the year ended September 30, 2022. We noted no transactions entered into by the City during the year for which there is a lack of authoritative guidance or consensus. All significant transactions have been recognized in the financial statements in the proper period.

Accounting estimates are an integral part of the financial statements prepared by management and are based on management's knowledge and experience about past and current events and assumptions about future events. Certain accounting estimates are particularly sensitive because of their significance to the financial statements and because of the possibility that future events affecting them may differ significantly from those expected. The most sensitive estimates affecting the financial statements were:

Management's estimate of the collectability of accounts receivable is based on historical utility revenues, historical loss levels, and an analysis of the collectability of individual accounts. We evaluated the key factors and assumptions used to develop the collectability of accounts receivable in determining that it is reasonable in relation to the financial statements taken as a whole.

Wealth Management, LLC Registered Investment Advisor, is affiliated with AMGL, P.C.
and offers wealth management and investment advisory services.

SHAREHOLDERS:

Robert D. Almquist
Phillip D. Maltzahn
Marcy J. Luth
Heidi A. Ashby
Christine R. Shenk
Michael E. Hoback
Joseph P. Stump
Kyle R. Overturf
Tracy A. Cannon

1203 W 2nd Street
P.O. Box 1407
Grand Island, NE 68802
P 308-381-1810
F 308-381-4824
EMAIL cpa@gicpas.com

A PROFESSIONAL
CORPORATION

Management's estimate of the depreciation of capital assets is based on the estimated useful life of the capital asset. We evaluated the key factors and assumptions used to develop the depreciation of capital assets in determining that it is reasonable in relation to the financial statements taken as a whole.

The financial statement disclosures are neutral, consistent, and clear.

Difficulties Encountered in Performing the Audit

We encountered no significant difficulties in dealing with management in performing and completing our audit.

Corrected and Uncorrected Misstatements

Professional standards require us to accumulate all known and likely misstatements identified during the audit, other than those that are trivial, and communicate them to the appropriate level of management. Management has corrected all such misstatements. Fourteen audit adjustments decreased the fund balances of the City's governmental funds by \$69,900 and sixteen audit adjustments increased the net position of the City's business-type funds by \$1,216,906. The following material misstatements detected as a result of audit procedures were corrected by management:

1. Unrecorded transfer of \$80,000 from TIF account to the CDA account was recorded.
2. Accounts receivable and utility revenues were decreased \$109,524 to record the change in accounts receivable.
3. Depreciation expense of \$902,720 was recorded on the utility funds.
4. Capital asset additions of \$2,661,745 were reclassified in the business-type funds, increasing capital assets and decreasing expenses.
5. Principal payments totaling \$231,746 were reclassified, decreasing liabilities and expenses in the business-type funds.
6. Notes receivable and revenues were decreased \$399,964 to record current year payoff of the electric note to CDA.

Disagreements with Management

For purposes of this letter, professional standards define a disagreement with management as a financial accounting, reporting, or auditing matter, whether or not resolved to our satisfaction, that could be significant to the financial statements or the auditor's report. We are pleased to report that no such disagreements arose during the course of our audit.

Management Representations

We have requested certain representations from management that are included in the management representation letter dated March 31, 2023.

Management Consultations with Other Independent Accountants

In some cases, management may decide to consult with other accountants about auditing and accounting matters, similar to obtaining a “second opinion” on certain situations. If a consultation involves application of an accounting principle to the City’s financial statements or a determination of the type of auditor’s opinion that may be expressed on those statements, our professional standards require the consulting accountant to check with us to determine that the consultant has all the relevant facts. To our knowledge, there were no such consultations with other accountants.

Other Audit Findings or Issues

We generally discuss a variety of matters, including the application of accounting principles and auditing standards, with management each year prior to retention as the City’s auditors. However, these discussions occurred in the normal course of our professional relationship and our responses were not a condition to our retention.

In connection with our audit of the financial statements of the City of David City as of September 30, 2022, we noted certain matters that we believe you should consider. Our observations were formed as a by-product of our audit procedures, which did not include a comprehensive review for the purpose of submitting detailed recommendations.

1. During our audit, we noted the City does not have a formal capitalization policy. We recommend the City approve a capitalization policy of \$2,500.
2. We noted that the City does not have up to date TIF bond amortization schedules. It is important that these schedules be accurately calculated so the TIF collections and payments to redevelopers can be terminated when the TIF bonds and interest are paid in full.
3. We recommend that the off books CDA accounts be recorded as a part of Fund 82 or its own fund to ensure a higher level of accountability over transactions.
4. We recommend the City consider the benefits of combining component of the utility funds into a singular fund number within Power Manager as the current tracking is very cumbersome and likely confusing to those outside of the organization. We recommend utilizing the current system to provide the same detail with less work of creating transfers that are unnecessary between fund numbers within the same utility fund.

Other Matters

We were engaged to report on the nonmajor governmental funds combining statements and statement of revenues and expenditures by General Fund department, which accompany the financial statements but are not RSI. With respect to the supplementary information, we made certain inquiries of management and evaluated the form, content, and methods of preparing the information to determine that the information complies with accounting principles generally accepted in the United States of America, the method of preparing it has not changed from the prior period, and the information is appropriate and complete in relation to our audit of the financial statements. We compared and reconciled the supplementary information to the underlying accounting records used to prepare the financial statements or to the financial statements themselves.

We were not engaged to report on the management's discussion and analysis and budgetary comparison schedules, which accompany the financial statements but are not RSI. We did not audit or perform other procedures on this other information and we do not express an opinion or provide any assurance on it.

Restriction on Use

This information is intended solely for the use of the City Council and management of the City of David City and is not intended to be and should not be used by anyone other than these specified parties.

AMGL P.C.

Grand Island, Nebraska
March 31, 2023

City of David City
 September 30,

	Reference	Recommended	2022	2021	2020
Population			2995	2995	2922
Valuation		\$ 347,363,069	\$ 174,894,100	\$ 161,163,627	\$ 148,679,695
Per Capita		\$ 65,191	\$ 58,395	\$ 53,811	\$ 50,883
1) Unrestricted Net Position/Total Net Position					
Government Wide	Page 13	35%	42.14%	81.44%	85.55%
Governmental Activities	Page 13	25%	23.62%	58.89%	66.85%
Business-Type Activities	Page 13	40%	49.36%	95.47%	96.18%
2) Top 4 Sources of Revenues - Governmental Activities					
Grants and Contributions	Page 9	\$235 per Capita	166	83	-
Property Taxes		\$283 per Capita	312	322	-
Sales Tax		\$340 per Capita	352	335	-
State Allocation		\$169 per Capita	189	194	-
3) State Allocations					
Highway Allocation		\$117 Per Capita	\$ 132	\$ 132	124
Municipal Equalization		\$52 Per Capita	57	62	65
4) Governmental Expenses (Excludes capital outlay and debt)					
Administrative	Page 47	\$90 Per Capita	\$ 106	91	n/a
Police		\$145 Per Capita	95	100	n/a
Library		\$60 Per Capita	48	45	n/a
Community Center		\$30 Per Capita	30	33	n/a
Park		\$50 Per Capita	48	41	n/a
Pool		\$40 Per Capita	36	41	n/a
Summer Recreation		\$30 Per Capita	40	28	n/a
5) Outstanding GO Debt/Valuation					
	Page 12	< 5%-Good < 3%-Excellent	4.94%	4.76%	4.97%
6) Unassigned Fund Balance/General Fund Expenditures					
	Pages 15 & 17	30%	113.72%	165.38%	

City of David City
 September 30,

	Reference	Recommended	2022	2021	2020
7) Months Expense in Street Cash Reserve	Pages 15 & 17	12.00	0.00	0.00	0.00
8) Levy Rates					
General		0.38	0.492152	0.500000	0.500000
\$241/Capita		\$ 287	\$ 269	\$ 254	
Debt Service		0.07	-	-	-
\$42/Capita		\$ -	\$ -	\$ -	
Total Levy			0.492152	0.500000	0.500000
9) Net Depreciable Capital Assets/Original Cost					
Governmental Activities	Page 37	> 35%	n/a	n/a	n/a
Business-type Activities	Page 39	> 35%	38.22%	38.43%	40.19%
10) Operating Income/Total Operating Revenue					
Water Fund	Page 20	15.00%	-14.70%	3.72%	15.93%
Sewer Fund		15.00%	-84.88%	-38.95%	8.76%
Electric Fund		15.00%	11.27%	1.54%	15.01%
11) Debt Coverage Ratio					
Water	Pages 20 & 21	1.50	0.60	1.89	2.51
Sewer		1.50	-0.46	0.26	0.75
12) Cash, Investments & Treasurer Cash					
General Fund:	Pages 15 & 17				
Operating		640,000			
Replacement		-			
(Budgetary stabilization \$0)		640,000	1,450,356	2,086,354	1,986,669
Business-type Activities (Excluding Depreciation/Amortization)	Pages 19/20/39				
Operating		2,760,000			
Restricted		620,000			
Replacement		-			
		3,380,000	5,055,989	6,648,636	5,052,846

Council member Bruce Meysenburg made a motion to accept the 2021-2022 audit by Kyle Overturf of AMGL P.C. for the fiscal year ended September 30, 2022. Council Member Pat Meysenburg seconded the motion. The motion carried.
 Jim Angell: Yea, Tom Kobus: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Woita: Yea
 Yea: 6, Nay: 0

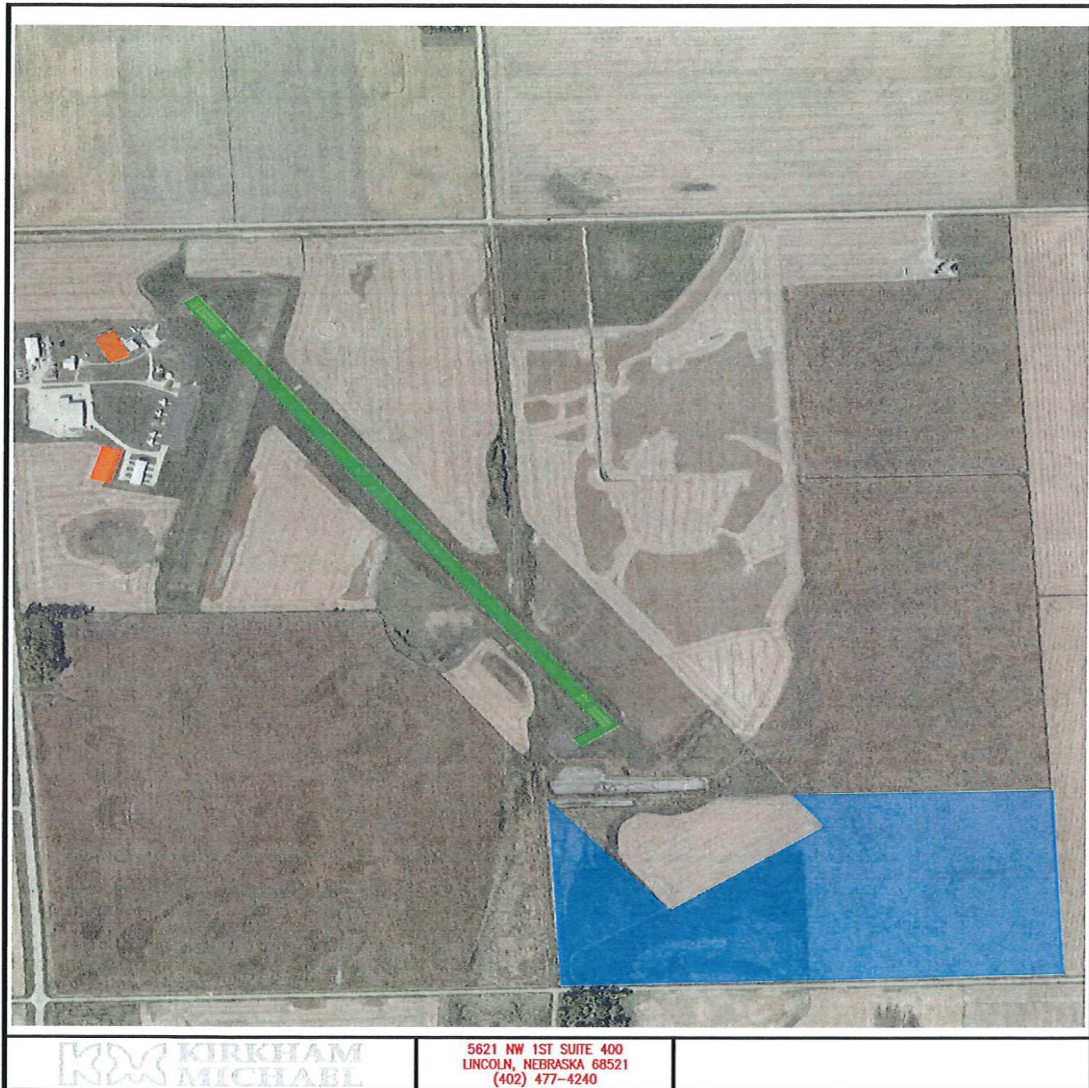
Eric Johnson with Kirkham Michael introduced himself and presented the David City Airport Capital Improvement Program for the next several years.

The Council discussed starting an Airport Advisory Board made up of pilots and City personnel that could help with decisions regarding the airport.

Capital Improvement Program
 David City Airport

4/25/2023

	<u>Year</u>	<u>Description</u>	<u>Total Cost</u>	<u>Federal</u>	<u>State</u>	<u>Local</u>
	<u>FFY</u>					
Phase I						
	2023	Land for runway 32	\$ 472,000.00	\$ 424,800.00	\$ -	\$ 47,200.00
	2023	Runway 14/32 design	\$ 200,000.00	\$ 180,000.00	\$ -	\$ 20,000.00
	2024	Rehab 14/32	\$ 3,672,000.00	\$ 3,304,800.00	\$ -	\$ 367,200.00
	2025	Airfield Lighting LED	\$ 420,000.00	\$ 378,000.00	\$ -	\$ 42,000.00
	2025	Runway 14/32 extesnion	\$ 1,920,000.00	\$ 1,728,000.00	\$ -	\$ 192,000.00
	2026	Construct terminal building	\$ 450,000.00	\$ 405,000.00	\$ -	\$ 45,000.00
	2026	Parking and Access Rd	\$ 115,000.00	\$ 103,500.00	\$ -	\$ 11,500.00
		Phase I Subtotal	\$ 7,249,000.00	\$ 6,524,100.00	\$ -	\$ 724,900.00
Phase II						
	2028	T-hangars	\$ 850,000.00	\$ 765,000.00	\$ -	\$ 85,000.00
	2031	Pavement Maintenance	\$ 290,000.00	\$ 261,000.00	\$ -	\$ 29,000.00
	2032	Expand Apron	\$ 148,630.00	\$ 133,767.00	\$ -	\$ 14,863.00
		Phase II Subtotal	\$ 1,288,630.00	\$ 1,159,767.00	\$ -	\$ 128,863.00
Phase III						
	2037	Construct Shop Hangar	\$ 600,000.00	\$ 540,000.00	\$ -	\$ 60,000.00
		Phase III Subtotal	\$ 600,000.00	\$ 540,000.00	\$ -	\$ 60,000.00
		TOTAL DEVELOPMENT COSTS	\$ 9,137,630.00	\$ 8,223,867.00	\$ -	\$ 913,763.00
Not Funded						
	2032	land for runway 2/20	\$ 370,000.00			
	2032	Approach survey	\$ 40,000.00			
	2032	10-place t-hangar	\$ 500,000.00			
		TOTAL NOT FUNDED	\$ 910,000.00			
Federal Entitlement Funds BIL Funds						
Fiscal Year						
	2020	\$ -				
	2021	\$ 50,100.00				
	2022	\$ 150,000.00	\$ 110,000.00			
	2023	\$ 150,000.00	\$ 113,000.00			
		Potential Funds in 2023	\$ 573,100.00			



Ethan Joy, with JEO Engineering, introduced himself and stated that there were eight bids for the 16" Water Main Loop ranging from \$3,471,576 to \$5,842,672.73 with Rutjens Construction being the low bidder. Rutjens Construction bid for Alternate number 1 was \$50,000.

Council member Tom Kobus made a motion to accept the low bid of Rutjens Construction in the amount of \$3,389,436 and accept the alternate bid of \$50,000. Council Member Pat Meysenburg seconded the motion. The motion carried.

Jim Angell: Yea, Tom Kobus: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Woita: Abstain (Without Conflict)

Yea: 5, Nay: 0, Abstain (Without Conflict): 1



April 20, 2023

Tami Comte, City Clerk-Treasurer
City of David City
400 E Street
David City, NE 68632

RE: 2023 Water Main Improvements North Loop
David City, Nebraska
JEO Project No. 221276.00

Dear Ms. Comte:

On February 19, 2023 at 11:00 AM the bid opening was conducted for the 2023 Water Main Improvements North Loop project. A total of eight bids were received, with base bids ranging from \$3,471,576.00 to \$5,842,672.73. Total bids, including Alternate 1, ranged from \$3,521,576.00 to \$5,842,672.73.

The low base bid of \$3,471,576.00 and low total bid of \$3,521,576.00 were submitted by Rutjens Construction of Tilden, Nebraska. The engineer's opinion of probable cost for the base bid and total bid were \$3,558,000 and \$3,583,000.00, respectively. The low base bid and low total bid were approximately 2% below the engineer's opinion of probable cost.

Rutjens Construction is a reputable contractor that has performed well on previous projects of similar type and size. JEO recommends that the base bid be awarded to Rutjens Construction, with the award of Alternate 1 to be made based on the best interests of the City of David City and the funds available for the work.

The bid tabulation is enclosed for your reference. If you have any questions about the information included in this letter or the enclosed, please feel free to call.

Sincerely,

A handwritten signature in black ink, appearing to read 'Tim Adams', written over a white background.

