

October 15, 2019

## ALLIANCE CITY COUNCIL

REGULAR MEETING, TUESDAY, OCTOBER 15, 2019

STATE OF NEBRASKA            )  
  )  
COUNTY OF BOX BUTTE        ) §  
  )  
CITY OF ALLIANCE                )

The Alliance City Council met in a Regular Meeting, October 15, 2019, at 7:00 p.m. in the Board of Education Meeting Room, 1604 Sweetwater Avenue, Alliance, Nebraska. A notice of meeting was published in the Alliance Times Herald on October 9, 2019. The notice stated the date, hour and place of the meeting, that the meeting was open to the public, and that an agenda of the meeting, kept continuously current, was available for public inspection at the office of the City Clerk in City Hall; provided the Council could modify the agenda at the meeting if it determined an emergency so required. A similar notice, together with a copy of the agenda, also had been delivered to each of the City Council Members. An agenda, kept continuously current, was available for public inspection at the office of the City Clerk during regular business hours from the publication of the notice to the time of the meeting.

Vice Mayor Mischnick opened the October 15, 2019 meeting of the Alliance, Nebraska City Council at 7:00 p.m. Present were Council Members Mischnick, Jones, Reynolds and Bentley. Also present were City Manager Sprock, Finance Director Waggener, City Attorney Hoelsing and City Clerk Jines.

- Vice Mayor Mischnick read the Open Meetings Act Announcement.
- The first action by Council was a motion made by Councilman Bentley to excuse Mayor Dafney from the meeting as he is out of town. The motion was seconded by Councilman Jones.

Roll call vote with the following results:

Voting Aye: Mischnick, Jones, Reynolds, Bentley.

Voting Nay: None.

Motion carried.

- City Manager Sprock announced the City has two new employees: Jamie Jensen, Public Transit Driver and Evan Wright, Meter Reader.

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- The Consent Calendar was the next matter before Council. Vice Mayor Mischnick requested Resolution No. 19-91 to be removed from the Consent Calendar and considered as a separate item.

Councilman Jones made a motion to approve the amended Consent Calendar. The motion was seconded by Councilman Bentley.

CONSENT CALENDAR – OCTOBER 15, 2019

1. Approval: Minutes of the Regular Meeting, October 1, 2019.
2. Approval: Payroll Costs for the period September 21 through October 4, 2019: \$329,223.58.
3. Approval: Claims against the following funds for the period of October 1 through October 9, 2019: General, General Debt Service, Trust and Agency, Street, Electric, Refuse Collection and Disposal, Sanitary Sewer, Water, Golf Course, Downtown Improvement Districts, R.S.V.P., Keno, and Capital Improvement; \$1,498,364.79.
4. Approval: Update to the Alliance Volunteer Fire Department by adding Megan Komarck and Theodore Rozmiarek, and removing Wesley Whitwer.
5. Approval: Issuance of a Cemetery Certificate for the West One Half (W<sup>1</sup>/<sub>2</sub>) Lot Twenty-two (22), Section Three (3), Block Twenty-seven (27), Alliance Cemetery Fourth Addition to Carlos D. Reza, Dana Reza and Bailey Reza.
6. Approval: The *Special Events Request for Use of Public Facilities, Parks, Streets* of the American Legion Post 7 and the Veterans Service Office to conduct a Veteran's Day Parade. The parade will be held on Saturday, November 9, 2019 starting at 11:00 a.m. The route will be starting at 14<sup>th</sup> Street and Box Butte Avenue traveling south to 4<sup>th</sup> Street, turning east and ending. The required Certificate of Insurance has been provided to the City.
7. Approval: The acceptance of a donation from Burlington Northern Santa Fe Railroad of a Conex Storage container for placement at the Police Department Shooting Range. The storage container will be used for targets and other supplies. The current structure being used for this purpose will be removed. The value of this donation is between \$2,000 and \$4,500 and BNSF will be delivering the unit to the site.
8. For Your Information: Charter Communications is making the following pricing change for new customers effective November 12, 2019:

Services/Products/Equipment	Pricing Adjustment
Spectrum TV Silver	Price will increase by \$5.00 to \$97.49
Spectrum TV Gold	Price will increase by \$5.00 to \$117.49

NOTE: City Manager Sprock has reviewed these expenditures and to the best of his knowledge confirms that they are within budgeted appropriations to this point in the fiscal year.