Tim Adams, PE
Senior Project Manager

Enclosures

cc: Ethan Joy, JEO Consulting Group



Bid Tab

PROJECT | 2023 Water Main Improvements North Loop

JEO PROJECT NO. | 221276.00

LOCATION | David City, Nebraska

LETTING | April 19, 2023 @ 11:00 AM

OPINION OF PROBABLE COST | \$3,500,000

Bidder	Total Group A	Total Group B	Total Groups A & B	ALTERNATE 1 – MODIFIED CONSTRUCTION SCHEDULE
Rutjens Construction Inc. Tilden, NE	\$3,369,436.00	\$82,140.00	\$3,471,676.00	\$50,000.00
MC Wells Contracting, LLC Omaha, NE	\$3,428,400.00	\$93,600.00	\$3,522,000.00	\$0.00
Van Kirk Bros. Contracting Sutton, NE	\$3,614,777.00	\$84,120.00	\$3,698,897.00	No Bid
H.R. Bookstrom Construction, Inc. Lincoln, NE	\$3,794,485.00	\$114,000.00	\$3,908,485.00	(left blank)
General Excavating, LLC Lincoln, NE	\$3,848,499.00	\$112,824.00	\$3,961,323.00	\$15,000.00
Obrist & Company, Inc. Columbus, NE	\$4,061,073.00	\$101,100.00	\$4,162,173.00	No Bid
M.E. Collins Contracting Co., Inc. Wahoo, NE	\$4,198,876.60	\$105,456.00	\$4,304,332.60	\$60,000.00
Myers Construction, Inc. Broken Bow, NE	\$5,735,854.73	\$106,818.00	\$5,842,672.73	No Bid

**Number in italics indicate an irregularity in the contractor's bid form*

(JEO Form Rev. 10/2021)

Electrical Engineer Matt Kalin, with JEO Engineering, introduced himself and stated that they had two bids for the 2023 Industrial Parkway-Trowbridge Lane Electrical Extension project. IES Commercial, Inc. was the low bidder with a bid of \$601,106.58 which was \$244,000 under the Engineers' cost estimate.

Council member Keith Marvin made a motion to accept the low bid of IES Commercial, Inc. for \$601,106.58 for the 2023 Industrial Parkway-Trowbridge Lane Electrical Extension Project. Council Member Bruce Meysenburg seconded the motion. The motion carried. Jim Angell: Yea, Tom Kobus: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Woita: Yea
 Yea: 6, Nay: 0



April 26, 2023

Tami Comte, City Clerk
City of David City, Nebraska
490 E Street
David City, NE 68632-0191

RE: 2023 Industrial Parkway-Trowbridge Lane Electrical Extension
David City, Nebraska
JEO Project No. 230325.00

Dear Tami and Members of the Council:

JEO Consulting Group, Inc. (JEO) is pleased to submit this letter of recommendation for the bid opening conducted on August 26, 2023.

The City of David City, Nebraska (Owner) received two responsive bids on Wednesday, August 26, 2023, for the '2023 Industrial Parkway-Trowbridge Lane Electrical Extension' project. The responsive bids received ranged in the amounts of \$601,106.58 to \$1,043,863.94 for all bid items, with the bid tab included. One responsive bid received was below and the other bid received was above the Engineer's opinion of probable construction cost for all work.

JEO has completed a thorough review of the bids and recommend that the Owner accept the lowest responsive bid submitted by IES Commercial, Inc. (IES) in the amount of \$601,106.58.

The project is required to extend the electrical distribution system to serve the new AKRS facility including future loads on adjacent properties and provide continuous roadway lighting. IES has demonstrated the experience to complete the previously mentioned project on multiple projects with JEO.

If you have any questions and/or concerns, do not hesitate to contact me via email at mkalin@jeo.com or mobile phone at 402.360.0217.

Respectfully submitted,

A handwritten signature in blue ink that reads "Matt E. Kalin".

Matt E. Kalin, PE
Electrical Senior Project Manager

MEK:cah
Enclosure



Bid Tab

PROJECT | 2023 Industrial Parkway-Trowbridge Lane Electrical Extension

JEO PROJECT NO. | 230325

LOCATION | David City, NE

LETTING | April 26, 2023 @ 3:00 PM

OPINION OF PROBABLE COST | \$845,000

Bidder	Total Bid Items	Start Date
IES Commercial, Inc. Holdrege, NE	\$601,106.58	June 5, 2023
Watts Electric Company Waverly, NE	\$1,043,863.94	June 5, 2023

Mayor Jessica Miller stated that the next agenda item was discussion regarding Downtown Rooftop Lighting.

Mayor Miller stated that she had been looking into the rooftop lighting and that she had not been ignoring the comments.

Mayor Miller read the following statement from Cory Vandenberg, with Vandenberg Electric. “The City cannot operate the way we have it currently. It was set up for temporary usage – seasonal 90 days. To be permanently on each building/business needs its own outlet to serve its lights. You are in violation of NEC Articles per NEC 2017 Nebraska Code: 410-160 Lighting needs to be listed for its use
400 – 12 Rubber cord cannot be used as a substitute for permanent wire method
500 – 36 90-day limit on temporary lighting.” “I had a conversation with Clint Hansen – Chief State of Nebraska Electric and Craig Thelen - Director Division Heads and this is what they told me.”

Former Mayor Alan Zavodny introduced himself and stated that he would encourage the Council to have the lights hard-wired in because they are a great addition to the downtown area.

Special Projects Coordinator Dana Trowbridge introduced himself and said that having the lights on and then off sends a message that we don’t care, and he feels that this is worth doing.

Ruth Thoendel introduced herself and stated that just as you want your home to have “curb appeal”, the rooftop lights are the “curb appeal” of downtown and she feels that it’s important to have them on permanently.

Council member Bruce Meysenburg made a motion to approve taking bids to permanently affix the downtown rooftop lighting. Council Member Jim Angell seconded the motion. The motion carried.

Jim Angell: Yea, Tom Kobus: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Woita: Yea
Yea: 6, Nay: 0

Mayor Miller stated that the next item on the agenda was repair of the number 6 engine at the Power Plant.

Power Plant Supervisor John Smaus introduced himself and explained that the number 6 engine at the Power Plant went down during the testing and therefore NPPD has been docking us about \$4,800 per month. He presented an estimate from NMC for repair of the engine in the amount of \$154,329. They also had number 5 engine and number 7 engine scoped. He stated that there is moisture inside of the cylinders and they both need to be repaired. His recommendation is to repair number 6 this year and then to budget to repair number 5 and 7 in the coming years.

Council member Tom Kobus stated that in the past the Council had voted to not repair the engines if they got bad.

Electrical Engineer Matt Kalin with JEO Engineering stated that he does engineering for several towns in the State and with the huge fluctuation on the power grid that towns are actually voting to open power plants that had been closed in the past and some are increasing their power capacity.

Council member Bruce Meysenburg made a motion to approve the repair of number 6 engine at the Power Plant and budget to repair engines number 5 and 7 over the next couple of years and this motion replaces and supersedes any prior conflicting action. Council Member Keith Marvin seconded the motion. The motion carried.

Jim Angell: Yea, Tom Kobus: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Woita: Yea
Yea: 6, Nay: 0

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Steve Altstadt
Power Systems PSSR
 Cell: 402-763-7208
 Email: stevealtstadt@nmcpower.com



Desk: 402-891-7639
 Fax: 402-891-7730

Customer: David City
 QUOTE NUMBER SA2344 Date: 24-Apr-23
Contact: John Smaus 402-367-3138 power01@windstream.net

We are pleased to submit the following estimate for your consideration.

Make CATERPILLAR	Model 3516	Serial No. 25204929	#6
------------------	------------	---------------------	----

RE: Replace 15 Cylinder Heads, 15 Cylinder Packs, and 15 Injectors.

NMC proposes repairing the cylinder assemblies. NMC will lock out/ tag out the generator set. The engine cooling system will be drained and kept for reuse. NMC will replace the cylinder head assemblies and cylinder pack assemblies. NMC will remove a side cover of the engine to gain access to the crankshaft and connecting rod. NMC will replace the cylinder pack with a new connecting rod bearing and piston cooling jet. NMC will use new gaskets and seals and install a new cylinder head. NMC will install floating bridges. Reman injectors will be installed with new seals and bolt. Once everything is replaced, NMC will add the engine coolant back into the cooling system and verify the repairs and that there are no leaks.

Parts	\$90,717.03
Labor	\$58,350.97
Total:	\$149,068.00

RE: Cooling System Maintenance

NMC proposes performing the engine cooling system maintenance to include replacing the radiator cap, fan belts, upper & lower radiator hoses with hose clamps, coolant thermostats & seals, and new coolant. All waste materials will be properly disposed of.

Parts	\$3,210.32
Labor	\$2,050.68
Total:	\$5,261.00

Replace Cylinder Head Assemblies, Cylinder Packs, and Injectors	\$149,068.00
Cooling System Maintenance	\$ 5,261.00

GRAND TOTAL: \$154,329.00

This estimate is based on visual inspection, it is only an estimate. Additional repair work resulting in incremental charges will not be performed without prior customer approval. All repairs are subject to State and Federal taxes, plus freight charges for non stock parts. Applicable taxes not included. Labor rates quoted are for normal business hours Monday through Friday.

ACCEPTED BY _____	THIS ESTIMATE IS VALID UNTIL 24-May-23
TITLE _____	
DATE: _____ P.O. NO. _____	Steve Altstadt NMC POWER SYSTEMS

Council member Kevin Woita made a motion to approve giving Waste Connections notice of termination of contract and seeking bids for a new contract for similar services. Council Member Tom Kobus seconded the motion. The motion carried.

Jim Angell: Yea, Tom Kobus: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Woita: Yea
Yea: 6, Nay: 0

Council member Bruce Meysenburg made a motion to pass and adopt Resolution No. 16-2023 establishing an insufficient funds of account closed policy. Council Member Pat Meysenburg seconded the motion. The motion carried.

Jim Angell: Yea, Tom Kobus: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Woita: Yea
Yea: 6, Nay: 0

RESOLUTION 16-2023

A RESOLUTION OF THE CITY OF DAVID CITY, NEBRASKA ESTABLISHING A POLICY TO DISCOURAGE THE ISSUANCE OF INSUFFICIENT FUNDS OR ACCOUNT CLOSED CHECKS IN PAYMENT OF SERVICES PROVIDED BY THE CITY OF DAVID CITY.

WHEREAS, the City of David City has received insufficient funds and account closed checks in payment of services provided by the city, and

WHEREAS, it has become necessary to discourage the issuance of insufficient funds and account closed checks to the City of David City by establishing a written policy regarding insufficient funds and account closed checks.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF DAVID CITY, the policy regarding the issuance of insufficient funds and closed account checks to the City of David City be as follows:

1. For the purposes of this Resolution, any form of payment, including bank withdrawal, automatic payment plans, and debit card transactions shall be treated as an insufficient funds or account closed check.
2. Any person tendering an insufficient funds or account closed check to the City of David City for any service provided by the city, will be assessed a "returned check" fee in the amount of forty dollars (\$40).
3. If an insufficient funds or account closed check is issued to pay a utility bill, the utility customer will be subject to disconnection if payment for the full amount of the insufficient or account closed check, plus the returned check fee, is not made in cash, money order, or other certified funds prior to the previously given disconnection date, without any further notice.
4. If an insufficient funds or account closed check is issued to the City of David City, the City Clerk will send a notice to the person issuing the insufficient or account closed check,

informing them that they have seven (7) days from the date of the notice to pay the amount of the returned check plus the returned check fee, or the check will be turned over to the city attorney for collection.

5. Any person tendering an insufficient funds or account closed check to the City of David City for any service provided by the city, will be required to make payments owed to the City of David City by cash, money order, or other certified funds for the next six (6) months.
6. Any person tendering a second insufficient funds or account closed check to the City of David City for any service provided by the city within twelve (12) months of the first insufficient or account closed check will be required to make payments owed to the City of David City by cash, money order, or other certified funds on a permanent basis.

Passed and adopted this 26th day of April, 2023.

Mayor Jessica Miller

ATTEST:

City Clerk Tami Comte

Council member Tom Kobus made a motion to approve the quote of Horizontal Boring for the 8" Sanitary Sewer Railroad Crossing. Council Member Pat Meysenburg seconded the motion. The motion carried.

Jim Angell: Yea, Tom Kobus: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Woita: Yea
Yea: 6, Nay: 0

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505 S RIVER AVENUE
 P.O. BOX 429
 EXETER, NE 68351-0429
 PHONE: 402-266-5347
 FAX: 402-266-6377
 PROJ. MGMT FAX: 402-266-5591
 www.hbttrenchless.com

*** QUOTE ***

DATE: April 13, 2023
 PROJECT: David City, NE - 8" Sanitary Sewer Crossing Railroad

ITEM	DESCRIPTION	ESTIMATED QUANTITIES	UNIT PRICE	TOTAL AMOUNT
1.00	Furnish Steel Casing and Bore Railroad Crossing	106 L.F.	\$ 672.00 /LF	\$ 71,232.00
1.10	Furnish Casing Spacers, End Seals and Install Contractor's 8" Sanitary Sewer Pipe in Steel Casing	106 L.F.	\$ 44.00 /LF	\$ 4,664.00

NOTES:

- 1.00 If required, contractor or others to handle all RR required flagging, inspection, observation and monitoring requirements and furnish the Railroad Protective Insurance. (Contractor should allow a minimum of 7 days for Horizontal's work).
- 2.00 Contractor shall perform all site clearing and provide adequate access to each end of the bore.

Contractor to: *- City To Do List*

- Furnish all 8" PVC sanitary sewer pipes to be installed through the casing, including any restrained joints, tracer wire or related items.
- Furnish and install casing spacers, end seals, and install their carrier pipe inside the steel casing (unless Horizontal handles at the price for Carrier Installation).
- Handle all potholing, verification and exposing of existing utilities and existing work as needed to determine final crossing elevations and alignments and to confirm no utility conflicts with the crossing and work pits. This shall be handled prior to Horizontal's mobilization.
- Handle any relocations or re-routing of existing utilities needed for the work and handle any bypass pumping of existing utilities.
- Handle all dewatering needed for the work (Horizontal will furnish up to two 2-inch submersible pumps for pumping of nuisance water from the bore pit).
- Furnish any rock base materials needed for the pit and/or sumping (allow up to 30 tons) and furnish any pipe bedding materials needed for the work.
- Handle all staking, pre and post construction surveys and any as-built surveys required.
- Provide and maintain all access, easements and room to perform the work.
- Handle all erosion control, SWPPP and associated permits.
- Handle all removals replacements, reseeding and site restoration.
- Handle all final backfilling and tamping of pits, and moving or hauling of excess spoil, as required.
- Handle all inspections and testing required.
- Handle all traffic control, barriers, flashers, flagmen, permits, pedestrian control, fencing or other similar items.
- Handle all Railroad Permits, Railroad Protective Insurance, Right-of-Way (ROW) entry fees and other related costs for the work.

Horizontal Boring & Tunneling Co. shall:

- Excavate their bore pits and exit pits. Horizontal will furnish and install trench boxes and loose shoring and sloping as practical for their pits. Horizontal will leave their shoring in place for Contractor to lay through the pits immediately upon bore completion if desired by Contractor at no additional cost to Contractor.
- Service their operations with their crawler excavators.
- Furnish 16" steel casing and bore into place. Steel casing pipe will meet the physical properties of ASTM A53, ASTM A139 GrB and ASTM A1097 for straight seam or spiral seam steel casing pipe with a minimum yield strength of 35,000 PSI.
- Not be responsible for any obstructions encountered which are unable to be brought back by the auger or which require boring, jacking or drilling operations to stop.
- Furnish payment and performance bonds, if requested, at an additional cost of \$19.00/\$1000 to the Contractor.
- All applicable taxes on Horizontal's materials are included. Contractor to provide applicable exemption certificates.

Handle all Railroad Flagging, Inspectors and Observers and monitoring (including 3rd party services) required by the Railroad.
 Prices exclude rock, shale, rubble, cobbles, boulders, flowing soils or obstructions.

If you have any questions, please contact Lucas Dietterle at 402-266-9110 (direct) or 402-266-5347 (office) or email lucasd@hbttrenchless.com.

HORIZONTAL BORING & TUNNELING CO.
 Lucas Dietterle, P.E., Sr. Estimator/Project Manager

Trenchless Construction Specialist



Council member Tom Kobus made a motion to pass and adopt Resolution No. 17-2023 Proclamation for David City Sesquicentennial. Council Member Pat Meysenburg seconded the motion. The motion carried.

Jim Angell: Yea, Tom Kobus: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Woita: Yea

Yea: 6, Nay: 0

Resolution No. 17-2023

City of David City

Sesquicentennial Proclamation

WHEREAS 1873 is the year when the community of David City was founded as the county seat of Butler County, Nebraska; and

WHEREAS we have grown in leaps & bounds, our past and present continues to build a strong foundation for our municipality to prosper; and

WHEREAS the memories of hometown warmth and good fellowship keep us young in spirit and hope; and

WHEREAS the observance of our one hundred fiftieth anniversary is an occasion of deep pride; and

WHEREAS this milestone year is of great significance in the history of David City; and

WHEREAS we feel it is important to recognize our founding fathers; and

WHEREAS the achievement which we celebrate is an accomplishment of which we can all be proud; and

WHEREAS this anniversary gives us a welcome opportunity to rededicate ourselves to the values and ideals that keep our community and our nation strong; now

THEREFORE, BE IT RESOLVED that the City of David City, Nebraska, officially joins the David City S150th Committee in proclaiming the year 2023 as David City SesQuiCentennial and urges that this period be dedicated to celebrating this

significant anniversary of the founding of David City, Nebraska. The City of David City, Nebraska further acknowledges the importance of sharing information about this historical event with the citizens of David City.

Mayor Jessica J. Miller

Date

Council member Bruce Meysenburg made a motion to approve the request of the 150th Anniversary Committee to waive rental fees for the Schweser House and Auditorium on Sunday, July 30th for the David City 150th Anniversary Celebration. Council Member Jim Angell seconded the motion. The motion carried.

Jim Angell: Yea, Tom Kobus: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Woita: Yea
Yea: 6, Nay: 0

Council member Tom Kobus made a motion to approve the request of the 150th Anniversary Committee to allow a Civil War Living History Group to camp out in the park during the weekend of July 28-30, 2023. Council Member Pat Meysenburg seconded the motion. The motion carried.

Jim Angell: Yea, Tom Kobus: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Woita: Yea
Yea: 6, Nay: 0

Matt Treadway with Treadway Ag introduced himself and asked if they could use the municipal airport for spraying this summer. Treadway indicated that they would purchase all of the fuel at the airport, and they would be spending additional money in town also.

Mayor Jessica Miller stated that she was concerned about the incident by Bellwood last year when one of his pilots hit an electrical line.

Matt Treadway stated that he called the power company right away and told them what happened, and it was resolved.

Council member Tom Kobus made a motion to approve the request by Treadway Ag to use the airport in the summer of 2023. Council Member Pat Meysenburg seconded the motion. The motion carried.

Jim Angell: Yea, Tom Kobus: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Woita: Yea

Yea: 6, Nay: 0

Council member Kevin Woita made a motion to approve the purchase of an AED for the City Office with an approved grant. Council Member Tom Kobus seconded the motion. The motion carried.

Jim Angell: Yea, Tom Kobus: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Woita: Yea

Yea: 6, Nay: 0

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Tami Comte

From: Socorro Medina, Customer Service <CSR2@ExpressCompaniesInc.com>
Sent: Thursday, April 20, 2023 9:42 AM
To: Tami Comte
Subject: AED Grant Approval - Grant Pricing Inside!



Hello

Thank you for applying for our Corporate Buy-Down Grant!

City of David City has been approved, allowing you to take advantage of our specially formulated grant pricing!
This grant expires on 5/19/23.

To assure you receive your approval, I have posted it online at the website - When we attach the approvals, they often get caught in Junk mail / Spam filters - Your Approval Number is "NFPHO23039" and I posted it here for you to download:
<https://www.aedgrant.com/NF/NFPHO23039.pdf>

You will need Adobe Acrobat to open the file. If you do not have Acrobat, you can download it free here: <http://get.adobe.com/reader/>

Please know that while AEDs are typically shipped within 30-60 business days, they are subject to longer and delayed ship times due to manufacturer ship holds and backorders with consideration of them being FDA tracked and tracked Class III Medical Devices. At present, due to worldwide supply chain, freight, and labor issues, several of the AED models are experiencing extended delays; below will give you the status by AED type as provided to us by the Manufacturers:

Philips Heartstart FRx	Currently available, shipping within 30-60 days
Philips Heartstart Onsite	4th quarter of 2023
Zoll AED Plus, semi- and fully-automatic	6-8 months
Zoll AED3, semi- and fully-automatic	8-12 months
Physio-Control Lifepak CR2, semi-auto	Limited stock available, shipping within 30-90 days
Physio-Control Lifepak CR2, fully-auto	Limited stock available, shipping within 30-90 days

Grant Approval #: NFPHO23039

Your Application for our AED Corporate Grant / Buy Down has been **APPROVED** for...

- 1) Free Prescription (Item #: FREERX)
- 2) AED Options and Packages Listed Below.

***The prices listed are your net cost AFTER Corporate Grant / Corporate Buy Down incentive**
 Make sure to see the next page for alternate package options and grant contact information!

HEARTSTART

ONSITE DEFIBRILLATOR

by **PHILIPS**

Item #: M5066A_C02
MSRP: \$1,584.00

Only \$1119.59 after your approved level of grant funding is applied

The Philips HeartStart OnSite Defibrillator the leader in portable defibrillation technology, designed the HeartStart OnSite Defibrillator for the ordinary person in the extraordinary moment. Available without a prescription, the OnSite is designed to be the easiest-to-use and most reliable defibrillator available. Our innovative technology, based on extensive research and user feedback, has produced a defibrillator so easy to use that you can potentially save the life of a co-worker, friend, or anyone else stricken with sudden cardiac arrest.



No RX Needed

Includes FREE Case

The HeartStart OnSite Defibrillator offers:

- Lightweight (3.3 lbs)
- Clear and natural voice instructions that guide you through each step of defibrillation and CPR
- Integrated SMART Pads placed on the patients bare skin transmit information to the defibrillator, which senses and adapts to your actions every step of the way.
- Proven Philips technologies for heart rhythm assessment (SMART Analysis)
- Defibrillation energy delivery (SMART Biphasic)
- Can be used to treat adults, as well as infants and children

Included:

- Battery
- 1 SMART Pads Cartridge
- Quick Start Poster
- Quick Reference Guide
- Owners Manual
- The HeartStart OnSite Defibrillator device includes a 96-month manufacturer's warranty
- HS1 battery includes a 4 year warranty from time of installation.
- SMART Pads Cartridge warranty extends to the expiration date.

Accessories for the HeartStart OnSite Defibrillator:

 <p style="font-size: x-small;">Fast Response Kit Price: \$21.60 Item #: OBC-FRK</p>	 <p style="font-size: x-small;">Extra Adult Pads Price: \$65.55 Item #: M5071A</p>	 <p style="font-size: x-small;">Pedi Pads Price: \$105.45 Item #: M5072A</p>	 <div style="position: absolute; top: -10px; right: -10px; background-color: red; color: white; border-radius: 50%; padding: 2px; font-size: x-small; font-weight: bold;">FITS ALL AEDS OFFERED</div> <p style="font-size: x-small;">AED Cabinet with Alarm Price: \$89.00 Item #: 60112</p>
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See the next page for alternate package options >>

Council member Bruce Meysenburg introduced Ordinance No. 1438 adding Water/Wastewater Data Manager and Assistant Police Chief positions to the employee pay scale. Mayor Jessica Miller read Ordinance No. 1438 by title.

Council member Keith Marvin made a motion to suspend the statutory rule requiring that an Ordinance be read on three separate days. Council Member Pat Meysenburg seconded the motion. The motion carried.

Jim Angell: Yea, Tom Kobus: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Woita: Yea
Yea: 6, Nay: 0

Council member Tom Kobus made a motion to pass and adopt Ordinance No. 1438 on 3rd and Final Reading adding Water/Wastewater Data Manager and Assistant Police Chief positions to the employee pay scale. Council Member Pat Meysenburg seconded the motion. The motion carried.

Jim Angell: Yea, Tom Kobus: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Woita: Yea
Yea: 6, Nay: 0

ORDINANCE NO. 1438

AN ORDINANCE ADOPTING A NEW PAY SCALE / SALARY BY UPDATING THE WATER/WASTEWATER DATA MANAGER AND ASSISTANT POLICE CHIEF LINES; REPEALING ALL ORDINANCES OR PORTIONS OF ORDINANCES IN CONFLICT THEREWITH; PROVIDING FOR PUBLICATION OF THIS ORDINANCE IN PAMPHLET FORM; AND PROVIDING FOR A TIME WHEN THIS ORDINANCE SHALL TAKE EFFECT.

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

SECTION 1. The Mayor and City Council of David City, Nebraska, do hereby establish and fix the pay scales and salaries attached for the attached positions for the appointed officers and employees of the City of David City, Nebraska.

SECTION 2. Any Cost-of-Living Adjustments (COLA) shall be given as approved by the City Council.

SECTION 3. Any and all ordinances or sections thereof, passed and approved prior to the passage, approval and publication or posting of this ordinance, and in conflict with its provisions, are hereby repealed.

SECTION 4. This ordinance shall be published in pamphlet form and shall be in full force and effect on April 26, 2023 following its passage, approval, and publication as provided by law and city ordinance.

PASSED AND APPROVED this 26th day of April, 2023.

Mayor Jessica Miller

City Clerk Tami Comte

City Council Proceedings
 April 26, 2023
 Page #36

Department										
Position	1	2	3	4	5	6	7	8	9	10
<u>City Hall</u>										
Clerical I	\$13.88	\$14.41	\$14.92	\$15.43	\$15.96	\$16.46	\$16.98	\$17.49	\$18.01	\$18.53
Acct Clerk I	\$19.86	\$20.42	\$20.97	\$21.52	\$22.06	\$22.61	\$23.16	\$23.70	\$24.26	\$24.80
Human Resources	\$21.78	\$22.47	\$23.13	\$23.81	\$24.48	\$25.15	\$25.82	\$26.50	\$27.17	\$27.84
Acct Clerk II	\$23.70	\$24.51	\$25.29	\$26.10	\$26.89	\$27.69	\$28.48	\$29.29	\$30.07	\$30.88
(incl .50/hr if CMC; Ord. 1192)	\$24.20	\$25.01	\$25.79	\$26.60	\$27.39	\$28.19	\$28.98	\$29.79	\$30.57	\$31.38
<u>Power Plant</u>										
Power Plant Op I	\$23.88	\$24.85	\$25.84	\$26.81	\$27.79	\$28.77	\$29.74	\$30.71	\$31.70	\$32.67
Power Plant Supervisor	\$33.91	\$35.01	\$36.10	\$37.20	\$38.28	\$39.38	\$40.45	\$41.55	\$42.64	\$43.74
<u>Electric</u>										
Apprentice Lineman	\$23.72	\$24.49	\$25.25	\$26.02	\$26.78	\$27.55	\$28.32	\$29.08	\$29.85	\$30.61
Lineman 2nd Class	\$26.39	\$27.04	\$27.68	\$28.33	\$28.98	\$29.64	\$30.28	\$30.92	\$31.57	\$32.22
Lineman 1st Class	\$31.19	\$31.99	\$32.78	\$33.60	\$34.39	\$35.20	\$35.99	\$36.79	\$37.58	\$38.39
Line Foreman	\$36.80	\$37.45	\$38.11	\$38.76	\$39.42	\$40.07	\$40.73	\$41.36	\$42.02	\$42.67
Electric Supervisor	\$41.10	\$42.07	\$43.02	\$43.98	\$44.95	\$45.90	\$46.86	\$47.82	\$48.78	\$49.74
<u>Water/Wastewater</u>										
Water/Wastewater Operator I	\$21.51	\$22.23	\$22.93	\$23.65	\$24.37	\$25.08	\$25.80	\$26.52	\$27.23	\$27.95
Water/Wastewater Operator II	\$25.27	\$25.91	\$26.57	\$27.22	\$27.86	\$28.53	\$29.17	\$29.82	\$30.48	\$31.13
Water/Wastewater Data Manager	\$26.57	\$27.22	\$27.86	\$28.53	\$29.17	\$29.82	\$30.48	\$31.13	\$31.79	\$32.45
Water Field Supervisor	\$28.92	\$29.70	\$30.49	\$31.27	\$32.05	\$32.84	\$33.63	\$34.41	\$35.19	\$35.97
Water Supervisor	\$31.01	\$32.04	\$33.07	\$34.10	\$35.13	\$36.16	\$37.18	\$38.22	\$39.24	\$40.28
Wastewater Supervisor	\$30.19	\$31.17	\$32.16	\$33.13	\$34.12	\$35.10	\$36.08	\$37.05	\$38.03	\$39.10
<u>Street</u>										
Maintenance Worker I	\$19.08	\$20.31	\$20.79	\$21.30	\$21.79	\$22.30	\$22.79	\$23.30	\$23.79	\$24.30
Maintenance Worker II	\$21.28	\$21.83	\$22.37	\$22.91	\$23.45	\$23.99	\$24.53	\$25.07	\$25.62	\$26.16
Street Foreman	\$24.97	\$25.51	\$26.04	\$26.58	\$27.11	\$27.65	\$28.18	\$28.72	\$29.24	\$29.77
Street Supervisor	\$28.92	\$29.70	\$30.49	\$31.27	\$32.05	\$32.84	\$33.63	\$34.41	\$35.19	\$35.97
<u>Parks</u>										
Park Laborer	\$18.48	\$19.13	\$19.79	\$20.44	\$21.09	\$21.75	\$22.40	\$23.05	\$23.70	\$24.36
Parks & Auditorium Supervisor	\$21.73	\$22.47	\$23.21	\$23.95	\$24.68	\$25.45	\$26.19	\$26.92	\$27.66	\$28.40
<u>Recreation</u>										
Recreation Coordinator	\$23.55	\$24.30	\$25.05	\$25.83	\$26.58	\$27.33	\$28.08	\$28.84	\$29.59	\$30.34
Recreation Director	\$26.94	\$27.64	\$28.36	\$29.06	\$29.78	\$30.50	\$31.20	\$31.91	\$32.63	\$33.34
<u>Part-Time</u>										
Part-Time Workers	\$15.34	\$15.75	\$16.15	\$16.55	\$16.97	\$17.38	\$17.79	\$18.20	\$18.60	\$19.01
Summer Help	\$11.09	\$11.70	\$12.32	\$12.94	(No more than 4 steps)					
<u>Police Department</u>										
Police Officers	\$23.00	\$23.50	\$24.00	\$24.50	\$25.00	\$25.60	\$26.20	\$26.80	\$27.40	\$28.00
Assistant Police Chief	\$27.40	\$28.16	\$28.92	\$29.68	\$30.44	\$31.20	\$31.96	\$32.72	\$33.48	\$34.25
Salaried Staff Pay Plan (Annual Rate of Pay)										
<u>Position</u>		Minimum		Mid-Point		Maximum				
Clerk/Treasurer		\$71,086		\$84,291		\$97,396				
Police Chief		\$62,400		\$78,000		\$93,600				

Council member Kevin Woita made a motion to appoint Christopher Baete as a Police Officer for the City of David City. Council Member Keith Marvin seconded the motion. The motion carried.

Jim Angell: Yea, Tom Kobus: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Woita: Yea
Yea: 6, Nay: 0

Council member Pat Meysenburg made a motion to approve Tristan Hilger as a Police Officer for the City of David City. Council Member Jim Angell seconded the motion. The motion carried.

Jim Angell: Yea, Tom Kobus: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Woita: Yea
Yea: 6, Nay: 0

Council member Pat Meysenburg made a motion to approve Cameron Lehr as a Police Officer for the City of David City. Council Member Tom Kobus seconded the motion. The motion carried.

Jim Angell: Yea, Tom Kobus: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Woita: Yea
Yea: 6, Nay: 0

Council member Tom Kobus made a motion to approve Michael Majstrik as a Police Officer for the City of David City. Council Member Keith Marvin seconded the motion. The motion carried.

Jim Angell: Yea, Tom Kobus: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Woita: Yea
Yea: 6, Nay: 0

Council member Tom Kobus made a motion to approve Anthony Whitmore as a Police Officer for the City of David City. Council Member Pat Meysenburg seconded the motion. The motion carried.

Jim Angell: Yea, Tom Kobus: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Woita: Yea
Yea: 6, Nay: 0

City Attorney Michael Sands administered the oath of officers to Police Chief Marla Schnell, Assistant Chief Devin Betzen, and to Police Officers Jason Reed, Christopher Baete, Tristan Hilger and Anthony Whitmore.

Council member Keith Marvin introduced Ordinance No. 1439 adopting an updated water rate schedule. Mayor Jessica Miller read Ordinance No. 1439 by title.

Council member Bruce Meysenburg made a motion to suspend the statutory rule requiring that an Ordinance be read on three separate days. Council Member Pat Meysenburg seconded the motion. The motion carried.

Jim Angell: Yea, Tom Kobus: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Woita: Yea
Yea: 6, Nay: 0

Council member Tom Kobus made a motion to pass and adopt Ordinance No. 1439 on third and final reading adopting an updated water rate schedule. Council member Pat Meysenburg seconded the motion. The motion carried.

Jim Angell: Yea, Tom Kobus: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Woita: Yea

Yea: 6, Nay: 0

ORDINANCE NO. 1439

AN ORDINANCE SETTING THE MONTHLY RATES TO BE CHARGED FOR WATER USAGE; CUSTOMER CHARGES; EFFECTIVE DATES AND RATES; REPEALING ALL PARTS OF THE MUNICIPAL CODE AND ORDINANCES IN CONFLICT HEREWITH; AND PROVIDING FOR PUBLICATION OF THE ORDINANCE IN PAMPHLET FORM.

WHEREAS, SECTION 7-211 OF THE MUNICIPAL CODE PROVIDES THAT THE GOVERNING BODY SHALL SET RATES TO BE CHARGED BY ORDINANCE.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF DAVID CITY, NEBRASKA.

Section 1. That the following monthly rates and customer charges shall become effective **May 19, 2023** (water used April 19 – May 19, billed in June, and due July 1 - 10th), for all customers using less than 2,000,000 gallons of water per month:

For 5/8" by 3/4" meters:

Customer charge of \$28.50 per month (no water usage included);
and \$3.41 per 1,000 gallons for First 10,000;
and \$3.87 per 1,000 gallons Over 10,000

For 3/4" meters:

Customer charge of \$35.75 per month (no water usage included);
and \$3.41 per 1,000 gallons for First 10,000;
and \$3.87 per 1,000 gallons Over 10,000

For 1" meters:

Customer charge of \$35.75 per month (no water usage included);
and \$3.41 per 1,000 gallons for First 10,000;
and \$3.87 per 1,000 gallons Over 10,000

For 1 1/2" meters:

Customer charge of \$71.25 per month (no water usage included);
and \$3.41 per 1,000 gallons for First 10,000;
and \$3.87 per 1,000 gallons Over 10,000

For 2" meters:

Customer charge of \$212.50 per month (no water usage included);
and \$3.41 per 1,000 gallons for First 10,000;

and \$3.87 per 1,000 gallons Over 10,000

For 3" meters:

Customer charge of \$300.00 per month (no water usage included);
and \$3.41 per 1,000 gallons for First 10,000;
and \$3.87 per 1,000 gallons Over 10,000

For 4" meters:

Customer charge of \$300.00 per month (no water usage included);
and \$3.41 per 1,000 gallons for First 10,000;
and \$3.87 per 1,000 gallons Over 10,000

Section 2. That the following monthly rates and customer charges shall become effective **May 19, 2023** (water used April 19 – May 19, billed in June, and due July 1 - 10th), **for all customers using, or anticipated to use, more than 2,000,000 gallons of water per month:**

For 5/8" by 3/4" meters:

Customer charge of \$28.50 per month (no water usage included);
and \$2.55 per 1,000 gallons for First 10,000;
and \$2.65 per 1,000 gallons Over 10,000

For 3/4" meters:

Customer charge of \$35.75 per month (no water usage included);
and \$2.55 per 1,000 gallons for First 10,000;
and \$2.65 per 1,000 gallons Over 10,000

For 1" meters:

Customer charge of \$35.75 per month (no water usage included);
and \$2.55 per 1,000 gallons for First 10,000;
and \$2.65 per 1,000 gallons Over 10,000

For 1 1/2" meters:

Customer charge of \$71.25 per month (no water usage included);
and \$2.55 per 1,000 gallons for First 10,000;
and \$2.65 per 1,000 gallons Over 10,000

For 2" meters:

Customer charge of \$212.50 per month (no water usage included);
and \$2.55 per 1,000 gallons for First 10,000;
and \$2.65 per 1,000 gallons Over 10,000

For 3" meters:

Customer charge of \$300.00 per month (no water usage included);
and \$2.55 per 1,000 gallons for First 10,000;
and \$2.65 per 1,000 gallons Over 10,000

For 4" meters:

Customer charge of \$300.00 per month (no water usage included);
and \$2.55 per 1,000 gallons for First 10,000;
and \$2.65 per 1,000 gallons Over 10,000

For meters greater than 4":

Customer charge of \$375.00 per month (no water usage included);
and \$2.55 per 1,000 gallons for First 10,000;
and \$2.65 per 1,000 gallons Over 10,000

- Section 3. The monthly rates to be charged for water usage and customer charges will be reviewed by the City Council on as needed basis.
- Section 4. That any other ordinance or section of any ordinance passed and approved prior to passage, approval, and publication or posting of this ordinance and in conflict with its provisions, is hereby repealed.
- Section 5. This ordinance shall be published in pamphlet form and shall be in full force and effect from and after its passage as provided by law.