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Any item listed on the Consent Calendar may, by the request of any single Council Member, be considered as a separate item in the Regular Agenda.

Roll call vote with the following results:

Voting Aye: Mischnick, Jones, Reynolds, Bentley.

Voting Nay: None.

Motion carried.

- The Council now had before them Resolution No. 19-91 which will approve Change Order No. 5 to the Building 3000 Reconstruction. This change order is for the purchase and installation of ten extended drain spouts for the new facility in the amount of \$1,000.

Roll call vote with the following results:

Voting Aye: Mischnick, Jones, Reynolds, Bentley.

Voting Nay: None.

Motion carried.

- A request of Girl Scout Troop No. 10296 to ban smoking in the City Parks was the next item on the agenda for Council's consideration. The Girl Scouts are requesting City Council to consider making City recreational facilities: parks, playgrounds, swimming pool, and walking/biking paths as smoke and tobacco free. They are suggesting that the Smoke and Tobacco Free Policy be enforced through public information and awareness (self policing).

The following was provided by the Troop Leader Carla Mayhew for Council's knowledge:

["Smoking is the #1 preventable cause of death in Nebraska and is a public health concern. As a City Manager and Council you can take a step to protect your community by passing a tobacco free policy for recreational facilities. The scientific evidence is clear: secondhand smoke causes serious diseases and premature death among nonsmokers. Secondhand smoke is harmful in an outdoor setting as there is no safe level for exposure and this is where children like to play. It is for this reason Nebraska passed the Clean Indoor Air Act and why communities across Nebraska are passing tobacco free policies for outdoor areas.

Over nineteen municipalities have passed tobacco free or smoke free policies across Nebraska, including North Platte, Central City, Fremont, Hasting, Grand Island, Kearney, and Lincoln. Our Girl Scout Troop, with the help of Panhandle Public Health District, is committed to working with you to develop a tobacco free policy that is right for Alliance. PPHD will also be able to provide technical assistance and metal signage at no cost.

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We have included a sample resolution and signage in this packet. As item four of the resolution states, the signage and campaign the troop will undertake will serve as awareness and the public is encouraged to self-police the policy. Please adjust the resolution as needed. As you heard from our presentation, our Troop is eager to make a difference in our community and look for your support in making our outdoor play space a smoke and tobacco-free environment.

Our Troop will act a promoters and campaign for the proposal and attend any meeting this issue would be discussed.]

Troop Leader Carla Mayhew, 801 Platte Avenue addressed Council and informed them that the members of the troop have worked very hard on this request and did a great deal of research and putting together partnerships for a successful campaign. Members of the troop shared with City Council the reasoning and benefits of making our recreational facilities smoke and tobacco-free environments.

Janelle Visser of Panhandle Public Health also addressed Council and stated her organization would be more than happy to assist with the project.

Vice Mayor Mischnick thanked the scouts for bringing this to Council's attention and their talking points. He informed the girls that the Council would instruct staff to look into a possibility of a resolution or ordinance for this purpose.

- Ordinance No. 2897 was next before Council on second reading and will amend the Alliance Municipal Code to address the recently enacted Small Wireless Facilities Deployment Act by the Nebraska Legislature. The following information was provided to Council:

[During the 2019 Legislative Session the Small Wireless Facilities Deployment Act was adopted. The effect of the act is that requests to access the municipal right-of-way or build poles in the right-of-way by a specific technology commonly known as "small cell" be treated differently than other requests to access the right-of-way. It is important to note that not all wireless or broadband technology deployments are actually "small cell" technology. Small cells are low-powered cellular radio access nodes involving antennas, fiber, clectricity and sometimes large equipment cabinets that have a limited range as a method of increasing cellular network capacity, quality and resilience. Because of this limited geographical coverage, it generally takes a lot of small cells to augment a macro cell tower in the area.