PASSED AND APPROVED this 26th day of April, 2023.

(ATTEST)

Mayor Jessica Miller

City Clerk Tami Comte

Council member Bruce Meysenburg made a motion to pass Ordinance No. 1437 on 2nd reading only. Council Member Pat Meysenburg seconded the motion. The motion carried.
Jim Angell: Yea, Tom Kobus: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Woita: Yea
Yea: 6, Nay: 0

ORDINANCE NO. 1437

AN ORDINANCE TO DETACH FROM THE CORPORATE LIMITS OF THE CITY OF DAVID CITY, NEBRASKA, BUTLER COUNTY, NEBRASKA, CERTAIN PROPERTY AS DESCRIBED; TO PROVIDE FOR SEVERABILITY; TO HARMONIZE POTENTIALLY CONFLICTING ORDINANCES; TO PROVIDE FOR AN EFFECTIVE DATE HEREOF; AND TO AUTHORIZE PUBLICATION IN PAMPHLET FORM.

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

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

- (a) The tract of real estate described in Exhibit "A" attached hereto and incorporated herein by reference as if fully set forth (the "Real Estate") is urban and suburban in character and contiguous and adjacent to the corporate limits of said City of David City, Nebraska (the "City");
- (b) By Ordinance No. 1413, the City properly and legally annexed the Real Estate and other, adjacent territory;
- (c) The City later determined that while legal and proper, it did not intend to include the Real Estate in the annexation because it would cause difficulty for the owner of the Real Estate if annexed; and
- (d) In good faith and comity to the owner of the Real Estate, the City desires to detach the Real Estate from the corporate limits of the City;
- (e) The City has provided all legally-required notices and has followed all legally-required procedures with respect to this detachment, which Nebraska law authorizes at Nebraska Revised Statutes section 18-3316.

SECTION 2: That the boundaries of the City of David City, Nebraska, be and hereby are, reduced so as to exclude, detach and deannex from the corporate limits of said City the Real Estate.

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

SECTION 4: That said territory is hereby detached from the corporate limits of the City of David City, Nebraska, along with all rights and obligations appurtenant thereto and arising by virtue of exclusion from the corporate limits of the City.

SECTION 5: If any section, subsection, sentence, clause or phrase of this Ordinance or the deannexation of the territory by this Ordinance is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of the annexation of other tracts of land, streets or highways by this Ordinance or other ordinances, since it is the express intent of the Mayor and City Council to enact each section, subsection, clause or phrase separately and to annex or deannex each tract of land separately.

SECTION 6: As effectively modified by this Ordinance, Ordinance 1413 [the Holoubek annexation ordinance] remains in full force and effect and is intended to coexist in harmony with this Ordinance.

SECTION 7: This Ordinance shall be in full force and effect from and after its passage, approval and publication according to law.

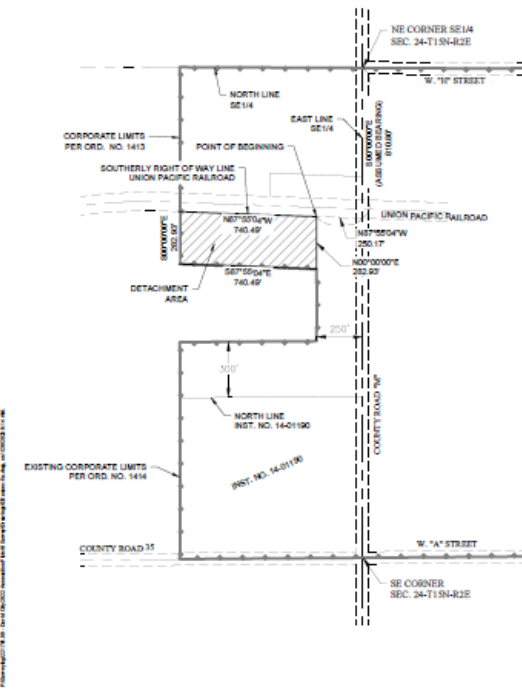
PASSED and APPROVED this ____ day of May, 2023.

Passed on 2nd reading only
 Mayor Jessica M. Miller

Passed on 2nd reading only
 City Clerk Tami Comte

EXHIBIT "A"

DETACHMENT PLAT
 CITY OF DAVID CITY, BUTLER COUNTY, NEBRASKA
 ORDINANCE NO. _____



DETACHMENT DESCRIPTION:

PART OF THE EAST HALF OF THE SOUTHEAST QUARTER OF SECTION 24, TOWNSHIP 18 NORTH, RANGE 2 EAST OF THE SIXTH, P.M., BUTLER COUNTY, NEBRASKA, BEING DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHEAST CORNER OF THE SOUTHEAST QUARTER OF SAID SECTION 24; THENCE S00°00'00\"/>

APPROVAL OF THE CITY COUNCIL OF DAVID CITY, NEBRASKA:

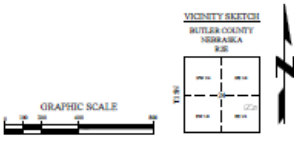
THIS DETACHMENT PLAT WAS APPROVED AND ACCEPTED BY THE CITY COUNCIL OF THE CITY OF DAVID CITY, NEBRASKA, THIS _____ DAY OF _____, 2023.

MAYOR _____ DATE _____

SURVEYOR'S STATEMENT:

I, BRIAN L. FORAL, A REGISTERED LAND SURVEYOR, DO HEREBY CERTIFY THAT THIS IS A TRUE AND ACCURATE PLAT OF THE PROPERTY DESCRIBED IN THE ATTACHED DETACHMENT DESCRIPTION. THE INFORMATION PERTAINING TO THE PERMETER OF THIS DETACHMENT IS BASED ON RECORD DEEDS AND SURVEYS.

BRIAN L. FORAL, L.S. 588 _____ DATE _____



PART OF THE SE 1/4
 SEC. 24-T18N-R2E
 BUTLER COUNTY, NEBRASKA

DETACHMENT PLAT
 CITY OF DAVID CITY,
 BUTLER COUNTY, NEBRASKA
 ORDINANCE NO. _____

PROJECT NO. 202181
 DATE 1/15/2023
 DRAWN BY ANNA
 CHECKED BY
 BUTLER CO. 93
 PROJ. CREW JLC
 SURVEY FILE NO.
 1 OF 1

City Attorney Michael Sands explained the redevelopment contract for the Northwest Industrial Area.

Council member Keith Marvin made a motion to pass and adopt Resolution No. 18-2023 approving a Redevelopment contract with Ag Processing, Inc.. Council Member Kevin Woita seconded the motion. The motion carried.

Jim Angell: Yea, Tom Kobus: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Woita: Yea
Yea: 6, Nay: 0

RESOLUTION NO. 18-2023

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF DAVID CITY, NEBRASKA, APPROVING A REDEVELOPMENT CONTRACT FOR A REDEVELOPMENT PROJECT UNDERTAKEN BY AG PROCESSING INC, AND THE CITY OF DAVID CITY, NEBRASKA, AS SET FORTH IN THE "REDEVELOPMENT PLAN FOR THE NORTHWEST INDUSTRIAL AREA".

WHEREAS, the Mayor and City Council of the City of David City, Nebraska (the "City"), previously approved a redevelopment plan entitled, "Redevelopment Plan for the Northwest Industrial Area", as amended (the "Plan"); and

WHEREAS, the Mayor and City Council of the City, has for its consideration, attached hereto and incorporated herein as Exhibit "A", a proposed form of the redevelopment contract by and between Ag Processing Inc ("AGP"), the City, and the Community Development Agency of the City (the "Agency"), with respect to the redevelopment project specified in the Plan (the "Redevelopment Contract").

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and City Council of the City of David City, Nebraska, that the Redevelopment Contract by and between the City, as redeveloper, and the Agency, in the form presented, is hereby acknowledged and approved. The Mayor and City Clerk are hereby authorized to execute said Redevelopment Contract in substantially the form presented but with such changes as they shall deem appropriate or necessary. The execution and delivery by the Mayor of the Redevelopment Contract, or any such documents, instruments, agreements or certifications relating to such matters contained in the Redevelopment Contract, shall conclusively establish their authority with respect thereto and the authorization and approval thereof.

INTRODUCED BY COUNCIL MEMBER Keith Marvin

PASSED AND ADOPTED THIS 26TH DAY OF APRIL, 2023.

MAYOR

ATTEST:

CITY CLERK

EXHIBIT "A"
Redevelopment Contract

(See attached)

REDEVELOPMENT CONTRACT
(The Northwest Industrial Area Redevelopment Project)

This Redevelopment Contract for the Northwest Industrial Area Redevelopment Project ("**Redevelopment Contract**") is made and entered into as of the _____, 2023, by and between the Community Development Agency of the City of David City, Nebraska (the "**Agency**"), the City of David City, Nebraska (the "**City**"), and Ag Processing Inc a cooperative, an Iowa corporate cooperative association ("**Redeveloper**"). The Agency, City and/or Redeveloper may be individually referred to hereinafter as the "**Party**", or collectively as the "**Parties**".

WITNESSETH:

WHEREAS, pursuant to the Nebraska Community Development Law, Sections 18-2101, et. seq. (the "**Act**") the City Council adopted and approved a plan entitled "Redevelopment Plan for the Northwest Industrial Area", as amended (the "**Plan**"), and provided therein is a redevelopment project for the real estate described on Exhibit "A" hereto attached and by such reference incorporated herein (the "**Redevelopment Area**"), which is located in the City, and which has previously been declared blighted and substandard or otherwise eligible for redevelopment by the City; and

WHEREAS, the Agency has encouraged and induced Redeveloper to engage in certain development activities and construct improvements in the Redevelopment Area and Redeveloper is not willing to incur the substantial investment necessary for such redevelopment of the Redevelopment Area without the assistance of tax-increment financing ("**TIF**") provided by the Agency in this Redevelopment Contract; and

WHEREAS, Redeveloper, pursuant to the Plan, intends to construct an agricultural processing facility, together with such other improvements ancillary thereto (said improvements are referred to herein as the "**AGP Private Improvements**"), within a portion of the Redevelopment Area (inclusive of the real property and improvements, the "**AGP Site**"), as further shown and described in Exhibit "B", attached hereto and incorporated herein; and

WHEREAS, Redeveloper, pursuant to the Plan, further intends to construct certain public improvements within the public rights-of-way within the Redevelopment Area, for the benefit of the AGP Site and the Redevelopment Area as a whole (said public improvements are referred to herein as the "**AGP Public Improvements**"), as further shown and described in Exhibit "B"; and

WHEREAS, the AGP Private Improvements and AGP Public Improvements are collectively referred to herein as the “**AGP Improvements**”; and

WHEREAS, the City, pursuant to the Plan, intends to construct certain public improvements within and/or serving the Redevelopment Area, for the benefit of the entire Redevelopment Area, inclusive of the AGP Site, as further detailed below (said public improvements are referred to herein as the “**City Public Improvements**”); and

WHEREAS, the AGP Private Improvements, AGP Public Improvements and City Public Improvements are collectively referred to herein as the “**Redevelopment Project**”; and

WHEREAS, the real property within the AGP Site, other than easements for public utilities and public rights-of-way, is or shall be privately owned by Redeveloper; and

WHEREAS, the Agency proposes to authorize, and via the adoption and execution of this Redevelopment Contract, hereby does authorize issuance of its tax increment financing promissory notes (the “**TIF Indebtedness**”, which collectively consists of the City Note, and Redeveloper Note, as defined below) pursuant to the terms herein, to provide for eligible costs relating to the Redevelopment Project; and

WHEREAS, Redeveloper and the City seek the assistance of the Agency for the costs of the eligible improvements related to the Redevelopment Project and therefore are willing to agree to the conditions herein set forth as an inducement to the Agency to issue the TIF Indebtedness, as provided herein and in the TIF Indebtedness.

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants herein contained, the Agency, the City and Redeveloper do hereby agree, covenant and warrant as follows:

Section 1. Representations, Warranties and Covenants of Redeveloper.

Redeveloper hereby represents, covenants and warrants as follows:

- (a) Redeveloper is a corporate cooperative duly organized and existing under the laws of the State of Iowa, is not in violation of any provisions of its articles of incorporation or bylaws, is authorized to enter into and perform its obligations under this Redevelopment Contract and, to the best of the knowledge of Redeveloper, is not in violation of the laws of the State of Nebraska.
- (b) Throughout the term of this Redevelopment Contract, Redeveloper will reasonably endeavor to construct the AGP Improvements, and subsequently operate and maintain the AGP Private Improvements, in accordance with the

terms of this Redevelopment Contract and the Plan, or amendments thereof, and all applicable local, state and federal laws and regulations (including, without limitation, environmental, zoning, building code and public health laws and regulations).

- (c) [Intentionally omitted]
- (d) Redeveloper or its assignee will endeavor, with commercially reasonable diligence, to complete the AGP Improvements on or before July 1, 2025.
- (e) Redeveloper has not received, nor is it aware of, notices or communications from any local, state or federal official or body that the activities of Redeveloper respecting the Redevelopment Area or the construction of the AGP Improvements thereon may be or will be in violation of any law or regulation.
- (f) Redeveloper will use commercially reasonable and diligent efforts to obtain or to cause others to obtain, in a timely manner, all required permits, licenses and approvals and to meet, in a timely manner, all requirements of all applicable local, state and federal laws and regulations which must be obtained or met for the AGP Improvements to be lawfully constructed, occupied or operated; provided, however, the City will obtain any necessary permits with respect to the connection to or modification of State Highway 15.
- (g) The execution and delivery of this Redevelopment Contract, the consummation of the transactions contemplated hereby and the fulfillment of or compliance with the terms and conditions of this Redevelopment Contract are not prevented or limited by and will not conflict with or result in a breach (i) of any provision of any evidence of indebtedness, agreement or instrument of whatever nature to which Redeveloper is now a party or by which it is bound; or (ii) of any past, pending or threatened litigation, court order, or administrative proceeding, by which Redeveloper is or might become bound.
- (h) To the best of the knowledge of Redeveloper, Redeveloper is not aware of any hazardous waste or other significant environmental pollution condition or hazard existing on or within the AGP Site.
- (i) Redeveloper acknowledges and agrees that neither the Agency nor the City shall be obligated to pay any costs related to the AGP Improvements other than costs to be paid from available grant monies derived from ad valorem incremental real estate taxes (referred to herein as "**TIF Revenues**") and, as applicable, the PILOT Payments (defined below), generated from the AGP Private Improvements and/or AGP Site, if any, and Redeveloper hereby undertakes and agrees to pay any and all such costs. All costs (both public and private) of the

AGP Improvements shall be paid in full and there are and shall be no construction liens unpaid against the Redevelopment Area arising from the AGP Improvements. Redeveloper agrees to provide for the construction of both the public and private improvements included as part of the AGP Improvements, and located within the Redevelopment Area, as described in the Plan or this Redevelopment Contract, except to the extent that the Agency or the City agree otherwise in this Redevelopment Contract, or by separate written agreement with Redeveloper.

- (j) Redeveloper agrees and covenants for itself, its successors and assigns that as long as the Redeveloper Note is outstanding, it will not discriminate against any person or group of persons on account of race, sex, color, religion, national origin, ancestry, disability, marital status or receipt of public assistance in connection with the AGP Improvements. Redeveloper, for itself and its successors and assigns, agrees that during the construction of the AGP Improvements, Redeveloper will not discriminate against any employee or applicant for employment because of race, religion, sex, color, national origin, ancestry, disability, marital status or receipt of public assistance. Redeveloper will comply with all applicable federal, state and local laws related to the AGP Improvements.
- (k) Redeveloper agrees that any contractor providing services related to the AGP Public Improvements will utilize the federal immigration verification system, as defined in Section 4-114, *Neb. Rev. Stat.* 2012, as amended or transferred, to determine the work eligibility status of new employees physically performing services on the AGP Public Improvements.
- (l) Redeveloper owns all real property within the AGP Site, other than public rights-of-way, in fee simple and free from any liens, encumbrances, or restrictions which would prevent the performance of this Redevelopment Contract by Redeveloper.
- (m) With respect to the AGP Public Improvements, any general contractor chosen by Redeveloper or Redeveloper itself shall obtain and keep in force at all times until completion of construction, policies of insurance including coverage for contractors' general liability and completed operations of at least \$2,000,000 per occurrence and \$5,000,000 in the aggregate, and a penal bond as required by the Act and Section 12 of this Redevelopment Contract. The Agency, the City and Redeveloper shall be named as additional insureds on such policies. Any contractor chosen by Redeveloper or Redeveloper itself, as an owner, shall be required to purchase and maintain property insurance upon the AGP Public Improvements to the full insurable value thereof. This insurance shall insure against the perils of fire and extended coverage and shall include "Builders Risk"

insurance for physical loss or damage. The contractor or Redeveloper, as the case may be, with respect to any specific contract, shall also carry insurance on all stored materials. The contractor or Redeveloper, as the case may be, shall furnish the Agency and the City with a certificate of insurance evidencing policies as required above. Redeveloper shall give the Agency and the City prior written notice in the event of cancellation of or material change in any of the policies.