City Attorney Hoelsing has reviewed the draft versions of proposed language from the Nebraska League of Municipalities, along with the Federal laws relating to this issue and has prepared Ordinance No. 2897 for Council's consideration. This ordinance will update the Alliance Municipal Code.]

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A motion was made by Vice Mayor Mischnick, seconded by Councilman Bentley to approve Ordinance No. 2897 on second reading. City Clerk Jines read the ordinance by title which follows in its entirety:

ORDINANCE NO. 2897

AN ORDINANCE OF THE CITY OF ALLIANCE ADOPTING A NEW ARTICLE ENTITLED "SMALL WIRELESS FACILITIES REGULATIONS FOR THE RIGHT-OF-WAY"; PROVIDING FOR AN EFFECTIVE DATE; AND PROVIDING FOR PUBLICATION IN PAMPHLET FORM.

WHEREAS, Federal laws and regulations that govern local zoning standards and procedures for wireless communication facilities have substantially changed; and

WHEREAS, The City of Alliance (the "City") desires to update its local standards and procedures to reasonably regulate wireless communication facilities aesthetics, to protect and promote the City's character in a manner consistent with state and federal laws and regulations; and

WHEREAS, The City intends to fully comply with state and federal law; and

WHEREAS, Federal laws and regulations, wireless technology and consumer usage have reshaped the environment within which wireless communication facilities are permitted and regulated.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City that the Municipal Code shall be amended as follows:

SECTION 1. Amendment. That the Municipal Code is hereby amended by adding Article XII in Chapter 18, entitled "Small Wireless Facilities Regulations for the Right-of-Way". The entirety of Article XII in Chapter 18 shall be as follows:

**"Section 18-601. - Purpose.**

- (1) The provisions of this Article shall be known as the Small Wireless Facilities Regulations for the Right-of-Way. It is the purpose of these provisions to delineate restrictions, development standards and siting criteria, and establish removal procedures in order to protect the City from the uncontrolled siting of wireless communication facilities in locations that have significant adverse effects and cause irreparable harm.
- (2) The Legislature found and declared in the Small Wireless Facilities Deployment Act (2019 LB 184) (the "Act") that:
  - (a) The deployment of small wireless facilities and other next-generation wireless facilities is a matter of statewide concern and interest and public policy;

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- (b) Wireless products and services are a significant and continually growing part of the state's economy and that encouraging the development of strong and robust wireless communications networks throughout the state is necessary to address public need and policy and is integral to the state's economic competitiveness;
- (c) Rapid deployment of small wireless facilities will serve numerous important statewide goals and public policy, including meeting growing consumer demand for wireless data, increasing competitive options for communications services available to the state's residents, improving the ability of the state's residents to communicate with other residents and with their state and local governments, and promoting public safety;
- (d) Small wireless facilities, including facilities commonly referred to as small cells and distributed antenna systems, are deployed most effectively in public rights-of-way;
- (e) To meet the public need and policy and the key objectives of the Act that wireless providers must have access to the public rights-of-way to densify their networks and provide next-generation wireless services;
- (f) Uniform procedures, rates, and fees for permit issuance and deployment of small wireless facilities in public rights-of-way and on City infrastructure, including poles, throughout the state that are reasonable and will encourage the development of robust next-generation wireless networks for the benefit of residents throughout the state; and
- (g) The procedures, rates, and fees in the Act, together with any taxes, fees, or charges imposed under Neb. Rev. Stat. § 86-1239(2), (a) are fair and reasonable when viewed from the perspective of the state's residents and the state's interest in having robust, reliable, and technologically advanced wireless networks, and (b) reflect a balancing of the interests of the wireless providers deploying new facilities and the interests of authorities in receiving fair value by recovering their costs of managing access to the public rights-of-way and provide for the attachment space on City infrastructure and enable the reviewing and processing of applications for the installation of small wireless facilities within the rights-of-way.

**Section 18-602. - Definitions.**

For purposes of this Article X, the following words and terms as used herein are defined to mean the following:

*Act* means the Small Wireless Facilities Deployment Act (Legislative Bill 184 adopted codified in Neb. Rev. Stat. § 86-1201 *et seq.*).