- (n) Upon completion of the AGP Public Improvements City, shall be entitled to inspect said improvements for conformance with the agreed upon specifications. Any defects discovered as a result of such inspection(s) shall be remedied at Redeveloper's expense. Upon City's confirmation the AGP Public Improvements meet the applicable specifications ownership of the AGP Public Improvements, and all contractor and material warranties related thereto, shall be transferred to the City. CITY SHALL ACCEPT THE AGP PUBLIC IMPROVEMENTS IN "AS-IS, WHERE-IS" CONDITION WITH ALL FAULTS AND DEFECTS KNOWN OR UNKNOWN. FOLLOWING TRANSFER OF OWNERSHIP OF THE AGP PUBLIC IMPROVEMENTS TO THE CITY, CITY SHALL BE SOLELY RESPONSIBLE FOR THE MAINTENANCE, REPAIR AND CONDITION OF THE AGP PUBLIC IMPROVEMENTS AND REDEVELOPER SHALL HAVE NO RESPONSIBILITY OR LIABILITY WITH RESPECT THERETO.
- (o) With respect to the AGP Public Improvements, Redeveloper has not pursued or received, and will not pursue or receive, tax incentives under the Nebraska Advantage Act or the ImagiNE Nebraska Act, or a refund of the City's local option sales tax revenue. Redeveloper shall be entitled to pursue and receive tax incentives under the Nebraska Advantage Act, the ImagiNE Nebraska Act, or any other available federal, state or local grants or incentives, including a refund of the City's local option sales tax revenue, with respect to the AGP Private Improvements.
- (p) The City shall maintain, and Redeveloper hereby grants to the City, a revocable license and temporary construction easement to undertake and construct applicable City Public Improvements on the AGP Site. Such license and temporary easement shall automatically terminate upon completion of construction of the City Public Improvements; provided that Redeveloper agrees to further grant any permanent easements necessary for the continued operation and maintenance of the same.
- (q) Redeveloper shall, upon the City's written request therefor, grant the City an exclusive easement for the construction and operation of an electric substation, together with such other improvements and uses ancillary thereto, on up to three (3) contiguous acres of the AGP Site, in addition to any ingress/egress easements and/or other rights reasonably related thereto. The easement shall

be perpetual in duration, subject to the City's continued use and operation of an electric substation thereon. Following the City's written request for the easement, the City and Redeveloper shall work together in good faith to establish a mutually-agreeable location for the easement, as shall be set forth in a survey obtained by the City at its sole cost. The City acknowledges and agrees that the final acreage of the easement shall be dependent upon its location, and may be less than three (3) contiguous acres if the location desired by the City cannot reasonably accommodate the same. Upon establishing the location of the easement, Redeveloper and the City shall enter into the foregoing easement agreement, on a form acceptable to the Parties, such acceptance not to be unreasonably withheld, conditioned or delayed, which shall be recorded against the AGP Site in the land records of Butler County, Nebraska.

- (r) Redeveloper shall make twenty (20) annual payments to the City, each in the amount of \$345,000, in consideration of the capital improvement costs associated with the expansion of the City's sewage treatment facilities to (in part) accommodate the increased capacity requirements of the AGP Private Improvements. The first such annual payment shall become due and owing on January 1 of the year in which the City's first payment becomes due on the financing for the sewage treatment improvements. The City shall provide written notice to Redeveloper specifically identifying such date at least ninety (90) days in advance of the same. Each subsequent payment shall become due and owing on January 1 of each subsequent calendar year until payment of the final installment (i.e., 20th installment). Following the full and final payment of all installments required hereunder, Redeveloper shall have no further obligations or liabilities under this Section 1(r). This Section 1(r) shall survive the expiration or early termination of this Redevelopment Contract.

Section 2. Public Improvements; Private Development Outside of AGP Site.

For the benefit of the Redevelopment Area, the City will construct the City Public Improvements, as shown and/or described on Exhibit "C" attached hereto and incorporated herein (the "**City Public Improvements**"). The City will finance the City Public Improvements via the Agency's issuance of its TIF Indebtedness to the City, in the form attached hereto as Exhibit "E" and incorporated herein (the "**City Note**"), in the principal amount established in accordance with Section 5, below, at a 5.0% rate of interest per annum, pursuant to the terms of the City Note and this Redevelopment Contract. Debt service payments on the City Note shall be funded from the TIF Revenues and, as applicable, the PILOT Payments, in accordance with the priority of payment set forth in Section 4 of this Redevelopment Contract. So long as Redeveloper is not delinquent in its payment of the (a) ad valorem real property taxes for the AGP Site, (b) the payment obligations under Section 1(r) of this Redevelopment Contract, or (c) as applicable, its PILOT Payment (defined below) obligations under this this Redevelopment

Contract, and to the extent permitted by law, the City shall indemnify and hold Redeveloper harmless from any shortfall due to the inadequacy of the funding mechanisms provided in this Redevelopment Contract to meet the City's debt service payments on the City Note or the costs of the City Public Improvements.

As detailed above, the City Public Improvements will benefit the entire Redevelopment Area, inclusive of, but not limited to, the AGP Site. The City and Agency anticipate that the Redevelopment Project will result in the development and redevelopment of the other parcels within the Redevelopment Area outside of the AGP Site (such parcels being referred to herein as the "**Future Development Sites**"). In accordance with the Plan, the prospective development of the Future Development Sites constitutes additional phases of the Redevelopment Project, from which the TIF Revenues will be allocated as debt service on the City Note, as reimbursement of the City Public Improvements which benefited and facilitated the same. Notwithstanding the foregoing, the Parties shall not have any obligations or liabilities to one another with respect to the Future Development Sites and/or the prospective development thereon, other than their respective obligations related to the AGP Improvements and City Public Improvements as provided hereunder. Additionally, this Redevelopment Contract shall not confer any rights or remedies upon any person or entity, including but not limited to the owner(s) or future owner(s) of the Future Development Sites, other than the Parties hereto and their respective successors and permitted assigns.

Section 3. Representations, Warranties and Covenants of the City.

The City hereby represents, covenants and warrants as follows:

- (a) The City is a municipal corporation duly organized and existing under the laws of the State of Nebraska, and is authorized to enter into and perform its obligations under this Redevelopment Contract.
- (b) The City or its assignee will endeavor, with commercially reasonable diligence, to complete the City Public Improvements on or before January 1, 2025.
- (c) The City will use commercially reasonable and diligent efforts to obtain or to cause others to obtain, in a timely manner, all required permits, licenses and approvals and to meet, in a timely manner, all requirements of all applicable local, state and federal laws and regulations which must be obtained or met for the City Public Improvements to be lawfully constructed.

- (d) The City acknowledges and agrees that, so long as Redeveloper is not in material default of this Redevelopment Contract, Redeveloper shall not be obligated to pay any costs related to the City Public Improvements, and the City hereby undertakes and agrees to pay any and all such costs.
- (e) Subject to the requirements of Section 12 below, Redeveloper shall maintain, and the City hereby grants to Redeveloper, a revocable license and temporary construction easement to undertake and construct the AGP Public Improvements within City rights-of-way. Such license and temporary easement shall automatically terminate upon completion of construction of the AGP Public Improvements.
- (f) The current (as of the effective date of this Redevelopment Contract) utility rates for water, sanitary sewer and electric services charged by the City in relation to the operation of the AGP Improvements are set forth in Exhibit "G", attached hereto and incorporated herein. The City anticipates such rates will be in effect upon completion of the AGP Improvements; provided, however, such rates are subject to adjustment, as necessitated by changes to the City's cost(s) to provide and maintain such services. Notwithstanding the foregoing, in accordance with Section 70-655 of the Nebraska Revised Statutes, the City represents and warrants that, with respect to any adjustments to the rates of the foregoing utilities, either prior to or following completion of the AGP Improvements, such adjustments shall be, "fair, reasonable, nondiscriminatory, and so adjusted as in a fair and equitable manner to confer upon and distribute among the users and consumers of commodities and services furnished or sold by the district the benefits of a successful and profitable operation and conduct of the business of the district."
- (g) Unless otherwise agreed to by the Parties in writing, any incentive payments or grants that are not addressed in this Redevelopment Contract which are obtained or procured with respect to the AGP Improvements shall be the sole property of Redeveloper. If such payments or grants are received by the City or Agency, such Party shall remit the same to Redeveloper, and such funds shall not be applied as debt service on the TIF Indebtedness nor shall it alter TIF Fund disbursements as set forth in Section 4 below.
- (h) If the AGP Public Improvements necessitate the acquisition of private land for the widening of the Road 37 public right-of-way, the City and/or Agency will undertake the same and perform such necessary actions for said public acquisition of private land. The City shall inform Redeveloper of any costs in excess of \$10,000 associated with such activities prior to their incurrence; provided that any failure by the City to do so shall not be considered a breach of this Redevelopment Contract, and such costs shall still be reimbursable in the

manner provided below so long as they were reasonable and necessary. Redeveloper shall have five (5) days to either consent or object to such cost(s), via a written response to the City. Redeveloper's failure to respond within the time period prescribed above shall conclusively be deemed a consent to such cost(s). In the event Redeveloper objects to a particular cost, then Redeveloper shall be responsible for the action/item associated with such cost, at its sole expense, and the City and/or Agency, as applicable, shall have no further obligation or liability with respect thereto. In accordance with the foregoing, all approved and other reasonable and necessary costs incurred by the City and/or Agency in relation to the undertakings under this subsection shall be reimbursed by Redeveloper, within thirty (30) days of the City's and/or Agency's written request therefor; provided that any such request shall include invoices or other documentation reasonably evidencing the incurrence of the costs to be reimbursed. To the extent any disagreement exists with respect to the reasonableness or necessity of the costs incurred by the City and/or Agency under this subsection, such question shall be submitted to a mutually-agreeable and qualified third-party professional, and such third party's determination on the same shall be binding upon the Parties with respect to the reimbursement obligations under this subsection.

Section 4. Incorporation of Plan; Issuance and Payment Priority of TIF Indebtedness.

This Redevelopment Contract hereby incorporates the Plan by this reference. In order to provide for payment of some of the eligible costs of the AGP Improvements set forth in the Plan and this Redevelopment Contract, as described in Exhibit "D", attached hereto and incorporated herein (the "**Eligible Costs**"), the Agency shall proceed to issue its TIF Indebtedness to Redeveloper in the form attached hereto and incorporated herein as Exhibit "E" (the "**Redeveloper Note**"), in the principal amount established in accordance with Section 5, below, at a variable interest rate, pursuant to the terms of the Redeveloper Note and this Redevelopment Contract. In consideration of Redeveloper undertaking the AGP Improvements, the Agency shall issue the Redeveloper Note to Redeveloper, upon request therefor, no earlier than thirty (30) days following the Agency's approval and adoption of this Redevelopment Contract. At issuance of the Redeveloper Note, the loan to be accomplished thereby and the obligation of the Agency to use the TIF Revenues for redevelopment purposes under this Redevelopment Contract may be accomplished by offset so that Redeveloper retains the TIF Revenues to fund the AGP Public Improvements and no bankable currency is exchanged at issuance the Redeveloper Note, except as otherwise provided herein.

The "**Effective Date**" (as defined in the Act) for the division of TIF Revenues with respect to the Redevelopment Project, or portion thereof, shall be January 1 of the year in which a "Notice to Divide Tax for Community Redevelopment Project" (the "**Notice to Divide**") is filed

with the offices of the Butler County Treasurer and Assessor, pursuant to Section 18-2147 of the Act, with respect to the Redevelopment Area, or portion thereof. The "redevelopment project valuation" (as defined in the Act) shall be the assessed value attributable to the Redevelopment Area, or applicable portion thereof, on January 1 of the year prior to the Effective Date. Redeveloper shall provide written notice to the Agency requesting filing of the Notice to Divide prior to July 1 of the calendar year in which Redeveloper wishes to establish the Effective Date for the AGP Site. Upon receipt of said timely notice, and in conformance with Section 18-2147 of the Act, the Agency shall file the Notice to Divide for the AGP Site on or before August 1 of such year. If Redeveloper fails to timely request filing of the Notice to Divide in accordance with this paragraph, neither the Agency nor City shall be liable for any damages stemming therefrom, including but not limited to, any loss, or potential loss, in TIF Revenues related to the failure to establish the Effective Date in the year desired. With respect to the Future Development Sites, the Agency shall determine, in its sole and exclusive discretion, the timing for filing of the Notice(s) to Divide. As between the AGP Site and the Future Development Sites, it is anticipated that the various parcels within the Redevelopment Area may be subject to different Notices to Divide, and thereby have different Effective Dates. The parcel or collection of parcels included within the same Notice to Divide is referred to herein as a **"Phase"**.

The TIF Indebtedness shall constitute a limited obligation of the Agency payable exclusively from the TIF Revenues and, as applicable the PILOT Payments, and collected for a period not to exceed fifteen (15) years from the Effective Date for each Phase. Prior to receipt of any TIF Revenues, the Agency, as paying agent and registrar of the TIF Indebtedness, shall create a special fund (or funds) established solely to make payments on the TIF Indebtedness (the **"TIF Fund"**). Upon receipt of the TIF Revenues and, as applicable, the PILOT Payments, the Agency shall deposit the same into the TIF Fund, and shall disburse said funds to the holders of the TIF Indebtedness (but only from available TIF Revenues) at the times provided in the TIF Indebtedness, in accordance with the following priority:

- (a) Seventy percent (70%) of annual TIF Revenues and/or PILOT Payments collected on the AGP Site, up to those collected on a tax assessed valuation of the AGP Site at or below the AGP Site Minimum Valuation, shall be disbursed and allocated towards debt service on the Redeveloper Note. Only TIF Revenues or PILOT Payments received from Redeveloper shall be used by City and Agency to repay the Redeveloper Note.
- (b) Thirty percent (30%) of annual TIF Revenues and/or PILOT Payments collected, up to those collected on a tax assessed valuation of the AGP Site at or below the AGP Site Minimum Valuation, shall be disbursed and allocated towards debt service on the City Note.
- (c) As applicable, one hundred percent (100%) of annual TIF Revenues collected on a tax assessed valuation of the AGP Site above the AGP Site Minimum Valuation

shall exclusively be disbursed and allocated towards debt service on the Redeveloper Note; provided that the disbursements under subsections (a) and (b) above shall occur prior to any disbursements under this subsection (c).

- (d) One hundred percent (100%) of annual TIF Revenues collected on the Future Development Sites shall be disbursed and allocated towards debt service on the City Note.
- (e) Following the full payment of all principal and interest on either the Redeveloper Note or City Note, one hundred percent (100%) of the TIF Revenues collected on the AGP Site for the remainder of the TIF period shall be disbursed and allocated towards debt service on the portion of the TIF Indebtedness that remains outstanding, until full payment or final maturity thereof, whichever occurs first.

The proceeds of the TIF Indebtedness shall be applied as described above. The Redeveloper Note shall be issued on the basis of interest which is includable in income for both federal and Nebraska State income taxes.

Notwithstanding the foregoing, if Redeveloper fails to make a required PILOT Payment under Section 6(c) below, the percentages under subsections (a) and (b) above shall be adjusted for the applicable calendar year, so that the amount of TIF Revenues generated by the AGP Site and allocated towards debt service on the City Note, shall equal the amount of property taxes that would be owed on the AGP Site for such year, and allocable towards debt service on the City Note if the taxable real property valuation of the AGP Site equaled the AGP Site Minimum Valuation (defined below).

The Agency may treat the registered holder of the City Note and Redeveloper Note, as applicable, as the absolute owner of the same for the purpose of making payments thereon and for all other purposes. All payments on account of interest or principal made to the registered owner(s) of the TIF Indebtedness in accordance with the terms of this Redevelopment Contract shall be valid and effectual and shall be a discharge of the Agency and its officers and agents, in respect of the liability upon the TIF Indebtedness or claims for interest to the extent of the sum or sums so paid. The Agency shall keep current and accurate records of all payments on the TIF Indebtedness and the outstanding balance of principal and interest on the TIF Indebtedness, and such records shall be treated as determinative by the Parties and/or their assigns, provided such records are current and do not include any material mistakes or errors. The City or Redeveloper, as applicable, may transfer or pledge the TIF Indebtedness as collateral upon prior written notice to the Agency, accompanied by such documentation effectuating such transfer or pledge, in accordance with such other requirements as may be set forth in the TIF Indebtedness. At any time, the Agency shall have the option of prepaying in whole or in part principal of the TIF Indebtedness; provided, however, any such prepayment shall only utilize TIF Revenues and/or PILOT Payments. The Chairperson (Mayor) and Secretary (City Clerk) of the Agency, or any one of them, shall be authorized to take any and all

actions, and to execute any and all documents deemed by them necessary to effect the transactions authorized by this Redevelopment Contract.

Section 5. Certification of Eligible Costs; Advances of Principal on TIF Indebtedness.

Notwithstanding anything to the contrary in this Redevelopment Contract, all TIF Revenues and, as applicable, the PILOT Payments, paid as debt service on the TIF Indebtedness shall provide for reimbursement of the Eligible Costs, to the extent paid by Redeveloper or the City, as applicable, as evidenced by paid invoices or other evidence acceptable to the Agency ("**Eligible Costs Certification(s)**"). Redeveloper and/or the City, as applicable, may, at its option, submit one or more partial Eligible Costs Certifications prior to expenditure of all Eligible Costs providing certification of receipt of billings for work in progress. All Eligible Costs Certifications shall be subject to review and approval by the Agency prior to the funding of such Eligible Costs via the payment of debt service on the TIF Indebtedness; provided, however, such approval shall not be unreasonably withheld. All Eligible Costs Certifications shall be submitted within one hundred-eighty (180) days after substantial completion of the AGP Public Improvements and/or City Public Improvements, as applicable.

Upon receipt of an approved Eligible Cost Certification, the Agency shall notify Redeveloper or City, as applicable, in writing of the "Principal Amount Advanced" on the respective note, as provided in Schedule 1 of the respective note, in relation to such Eligible Cost Certification. Such written notice shall also include the then-current "Principal Amount Redeemed" and "Cumulative Outstanding Principal Amount" on Schedule 1 of the respective note. Upon receipt of such notice from the Agency, the holder of the respective note shall update Schedule 1 of such note in conformance with the amounts provided by the Agency. Notwithstanding the foregoing, the Agency's records as to "Principal Amount Advanced", "Principal Amount Redeemed" and "Cumulative Outstanding Principal Amount" shall act as the official records of the TIF Indebtedness and shall supersede those shown on Schedule 1 of the notes.

In accordance with the foregoing, the principal amount of the Redeveloper Note and City Note, as applicable, shall equal the aggregate total of Eligible Costs Certifications received and approved by the Agency with respect to the AGP Public Improvements or City Public Improvements, as applicable; subject to and in accordance with the following:

- (a) the aggregate total of "Principal Amount Advanced" on the Redeveloper Note shall not exceed \$37,332,510;
- (b) the aggregate total of "Principal Amount Advanced" on the City Note shall not exceed \$9,673,853; and

Section 6. Covenants With Respect to Taxation of Redevelopment Area.

Redeveloper agrees with respect to the Redevelopment Project as follows:

- (a) Until the termination of this Redevelopment Contract (as described in Section 20 hereof), the AGP Private Improvements shall not be sold or conveyed to any person or entity for ownership or use which would cause the real property within the AGP Site to be eligible for exemption from ad valorem taxes under Section 77-202 R.R.S. Neb. 2009, as now existing or hereafter amended, or any successor provision thereto, and that it will not make application for any structure, or any portion thereof, to be taxed separately from the underlying land of any lot.
- (b) For the purposes of this Agreement Redeveloper estimates it will create a taxable real property valuation of not less than \$80,000,000 within the AGP Site (the "**AGP Site Minimum Valuation**") by no later than July 1, 2025.
- (c) If, during the period of this Redevelopment Contract and after the filing of a Notice to Divide with respect to the AGP Site, the taxable real property valuation of the AGP Site is less than the AGP Site Minimum Valuation, Redeveloper and/or its successors and assigns, inclusive of future owner(s) of the AGP Site, shall make a payment in lieu of taxes ("PILOT Payment") to the Agency within thirty (30) days of the Agency's written demand therefor. The amount of the PILOT Payment shall be the amount of property taxes that would be owed on the AGP Site had the taxable real property valuation for the same equaled the AGP Site Minimum Valuation in the applicable year, less the actual amount of property taxes paid and/or owing with respect to the AGP Site for such year. If Redeveloper has monetized the Redeveloper Note by pledging it to its lender, Redeveloper shall solely be responsible for all payments due to such lender.
- (d) Redeveloper shall and hereby does unconditionally forgive all outstanding principal and interest amounts remaining unpaid on the Redeveloper Note at the end of the fifteen (15) year period for the division of ad valorem real estate taxes prescribed by the Act.
- (e) Redeveloper, its successors and assigns, including subsequent purchasers of land within the AGP Site, further agree as follows:
 - (i) to pay all local ad valorem real estate taxes for the AGP Site as levied and assessed before the same become delinquent; and
 - (ii) not to seek any administrative review or judicial review of the applicability or validity of any tax statute relating to taxation of the AGP Site or to raise

such inapplicability or invalidity as a defense in any administrative or judicial proceedings; provided, however, the foregoing shall not prevent Redeveloper to challenge the assessed value of the AGP Improvements or any other property owned by Redeveloper in the Redevelopment Area; and

- (iii) to pay or cause to be paid, when due and before any fine, penalty, interest or cost may be added thereto for the non-payment thereof, all water and sewer rates and charges, occupancy tax, special assessments and other governmental levies and charges, general and special, ordinary and extraordinary, unforeseen as well as foreseen, of any kind and nature whatsoever, which are assessed, levied, confirmed, imposed or become payable with respect to the AGP Site or AGP Improvements; provided, however, that any special assessments levied for water, sewer or paving improvements shall be permitted to be paid as the same fall delinquent and may bear interest from the date of levy or other appropriate date set by the levying body, and Redeveloper shall not be responsible for any such costs hereunder with respect to the AGP Public Improvements following their completion, so long as the same is not imposed as a result of the gross negligence or intentional misconduct of Redeveloper; and
- (v) to retain copies of all supporting documents (as defined under Section 18-2119(4) of the Act) actually generated and received by Redeveloper in relation to the Redevelopment Project or Plan until the expiration of three years following the end of the last fiscal year in which ad valorem taxes are divided in relation to the Redevelopment Project.

Section 7. Release and Indemnification.

Redeveloper hereby releases from and covenants and agrees that the Agency and the City, together with their governing body, officers, agents, including their independent contractors, consultants and legal counsel, servants and employees thereof (hereinafter, for purpose of this Section 7, collectively the “**Indemnified Parties**”) shall not be liable for and agrees to indemnify and hold harmless the Indemnified Parties against any loss or damage to property or any injury to or death of any person occurring at or about or resulting from any defect arising from the AGP Improvements or within the AGP Site. Provided, however, such release shall not be deemed to include liability for loss or damage to the extent proximately caused by the negligence or willful misconduct of the Indemnified Parties and/or with respect to the actions of the Indemnified Parties in relation to the City Public Improvements.

Except for the City’s obligations with respect to the City Public Improvements, the Indemnified Parties shall not have any pecuniary obligation or monetary liability under this Redevelopment Contract. The obligation of the Indemnified Parties on the TIF Indebtedness or

any indebtedness contemplated hereunder shall be limited solely to the TIF Revenues and, as applicable, the PILOT Payments, pledged as security for such indebtedness, and the Indemnified Parties shall not be liable to Redeveloper or any other third party for any costs, liabilities, actions, demands, or damages for failure of any representations, warranties or obligations hereunder, with respect to the AGP Improvements, to the extent of Redeveloper's obligation(s) related to the same under this Redevelopment Contract.

Following transfer of ownership of the AGP Public Improvements to City, City, to the greatest extent allowed by law, agrees to indemnify, defend and hold Redeveloper and its officers, employees and agents and their respective successors, heirs and assigns (the "Redeveloper Indemnitees"), harmless against any liability, damage, loss or expense (including reasonable attorney's fees and expenses of litigation) incurred by or imposed upon the Redeveloper Indemnitees or any one of them in connection with any claims, suits, actions, demands or judgment arising out of any alleged construction defect, design defect, failure to repair or failure to maintain (including, but not limited to, actions in the form of tort, warranty or strict liability) concerning the AGP Public Improvements, except those arising from the gross negligence or willful misconduct of the Redeveloper Indemnitees. Not to limit the foregoing, but to further clarify, once the AGP Public Improvements are transferred to the City, AGP shall be released from any and all obligations relating to the ownership, design, construction, maintenance and repair of the AGP Public Improvements, and those obligations shall be assumed by the City.

Section 8. Covenants to Run with the Land; Easement; Recording of Redevelopment Contract.

The Parties agree and acknowledge that this Redevelopment Contract and the undertakings of Redeveloper and the Agency as herein provided for shall be considered as and constitute covenants running with the land binding upon the Parties and their successors and assigns and upon each successive owner of the AGP Site or any portion thereof. Redeveloper hereby acknowledges and agrees that by the terms of this Redevelopment Contract it is binding and obligating any and all of its interest in the AGP Site, now or hereafter acquired, and hereby covenants and warrants for the benefit of the Agency and the registered owner(s) of the TIF Indebtedness that Redeveloper shall defend such interest in the AGP Site against the claims and interests of any and all persons. Redeveloper shall record a memorandum of this Redevelopment Contract, in the form attached hereto and incorporated herein as Exhibit "F", against all real estate located in the AGP Site, and such document shall remain of record until termination of this Redevelopment Contract. The Agency shall have the authority to execute any such memorandum without additional public determinations or meetings. As and to the extent that this Redevelopment Contract does not have priority by order of recording over each and every mortgage or other instrument securing indebtedness of Redeveloper, Redeveloper hereby agrees to obtain the written agreement in recordable form from each mortgagee or other encumbrancer having any such priority, which written form acknowledges and agrees to the terms of this Redevelopment Contract, unless waived in writing by the Agency. Redeveloper

agrees to provide the Agency with a title report or other evidence as to the status of title to the AGP Site after the recording of this Redevelopment Contract. After the expiration of the 15-year TIF period, or once the TIF Indebtedness has been paid in full, whichever occurs first, Redeveloper or any successor or assign of Redeveloper shall have the right to request in writing and the Agency shall, upon such request, execute and deliver an appropriate instrument evidencing the termination of this Redevelopment Contract.

Section 9. Default and Remedies upon Default.

The Parties agree with respect to any defaults or failures of performance by a Party as follows:

- (a) The following shall constitute "Events of Default" under the terms of this Redevelopment Contract:
 - (i) failure by a Party to observe timely or perform timely any material covenant, condition, obligation or agreement on its part to be observed or performed under this Redevelopment Contract;
 - (ii) any representation or warranty made herein by a Party herein proves untrue in any material respect; or
 - (iii) A Party makes an assignment for the benefit of creditors, files a petition in bankruptcy, is adjudicated insolvent or bankrupt or petitions for an order for relief, petitions or applies to any tribunal for the appointment of any receiver or any trustee or a debtor in possession or commences any proceeding related to any reorganization, arrangement, readjustment of debt, dissolution or liquidation act, code, law or statute of any jurisdiction, whether now or hereafter in effect, or if there is commenced against either Party any such proceedings and a Party by any act indicates its consent or approval of or acquiescence in any such proceeding or the appointment of any receiver or any trustee or debtor in possession for said Party or any part of its property or suffers any such receivership or trusteeship.
- (b) Whenever a material Event of Default occurs, in addition to all other remedies available to the Parties at law or in equity, an aggrieved Party may: (1) suspend its performance under this Redevelopment Contract, including suspension of contracting for TIF-Eligible improvements or disbursement of monies for Eligible Costs or other improvements until receiving adequate assurances from the defaulting Party that it has cured the default and will continue performance under this Redevelopment Contract; and (2) take such action at law or in equity as the aggrieved Party reasonably deems appropriate, including specific performance or

injunction to enforce or compel performance of the provisions of this Redevelopment Contract.

- (c) In addition to the remedies under Section 6(b), the Agency and/or City, as applicable, shall have the following additional remedies upon a material Event of Default by Redeveloper:
- (i) If at any time during the term of this Redevelopment Contract an Event of Default shall occur and remain continuing and uncured for a period of more than thirty (30) days after written notice from the Agency to Redeveloper of such Event of Default, the City or Agency shall have the right, but not the obligation, to cure such breach on behalf of Redeveloper with respect to the construction of the AGP Public Improvements. If the City or Agency elects to cure any such breach of Redeveloper, Redeveloper shall reimburse the City or Agency for the documented and reasonable costs of curing Redeveloper's breach within 30 days of demand from City or Agency given to Redeveloper. Alternatively, if Redeveloper fails or refuses to cure the Event of Default, the City or Agency may cure such defect and obtain reimbursement, without notice to Redeveloper, via a set off to the principal amount of the Redeveloper Note equal to the Eligible Costs expended by the City or Agency. The Eligible Costs expended by the City or Agency must be certified by the City or Agency to the City Treasurer and all subsequent distributions of grant proceeds shall be distributed to the City or Agency, as applicable, until such Eligible Costs expended by the City or Agency have been reimbursed in full. Interest shall accrue on the amount expended by the City or Agency at the rate provided in the Redeveloper Note and such interest shall commence from the date that the Agency gives notice to Redeveloper of Redeveloper's Event of Default.
 - (ii) If at any time during the term of this Redevelopment Contract an Event of Default by Redeveloper shall occur and remain continuing, following written notice from the Agency and/or City to Redeveloper of such Event of Default, the Agency may withhold any TIF Revenues received, and shall not be required to remit said TIF Revenues as debt service on the Redeveloper Note unless and until Redeveloper cures the Event of Default.
 - (iii) If at any time during the term of this Redevelopment Contract an Event of Default by Redeveloper shall occur and remain continuing and uncured for a period of more than sixty (60) days after written notice from the Agency and/or City to Redeveloper of such Event of Default, unless Redeveloper has commenced to cure the same and is diligently prosecuting the same to completion, the Agency may, upon further written notice to Redeveloper, terminate and void the Redeveloper Note.

- (d) No remedy herein conferred upon or reserved to the Agency or the registered owner(s) of the TIF Indebtedness is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Redevelopment Contract or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.
- (f) If any provision of this Redevelopment Contract is breached by a Party and thereafter waived by the other Party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other concurrent, previous or subsequent breach hereunder.
- (g) An Event of Default by either the City or Redeveloper shall not, under any circumstances, result in a termination of this Redevelopment Contract, as between the non-defaulting Party and the Agency, unless otherwise agreed to between such non-defaulting Party and the Agency in writing.

Section 10. Status of Agency and City.

Neither the Agency nor the City is or shall be regarded as the partner, joint venturer or other jointly acting party with Redeveloper for any purpose whatsoever and the undertakings and agreements on the part of the Agency herein provided for are undertaken solely pursuant to the provisions of Sections 18-2101 to 18-2150 of the Act and for the limited governmental purposes of promoting and encouraging redevelopment of a blighted and substandard area. Redeveloper acknowledges that Redeveloper or its successors and assigns are and shall remain in control of the AGP Site and AGP Private Improvements for all purposes, provided that Redeveloper acknowledges and agrees that the City is and shall be the owner of and shall be in control of all public street, sewer and water improvements constituting a part of or serving the Redevelopment Project following the completion of their construction, including the AGP Public Improvements.

Section 11. TIF Indebtedness; Manner of Sale; Payment of Agency's Legal Fees.

Redeveloper and the City agree to purchase the Redeveloper Note and City Note, respectively, for the principal amount thereof. The loan to be accomplished by this Section 11, and the obligation of the Agency to remit the TIF Revenues and, as applicable, the PILOT Payments, as debt service on the TIF Indebtedness, may be accomplished by offset in

consideration of Redeveloper's and the City's respective warranties and obligations hereunder related to the expenditure of Eligible Costs, so that no bankable currency is exchanged between the Parties at issuance of the TIF Indebtedness, except as otherwise required hereunder. If the Agency so requests, Redeveloper and the City shall, from time to time and as applicable, furnish the Agency with satisfactory evidence as to the use and application of the TIF Revenues and, as applicable, the PILOT Payments.

Upon full execution and effectiveness of this Redevelopment Contract, Redeveloper shall reimburse the Agency for its legal fees incurred in relation to the Redevelopment Project in the amount of \$25,000. Such reimbursements shall be payable directly to the Agency or Agency's special counsel, at the direction of the Agency.

Section 12. Indemnification and Penal Bond

Redeveloper hereby agrees to indemnify and save the City and Agency harmless from any payment or liability to which the City or Agency may become subject for carrying out of any contract entered into by Redeveloper with respect to the AGP Improvements. With respect to the AGP Public Improvements, Redeveloper agrees to provide to the Agency evidence that there is in effect a bond for the payment costs as required under Section 18-2151 of the Act. With respect to the City Public Improvements, the City agrees to provide to the Agency evidence that there is in effect a bond for the payment costs as required under Section 18-2151 of the Act.

Section 13. Additional Parties Added as Redeveloper.

The Parties specifically agree that additional parties or entities may be admitted to and included within the meaning of the term "Redeveloper" upon the mutual written consent of both Parties.

Section 14. Redevelopment Contract Binding Upon Successors and Assigns.

This Redevelopment Contract is made for the benefit of Redeveloper, the Agency, the City and the registered owners from time to time of the TIF Indebtedness as third-party beneficiaries, and no others. This Redevelopment Contract shall be binding upon the Parties, and any successors or assigns thereof. Redeveloper may assign its interest in the Redevelopment Project, in whole or in part, upon the prior written approval of the Agency, not to be unreasonably withheld. The Agency and Redeveloper acknowledge and agree that, in the event Redeveloper assigns its rights and obligations under this Redevelopment Contract, in whole or in part, to any assignee, Redeveloper and the assignee shall both be bound by the terms of the Plan and this Redevelopment Contract (as and to the extent of any such assignment with respect to the assignee). No assignment by Redeveloper to the assignee shall be effective until a written instrument binding the assignee under the terms of the Plan and this Redevelopment Contract (as and to the extent of such assignment), duly acknowledged and in

recordable form, has been executed and delivered by the assignee and recorded in the real estate records of Butler County, Nebraska, with respect to the AGP Site.

Section 15. Titles of Sections.

Any titles of the several Sections of this Redevelopment Contract are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of the provisions hereof.

Section 16. Notices.

Except as otherwise specified herein, all notices hereunder shall be in writing and shall be given to the relevant Party at its address set forth below, or such other address as such Party may hereafter specify by notice to the other given by United States mail or by other telecommunication device capable of creating a written record of such notice and its receipt. Notices hereunder shall be addressed:

- (a) in the case of Redeveloper, if mailed to or delivered personally to:

Ag Processing Inc a cooperative
c/o Chief Financial Officer
12700 West Dodge Road
Omaha, NE 68154

with a copy to:

Ag Processing Inc a cooperative
c/o Legal Department
12700 West Dodge Road
Omaha, NE 68154

- (b) in the case of both the City Agency, if mailed to or delivered personally to:

Offices of the City of David City, Nebraska
c/o City Clerk
490 "E" Street
David City, NE 68632

with a copy to:

Baird Holm LLP
c/o Michael D. Sands

1700 Farnam Street; Suite 1500
Omaha, NE 68102

Each such notice, request or other communication shall be effective (i) if given by mail, five (5) days after such communication is deposited in the mail, certified or registered with return receipt requested, addressed as aforesaid or (ii) if given by any other means, when delivered at the addresses specified in this Section 16 or at any such other address with respect to any such Party as that Party may, from time to time, designate in writing and forward to the other Party as provided in this section.

Section 17. Severability.

If any provision of this Redevelopment Contract shall be held or deemed to be or shall, in fact, be inoperative or unenforceable as applied in any particular case, for any reason, such circumstances shall not have the effect of rendering the provision in question inoperative and unenforceable in any other case or circumstance, or of rendering any other provision or provisions herein contained, invalid, inoperative or unenforceable to any extent whatever. The invalidity of any one or more phrases, sentences, clauses, sections or paragraphs in this Redevelopment Contract shall not affect the remaining portions of this Redevelopment Contract or any part thereof.