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*Antenna* means communications equipment that transmits or receives electromagnetic radio frequency signals used in providing wireless services.

*Applicable codes* means uniform building, fire, safety, electrical, plumbing, or mechanical codes adopted by a recognized national code organization or local amendments to such codes so long as such amendments are not in conflict with the Act and to the extent such codes have been adopted by the City and are generally applicable in the jurisdiction.

*Applicant* means any person who submits an application and is a wireless provider.

*Application* means a written request submitted by an applicant to the City (1) for a permit to collocate small wireless facilities on an existing utility pole or wireless support structure or (2) for a permit for approval for the installation, modification, or replacement of a utility pole to support the installation of a small wireless facility.

*Collocate* or *collocation* means to install, mount, maintain, modify, operate, or replace small wireless facilities on or adjacent to a wireless support structure or utility pole. Collocate or collocation does not include the installation of a new utility pole or new wireless support structure in the right-of-way.

*Communications network* means a network used to provide communications service.

*Communications service* means a cable service as defined in 47 U.S.C. 522, as such section existed on January 1, 2019, an information service as defined in 47 U.S.C. 153, as such section existed on January 1, 2019, a telecommunications service as defined in 47 U.S.C. 153, as such section existed on January 1, 2019, or a wireless service.

*Communications service provider* means a cable operator as defined in 47 U.S.C. 522, a provider of information service as defined in 47 U.S.C. 153, or a telecommunications carrier as defined in 47 U.S.C. 153, as such sections existed on January 1, 2019. Communications service provider includes a wireless provider.

*Decorative pole* means a City pole that is specially designed and placed for aesthetic purposes.

*Distributed Antenna System* means a network consisting of transceiver equipment at a central hub site to support multiple antenna locations throughout the desired coverage area.

*Eligible Facilities Request* shall be as defined in federal regulations.

*FAA* means the Federal Aviation Administration.

*FCC* means the Federal Communications Commission.

*Fee* means a one-time, nonrecurring charge.

*Historic district* means any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places, in accordance with Stipulation VI.D.1.a (i)-(v) of the Nationwide Programmatic Agreement for Review of Effects on Historic Properties for Certain Undertakings Approved by the Federal

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Communications Commission codified at 47 C.F.R. part 1, Appendix C, as such regulation existed on January 1, 2019, or designated pursuant to state historic preservation law if such designation exists at the time of application.

*Law* means federal, state, or local law, statute, common law, code, rule, regulation, order, or ordinance.

*Macro cell* means an antenna or antennas mounted on a tower, ground-based mast, rooftops or structures, at a height that provides coverage to the surrounding area.

*Microwireless facility* means a small wireless facility that is not larger in dimension than twenty-four inches in length, fifteen inches in width, and twelve inches in height and with any exterior antenna no longer than eleven inches.

*City* means the City of Alliance, Nebraska.

*Permit* means a written authorization required by the City to perform an action, initiate, continue, or complete installation of a small wireless facility on an existing utility pole or attached to an existing wireless support structure, or to install, modify, or replace a utility pole to support installation of a small wireless facility.

*Person* means an individual, a corporation, a limited liability company, a partnership, an association, a trust, or any other entity or organization, including the City.

*Pole* means a legally constructed pole, such as a utility, lighting or similar pole made of wood, concrete, metal or other material, located or to be located within the right-of-way.

*Rate* means a recurring charge

*Right-of-way* means the area on, below, or above a public roadway, highway, street, sidewalk, alley, dedicated utility easement, or similar property, but not including a private easement.

*Routine maintenance* means inspections, testing or repair that maintain functional capacity, aesthetic and structural integrity of a small wireless facility and the associated structure, pole or tower, and that does not involve impeding, damaging or disturbing any portion of the right-of-way.