Section 18. Counterparts.

This Redevelopment Contract may be executed in any number of counterparts, each of which shall constitute one and the same instrument.

Section 19. Law Governing.

The Parties agree that this Redevelopment Contract shall be governed and construed in accordance with the laws of Nebraska.

Section 20. Time of the Essence.

Time shall be of the essence of this Redevelopment Contract.

Section 21. Termination.

This Redevelopment Contract shall commence as of the date first above written and shall terminate upon the earlier of the date on which TIF Revenues for the Redevelopment Project are no longer collectable under Section 18-2147 of the Act or payment of all principal and interest owed toward the TIF Indebtedness.

Section 22. Force Majeure Event.

No Party shall be considered in breach of, or in default in its obligations with respect to any of the obligations under this Redevelopment Contract in the event that a delay in the performance of such obligations is caused by a Force Majeure Event. A “**Force Majeure Event**” means any failure or delay in performance by a Party that is proximately caused by unforeseeable causes beyond its control and without its fault or negligence, such as acts of God, wars or insurrections, pandemics, and epidemics, among others. In the event of the occurrence of any such delay due to a Force Majeure Event, the time or times for performance of the obligations of the delayed Party shall be extended for the period of Force Majeure Event, as determined by the mutual agreement of the Parties. Any Party claiming such excused delay as the result of a Force Majeure Event shall, within twenty (20) days after the beginning of any such Force Majeure Event, notify the other Parties in writing of the cause or causes thereof, and request an extension for the period of the delay.

Section 23. Effect of Redevelopment Contract.

This Redevelopment Contract (including the Plan as incorporated by reference) constitutes the entire understanding by and between the Parties concerning the subject matter hereof, and supersedes and replaces all prior agreements. No other prior or contemporaneous representations, inducements, promises or agreements, oral or otherwise, between or among the Parties relating to the subject matter hereof and not embodied in this Redevelopment Contract shall be of any force and effect.

(Signatures on following pages)

IN WITNESS WHEREOF, the Agency, City and Redeveloper have caused this Redevelopment Contract to be executed by their duly authorized representatives.

COMMUNITY DEVELOPMENT AGENCY OF THE
CITY OF DAVID CITY, NEBRASKA

By: _____
Chairperson (Mayor)

ATTEST:

Secretary (City Clerk)

STATE OF NEBRASKA)
) ss.
COUNTY OF BUTLER)

The foregoing instrument was acknowledged before me this _____ day of _____, 2023, by Jessica Miller, Chairperson (Mayor), and Tami Comte, Secretary (City Clerk), of the Community Development Agency of the City of David City, Nebraska, on behalf of the agency.

Notary Public

THE CITY OF DAVID CITY, NEBRASKA

By: _____
Mayor

ATTEST:

City Clerk

STATE OF NEBRASKA)
) ss.
COUNTY OF BUTLER)

The foregoing instrument was acknowledged before me this _____ day of _____, 2023, by Jessica Miller, Mayor, and Tami Comte, City Clerk, of the City of David City, Nebraska, on behalf of the city.

Notary Public

AG PROCESSING INC A COOPERATIVE

By: _____

Name: _____

Title: _____

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2023, by _____, the _____ of Ag Processing Inc a cooperative, an Iowa corporate cooperative association, on behalf of the corporation.

Notary Public

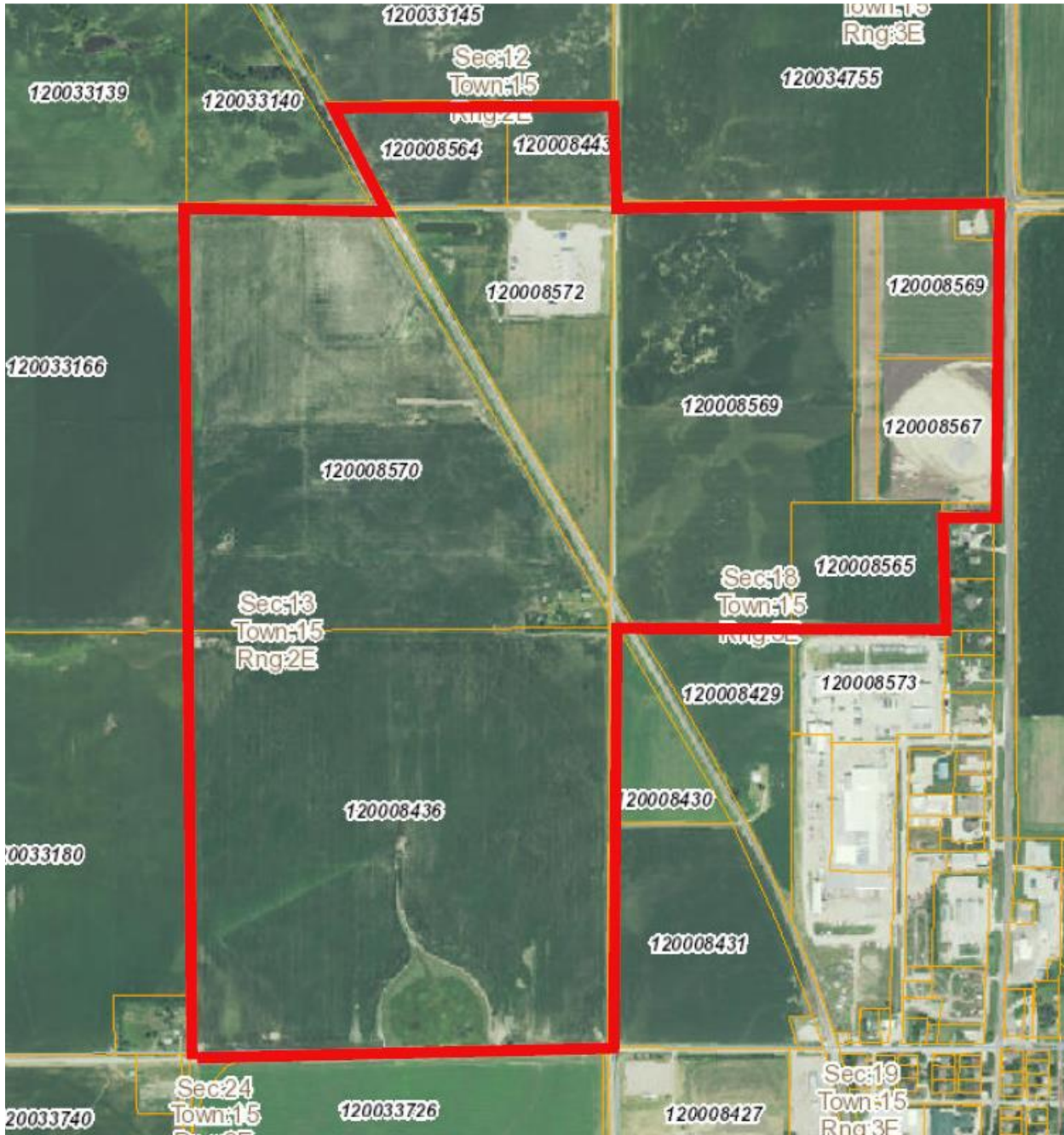
Exhibit "A"
Redevelopment Area

Parcel IDs:

120008436;
120008570;
120008572;
120008569;
120008565;
120008567;
120008566;
120008563;
120008564; and
120008443

* The above Parcel IDs are those in existence at the time of the drafting of this Redevelopment Contract, and may change over time. Additionally, in the event the Redevelopment Area is subdivided or replatted, the legal description(s) of such subdivided or replatted parcel(s) comprising the Redevelopment Area, upon final approval of the City with respect thereto, shall replace and supersede the above descriptions.

Redevelopment Area Depiction:

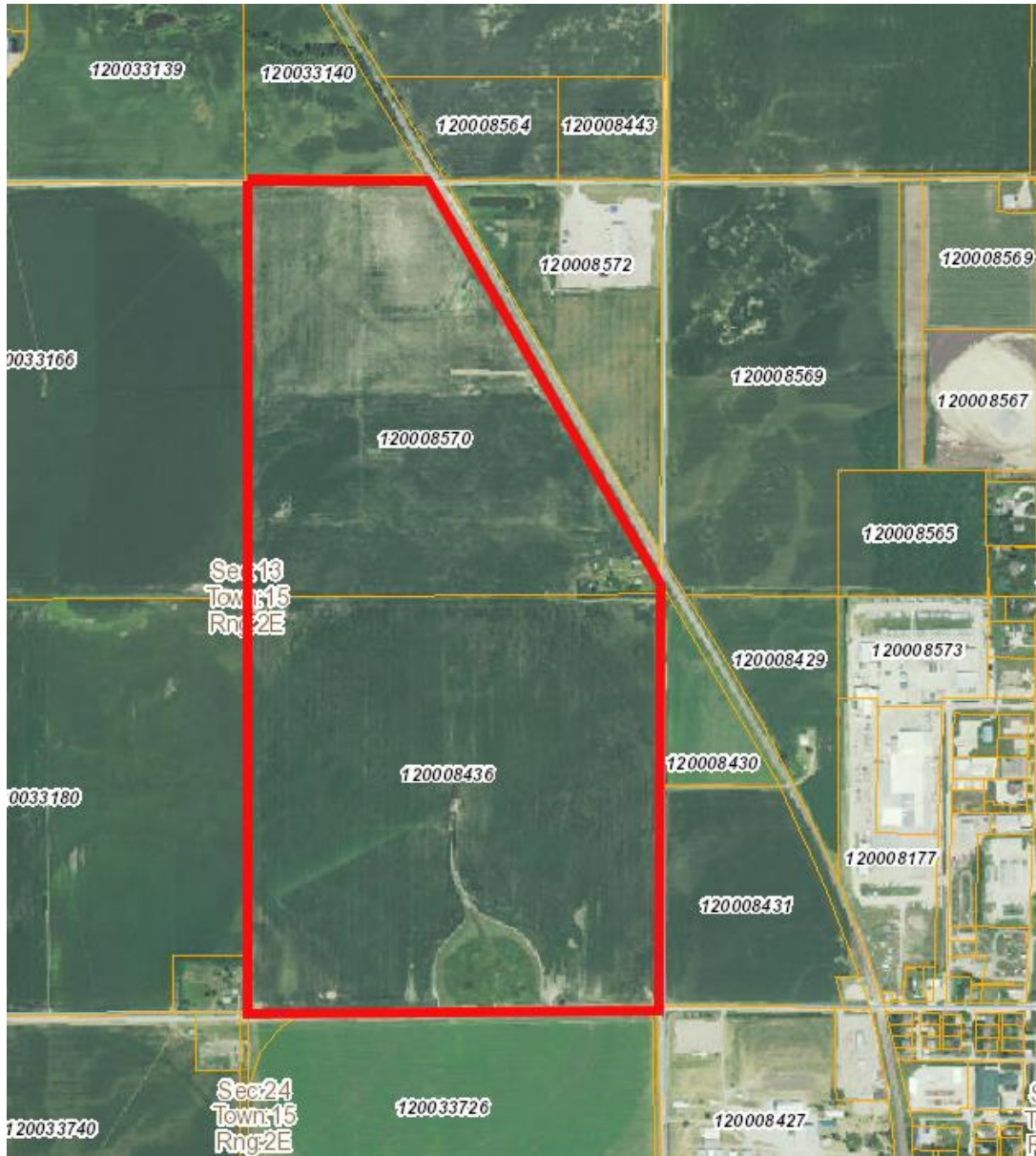


* Redevelopment Area outlined in red

Exhibit "B"
Redevelopment Project Description & AGP Site

AGP Site:

Parcel IDs 120008436 and 120008570, as outlined in red, below:

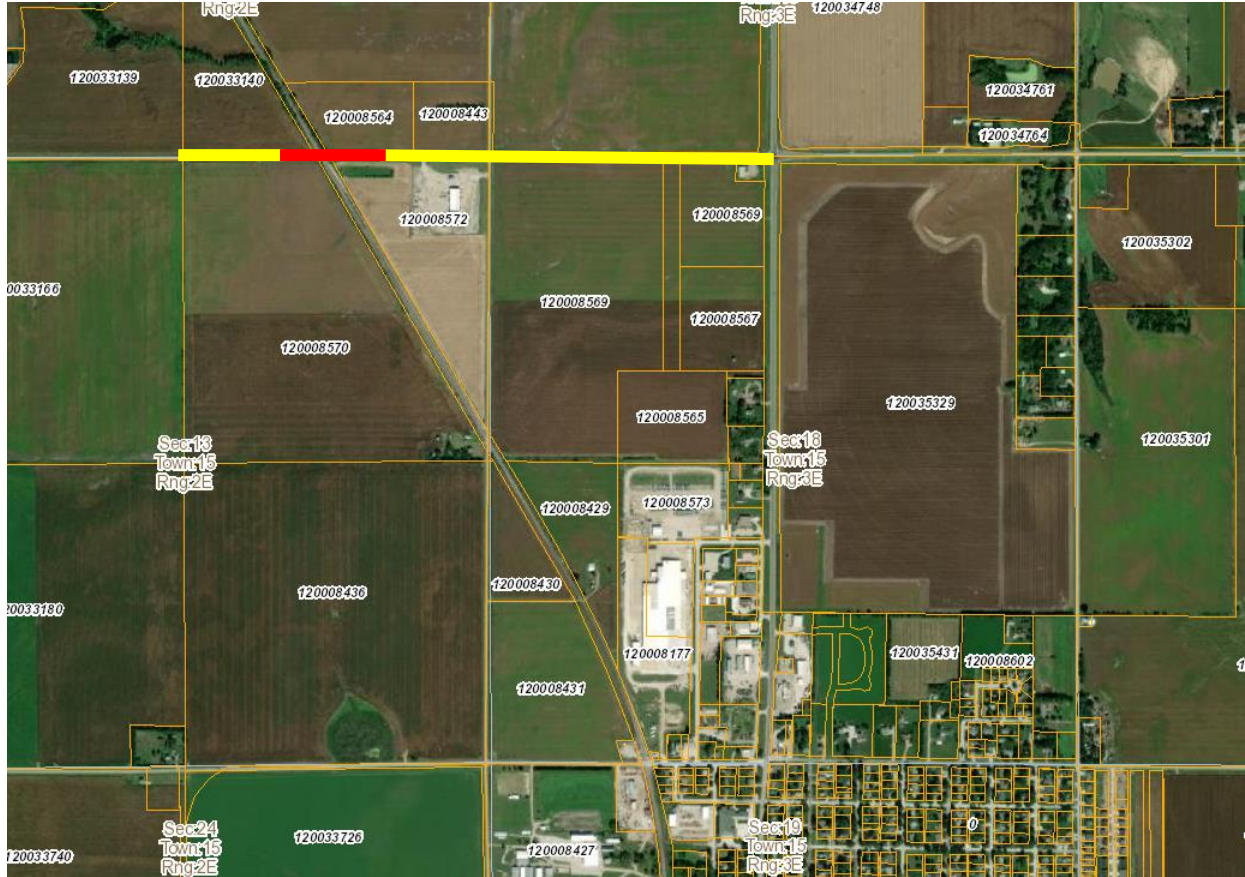


AGP Private Improvements:

The AGP Private Improvements shall be comprised of the construction of an agricultural processing facility on the AGP Site, together with such other improvements ancillary thereto.

AGP Public Improvements:

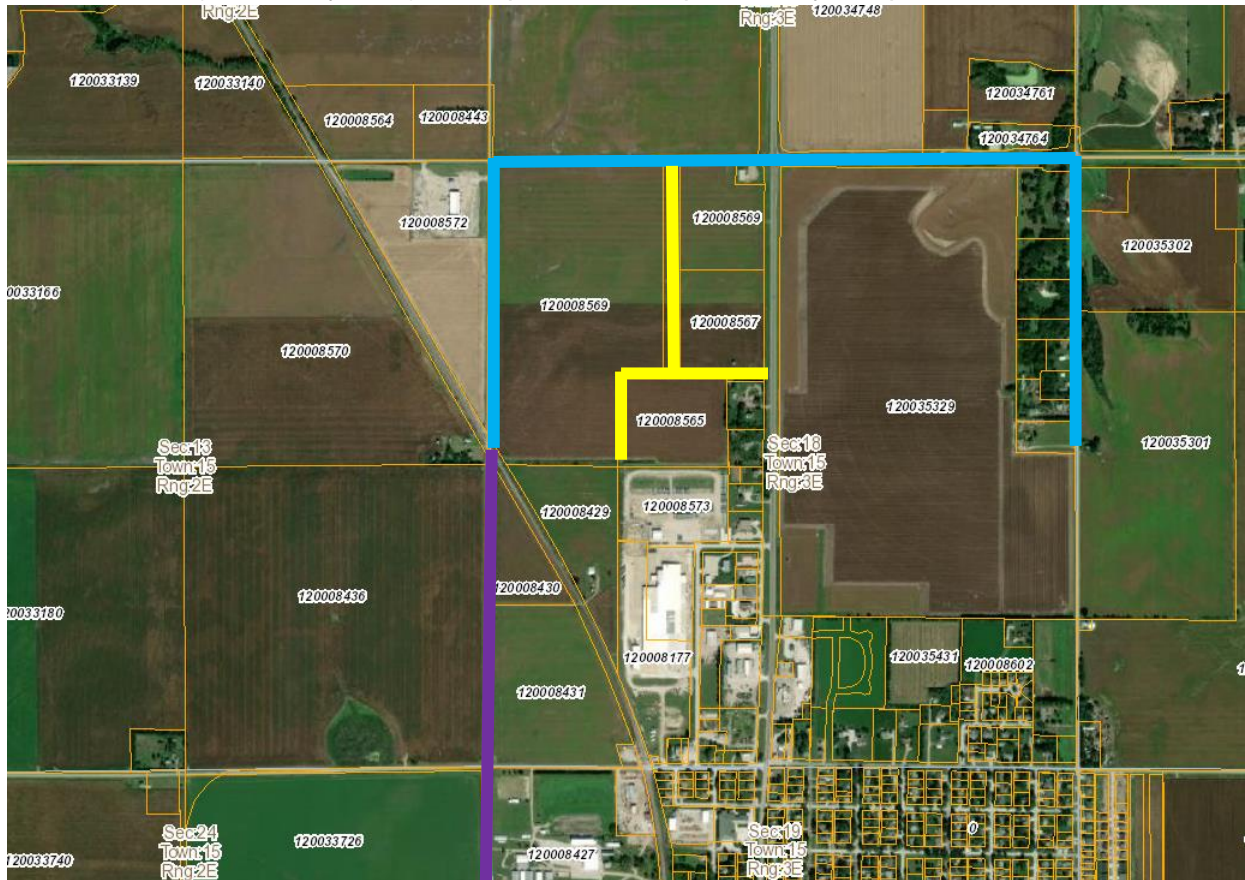
The AGP Public Improvements shall be comprised of: (1) construction of street improvements to Road 37 (shown in yellow); and (2) construction of vehicular bridge on Road 37 spanning BNSF railway (shown in red), as depicted on the preliminary site plan, below:



* The above are preliminary plans/descriptions for reference purposes only and are subject to change.

Exhibit "C"
City Public Improvements

The City Public Improvements shall consist of: (1) construction of a 16" water main from the City's water tower to Redevelopment Area (shown in blue); (2) extension of trunk sewer to Redevelopment Area (shown in purple); and (3) construction of a street connecting to Road 37 and 4th Street (shown in yellow), as depicted on the preliminary site plan, below:



* The above are preliminary descriptions/plans for reference purposes only and are subject to change.

Exhibit "D"
Eligible Costs

Projected Eligible Costs of Redeveloper

Land Acquisition for Infrastructure	\$150,000
Land Acquisition for AGP Improvements Site	\$7,000,000
Site Preparation Costs for AGP Improvements	\$40,000,000
A/E & Legal Fees for AGP improvements	\$15,000,000
Rd 37 & Bridge Improvements	\$19,020,000
City Fees	\$30,000
TOTAL	\$81,200,000

Projected Eligible Costs of City

Water Extension	\$4,200,000
Sewer Extension	\$2,383,920
Rd 37/4th St Connecting Road	\$1,800,000
Financing Costs	\$3,549,990
TOTAL:	\$11,933,910

* The above figures are only estimates of the Eligible Costs and other costs, and such actual costs will be reflected in the Eligible Costs Certifications required under Section 5 of the Redevelopment Contract.

** All Eligible Costs contemplated in the Plan and/or Act and not otherwise specified herein shall be included as Eligible Costs for purposes of this Redevelopment Contract under this Exhibit "D".

Exhibit "E"
Form of City Note and Redeveloper Note

(See Attached)

THIS PROMISSORY NOTE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 (THE "'33 ACT") AND MAY NOT BE TRANSFERRED, ASSIGNED, SOLD OR HYPOTHECATED UNLESS A REGISTRATION STATEMENT UNDER THE '33 ACT SHALL BE IN EFFECT WITH RESPECT THERETO AND THERE SHALL HAVE BEEN COMPLIANCE WITH THE '33 ACT AND ALL APPLICABLE RULES AND REGULATIONS THEREUNDER, OR THERE SHALL HAVE BEEN DELIVERED TO THE CITY OF DAVID CITY PRIOR TO TRANSFER, ASSIGNMENT, SALE OR HYPOTHECATION AN OPINION OF COUNSEL, SATISFACTORY TO THE CITY OF DAVID CITY TO THE EFFECT THAT REGISTRATION UNDER THE '33 ACT IS NOT REQUIRED.

TAX INCREMENT FINANCING PROMISSORY NOTE

(The Northwest Industrial Area Redevelopment Project – _____ Note)

Dated Date: _____, 20__

FOR VALUE RECEIVED, the undersigned, Community Development Agency of the City of David City, Nebraska (hereinafter known as "Agency"), in accordance with the terms of that certain Redevelopment Contract dated _____, 2023 (the "Redevelopment Contract"), as between the Agency, the City of David City, Nebraska, and Ag Processing Inc a cooperative, hereby acknowledges itself to owe and for value received promises to pay, but only from the sources herein designated, to _____ ("Holder"), or its registered assigns, in lawful money of the United States of America, the principal amount on Schedule 1 attached hereto, with such principal sum to become due on the maturity date set forth below, with interest on the unpaid balance of the "Cumulative Outstanding Principal" amount reflected in Schedule 1 from January 1, 2025, until maturity or earlier redemption at a rate of ___% per annum. Maturity of this Tax Increment Financing Promissory Note (this "Note") shall be the date that the excess ad valorem real property taxes derived from the [AGP Site/Redevelopment Area] (as defined in the Redevelopment Contract) may no longer be divided and pledged towards the payment of this Note under section 18-2147 of the Nebraska Community Development Law, Sections 18-2101 et seq., of the Nebraska Revised Statutes (the "Act"), or until all principal and interest on this Note is paid in full, whichever occurs first. Interest on this Note shall be payable on July 1 of the year following the initial Effective Date (as defined in the Redevelopment Contract) for the [AGP Site/Redevelopment Area], and semiannually thereafter on January 1 and July 1 of each year, until maturity.

[The interest rate on this Note is subject to change from time to time, with respect to the Cumulative Outstanding Principal Amount as of the date of such change. Changes to the interest rate shall be determined annually on September 1 of each calendar year, based upon the tax assessed property valuation of the AGP Site for the applicable year, as determined by the county assessor for Butler County, Nebraska, in accordance with the rate schedule set forth under Schedule 2, attached hereto. Any adjustment to the interest rate on this Note in accordance with the foregoing shall be notated by Holder in the rate adjustment ledger provided under Schedule 2; provided that the records accurately maintained by the Agency as to the

interest rate shall be the official records of this Note for all purposes. Notwithstanding the foregoing, under no circumstance shall the interest rate on this Note exceed the maximum rate allowed by applicable law.]

THE PRINCIPAL AMOUNT OF THIS NOTE IS SET FORTH IN SCHEDULE 1 ATTACHED HERETO. THE MAXIMUM PRINCIPAL AMOUNT OF THIS NOTE IS \$_____.

This Note is one of two notes of its series in the total principal amount not to exceed \$23,078,029, issued by the Agency for the purpose of paying a portion of the costs of redevelopment of certain real estate as described in the Redevelopment Contract, and as designated in that certain redevelopment plan recommended by the Agency and approved by the Mayor and City Council of the City of David City, Nebraska, on December 14, 2022 (the "Plan"), all in compliance with the Act, as amended, and has been duly authorized by the Agency.

All terms of the Redevelopment Contract authorizing the issuance of this Note are hereby incorporated and adopted by this Note as if specifically set forth herein. Unless otherwise prescribed herein, to the extent the terms of this Note directly conflict with the Redevelopment Contract, the terms of the Redevelopment Contract shall control. All capitalized terms in this Note that are not otherwise defined herein shall have the same meaning as set forth in the Redevelopment Contract.

In the event of default under this Note, all sums secured by this Note or any other agreement securing this Note shall bear interest at a rate equal to five percent (5%) above the prime rate as published by the Wall Street Journal from time-to-time; however, in the event said interest rate exceeds the maximum rate allowable by law, then such rate of interest shall equal the highest legal rate available.

The Agency may prepay the principal of this Note, in whole or in part, without penalty or the prior consent of the Holder; provided, however, any such prepayment shall be made solely from TIF Revenue in accordance with the Redevelopment Contract.

Holder, pursuant to the terms of Section 5 of the Redevelopment Contract, may from time to time enter the respective amounts advanced under the column headed "Principal Amount Advanced" on Schedule 1 hereto (the "Table") and may enter the aggregate principal amount of this Note then outstanding under the column headed "Cumulative Outstanding Principal Amount" on the Table, pursuant to the terms of the Redevelopment Contract. On each date upon which a portion of the Cumulative Outstanding Principal Amount is paid on this Note, Holder may enter the principal amount paid on this Note under the column headed "Principal Amount Redeemed" on the Table and may enter the then outstanding principal amount of this Note under the column headed "Cumulative Outstanding Principal Amount" on the Table. Notwithstanding the foregoing, the records accurately maintained by the Agency as to the

principal amount issued and principal amounts paid on this Note shall be the official records of the Principal Amount Advanced, Principal Amount Redeemed, and Cumulative Outstanding Principal Amount of this Note for all purposes.

In the event the monies collected and held in that special fund established under Section 18-2147 of the Act, and pursuant to the Redevelopment Contract, are insufficient to pay in full all amounts due and owing after all excess ad valorem taxes collected within the [AGP Site/Redevelopment Area] and allocable towards this Note, have been collected by the Agency and paid, within a reasonable time after becoming available, towards the retirement of the amounts due hereunder, then the Holder shall waive any unpaid portion of the principal and interest due hereon. Notwithstanding the foregoing, the Agency shall not be obligated to make more than two payments on this Note, at least five months apart, during any single calendar year.

In the event this Note is referred to an attorney for collection the Holder shall be entitled to reasonable attorney fees allowable by law and all court costs and other expenses incurred in connection with such collection. Demand, presentment, protest and notice of nonpayment under this Note are hereby waived.

A PORTION OF THE PRINCIPAL AMOUNT OF THIS NOTE MAY BE PAID OR REDEEMED WITHOUT SURRENDER HEREOF TO THE PAYING AGENT OF THE AGENCY. THE HOLDER OR ANY TRANSFEREE OR ASSIGNEE OF SUCH HOLDER MAY NOT RELY UPON THE PRINCIPAL AMOUNT INDICATED HEREON AS THE PRINCIPAL AMOUNT HEREOF OUTSTANDING AND UNPAID. THE PRINCIPAL AMOUNT HEREOF OUTSTANDING AND UNPAID SHALL FOR ALL PURPOSES BE THE AMOUNT DETERMINED BY THE RECORDS OF THE AGENCY.

Pursuant to the Redevelopment Contract and sections 18-2124 and 18-2150 of the Act, the excess ad valorem real property taxes generated by the Redevelopment Project, and collected within the [AGP Site/Redevelopment Area], and, as applicable, the PILOT Payments (as defined in the Redevelopment Contract), have, in part, been pledged for the payment of this Note, both principal and interest as the same fall due or become subject to mandatory redemption. Notwithstanding any terms to the contrary in this Note, said excess ad valorem real property taxes collected within the [AGP Site/Redevelopment Area], and, as applicable, the PILOT Payments, shall be allocated and disbursed as debt service towards this Note in accordance with the payment terms and priorities set forth in Section 4 of the Redevelopment Contract.

This Note shall not constitute a general obligation of the Agency and the Agency shall be liable for the payment thereof only out of said portion of taxes as described in this paragraph and, as applicable, the PILOT Payments. This Note shall not constitute an obligation of the State of Nebraska, the Agency, or of the City of David City (except for such receipts as have been pledged pursuant to said Sections 18-2124 and 18-2150 of the Act and, as applicable, the

PILOT Payments) and neither the State of Nebraska, the Agency nor the City of David City shall be liable for the payment thereof from any fund or source including but not limited to tax monies belonging to either thereof (except for such receipts as have been pledged as described above in this paragraph). Neither the members of the Agency's governing body nor any person executing this Note shall be liable personally on this Note by reason of the issuance hereof.

No delay or omission on the part of the Holder in exercising any remedy, right or option under this Note shall operate as a waiver of such remedy, right or option. In any event, a waiver on any one occasion shall not be construed as a waiver or bar to any such remedy, right or option on a future occasion.

Any notice provided for in this Note to the Agency or the Holder shall be in writing and shall be given by regular mail to the Holder or Agency, or at such other address as either party may designate by notice in writing.

This Note shall be governed by and construed in accordance with the laws of the State of Nebraska. All payments hereunder shall be payable in lawful money of the United States of America and shall be legal tender for public and private debts at the time of payment.

IN WITNESS WHEREOF, the Chairperson (Mayor) and Secretary (City Clerk) of the Agency have caused this Note to be executed on behalf of the Agency, all as of the Dated Date shown below.

Dated this ____ day of _____, 20__.

COMMUNITY DEVELOPMENT AGENCY OF THE
CITY OF DAVID CITY, NEBRASKA

ATTEST:

By: (Sample – Do Not Sign)
Chairperson (Mayor)

(Sample – Do Not Sign)
Secretary (City Clerk)

Exhibit "F"
Form Memorandum of Redevelopment Contract

(See Attached)

MEMORANDUM OF REDEVELOPMENT CONTRACT

This Memorandum of Redevelopment Contract ("Memorandum") is made this ____ day of _____, 2023, by and between the Community Development Agency of the City of David City, Nebraska ("Agency"), the City of David City, Nebraska (the "City"), and Ag Processing Inc a cooperative, an Iowa corporate cooperative association ("Redeveloper").

1. **Redevelopment Contract.** Agency, the City and Redeveloper have entered into that certain Redevelopment Contract dated as of _____, 2023 ("Redevelopment Contract"), describing the public and private improvements being made by the Redeveloper on the real property legally described as:

[Insert legal description]

(the "AGP Site")

2. **Tax Increment Financing.** The Redevelopment Contract provides for the capture of the tax-increment financing ("TIF") revenues by the Agency of the improvements made by the Redeveloper on the AGP Site for a period not to exceed fifteen (15) years after the effective date (as defined in the Nebraska Community Development Law) of the Redevelopment Project. The TIF revenues so captured by the Agency shall be used to reimburse Redeveloper for construction of certain TIF-eligible improvements described in the Redevelopment Contract via debt service payments on TIF Indebtedness issued by the Agency.

3. **Minimum Lot Valuation.** The Redevelopment Contract establishes a minimum taxable real property valuation of \$80,000,000 for the AGP Site (the "AGP Site Minimum Valuation"). The Redevelopment Contract further provides that if, during the period of the Redevelopment Contract, the taxable real property valuation of the AGP Site is less than the AGP Site Minimum Valuation, Redeveloper and/or its successors and assigns, inclusive of future owner(s) of the AGP Site, shall make a payment in lieu of taxes ("PILOT Payment") to the Agency within thirty (30) days of the Agency's written demand therefor. The amount of the PILOT Payment shall be the amount of property taxes that would be owed on the AGP Site had the taxable real property valuation for the same equaled the AGP Site Minimum Valuation in the applicable year, less the actual amount of property taxes paid and/or owing with respect to the AGP Site for such year. Additionally, the Redevelopment Contract prohibits the conveyance of the AGP Site, or portion thereof, or any structures or units thereon, to any entity which would be exempt from the payment of real estate taxes or cause the nonpayment of such real estate taxes.

4. **Remaining Terms.** The rest and remaining terms of the Redevelopment Contract are hereby incorporated into this Memorandum as if they were set forth in full. All capitalized terms in this Memorandum that are not otherwise defined herein shall have the same meaning as set forth in the Redevelopment Contract. A full and correct copy of the Redevelopment Contract may be inspected at the Agency offices in David City, Nebraska.

5. **Termination of Memorandum.** Unless terminated sooner in accordance with the terms of the Redevelopment Contract, this Memorandum shall be deemed to automatically terminate and be released from the above-described real property upon the payoff or maturity of the TIF Indebtedness.

(Signatures on following page)

IN WITNESS WHEREOF, the Agency, City and Redeveloper have caused the foregoing instrument to be executed by their duly authorized representatives.

COMMUNITY DEVELOPMENT AGENCY OF THE
CITY OF DAVID CITY, NEBRASKA

By: _____
Chairperson (Mayor)

ATTEST:

Secretary (City Clerk)

STATE OF NEBRASKA)
) ss.
COUNTY OF BUTLER)

The foregoing instrument was acknowledged before me this _____ day of _____, 2023, by Jessica Miller, Chairperson (Mayor), and Tami Comte, Secretary (City Clerk), of the Community Development Agency of the City of David City, Nebraska, on behalf of the agency.

Notary Public

THE CITY OF DAVID CITY, NEBRASKA

By: _____
Mayor

ATTEST:

City Clerk

STATE OF NEBRASKA)
) ss.
COUNTY OF BUTLER)

The foregoing instrument was acknowledged before me this _____ day of _____, 2023, by Jessica Miller, Mayor, and Tami Comte, City Clerk, of the City of David City, Nebraska, on behalf of the city.

Notary Public

Exhibit "G"
Initial Utility Rates

<u>Utility</u>	<u>Rate*</u>
Sanitary Sewer	Customer charge of \$11.35 per month; PLUS \$3.25 per 1,000 gallons of outflow water (See Ordinance No. 1436-B)
Water**	Customer charge: \$300.00 per month for 4" and \$375.00 per month for 6"; PLUS \$2.55 per 1,000 gallons for first 10,000 gallons: AND \$2.65 per 1,000 gallons over 10,000 gallons
Electric	Customer charge: \$1,000 per month (or partial month) Demand charge: 110% of NPPD and Butler PPD actual cost Energy charge: 110% of NPPD actual cost (See Ordinance No. 1432)

* The above descriptions are merely a synopsis of the rates in existence at the Effective Date of the Redevelopment Contract and are for reference purposes only. The actual rates, and the terms/context related to the same, shall be exclusively governed by the applicable ordinance(s) of the City, that are in effect at any given time, and which are subject to change from time to time.

** The water rate applicable to the AGP Private Improvements has not been established as of the Effective Date of the Redevelopment Contract. Accordingly, the rate provided in the above table is the anticipated rate, to be established via the City's subsequent adoption of an ordinance.

Council member Tom Kobus made a motion to adjourn. Council Member Kevin Woita seconded the motion. The motion carried and Mayor Jessica Miller declared the meeting adjourned at 9:01 p.m.

Jim Angell: Yea, Tom Kobus: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Woita: Yea
Yea: 6, Nay: 0



CERTIFICATION OF MINUTES
April 26, 2023

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 26, 2023; that all of the subjects included in the foregoing proceedings were contained in the agenda for the meeting, kept continually current and available for public inspection at the office of the City Clerk; that such subjects were contained in said agenda for at least twenty-four hours prior to said meeting; that the minutes of the meeting of the City Council of the City of David City, Nebraska, were in written form and available for public inspection within ten working days and prior to the next convened meeting of said body; that all news media requesting notification concerning meetings of said body were provided with advance notification of the time and place of said meeting and the subjects to be discussed at said meeting.

Tami Comte, City Clerk