*Small wireless facility* means a wireless facility that meets each of the following conditions: (1) The facilities (a) are mounted on structures fifty feet or less in height including the antennas or (b) are mounted on structures no more than ten percent taller than other adjacent structures; (2) each antenna associated with the deployment is no more than three cubic feet in volume; (3) all other equipment associated with the structure, whether ground-mounted or pole-mounted, is no more than twenty-eight cubic feet in volume; (4) the facilities do not require antenna structure registration under 47 C.F.R. part 17, as such regulation existed on January 1, 2019; (5) the facilities are not located on tribal lands, as defined in 36 C.F.R. 800.16(x), as such regulation existed on January 1, 2019; and (6) the facilities do not result in human exposure to

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radio frequency radiation in excess of the applicable safety standards specified in 47 C.F.R. 1.1307(b), as such regulation existed on January 1, 2019.

*State* means the State of Nebraska.

*Stealth* means a design that minimizes the visual impact of wireless communication facilities by camouflaging, disguising, screening or blending them into the surrounding environment. Examples of stealth design include but are not limited to facilities disguised as trees (monopines), flagpoles, utility and light poles, bell towers, clock towers, ball field lights and architecturally screened roof-mounted antennas or flush-mounted antennas that are either painted to match or enclosed in an architecturally applicable box.

*Technically feasible* means that by virtue of engineering or spectrum usage, the proposed placement for a small wireless facility, or its design or site location, can be implemented without a reduction in the functionality of the small wireless facility.

*Tower* means any structure in the right-of-way built for the sole or primary purpose of supporting a wireless communication facility.

*Tower height* means the vertical distance measured from the base of the tower structure at grade to the highest point of the structure including the antenna. A lightning rod, not to exceed ten (10) feet in height, shall not be included within tower height.

*Transmission equipment* means equipment that facilitates transmission for any FCC-licensed or authorized wireless communication service, including, but not limited to, radio transceivers, antennas, microwave dishes, coaxial or fiber-optic cable and backup power supplies. The term includes equipment associated with wireless communication services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

*Utility pole* means a pole located in the right-of-way that is used for wireline communications, lighting, the vertical portion of support structures for traffic control signals or devices or a similar function, or for the collocation of small wireless facilities and located in the right-of-way. Utility pole does not include (1) wireless support structures, (2) any transmission infrastructure owned or operated by the City, and (3) any distribution or communications infrastructure owned or operated by the City.

*Wireless facility* means equipment at a fixed location that enables wireless communications between user equipment and a communications network, including (a) equipment associated with wireless communications and (b) radio transceivers, antennas, coaxial or fiber-optic cable, regular power supply, and small back-up battery, regardless of technological configuration. Wireless facility includes small wireless facilities. Wireless facility does not include (a) the structure or improvements on, under, or within the equipment which is collocated, (b) coaxial or fiber-optic cable that is between wireless structures or utility poles or that is otherwise not immediately adjacent to, or directly associated with, a particular antenna, or (c) a wireline backhaul facility.

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*Wireless infrastructure provider* means any person, including a person authorized to provide telecommunications service in the State of Nebraska, when acting to build or install wireless communication transmission equipment, wireless facilities, or wireless support structures, but that is not a wireless services provider.

*Wireless provider or provider* means a wireless services provider or a wireless infrastructure provider when acting as a coapplicant for a wireless services provider.

*Wireless services* means any services using licensed or unlicensed spectrum, including the use of Wi-Fi, whether mobile or at a fixed location, provided to the public using wireless facilities.

*Wireless services provider* means a person who provides wireless services.

*Wireless support structure* means a structure such as a guyed or self-supporting tower, billboard, building, or other existing or proposed structure designed to support or capable of supporting wireless facilities other than a structure designed solely for the collocation of small wireless facilities. Wireless support structure does not include a utility pole.

*Wireline backhaul facility* means an above-ground or underground facility used to transport communications services from a wireless facility to a communications network.

**Section 18-603. - Deployment in the Right-of Way.**

- (1) This Article only applies to the deployment of small wireless facilities in the right-of-way and to associated poles or towers. The placement of other facilities or infrastructure in the right-of-way shall be governed by other laws and ordinances.
- (2) No person may install in the right-of way any small wireless facility, or any pole or tower built for the sole or primary purpose of supporting a small wireless facility, nor shall they construct, install, or maintain in the right-of-way any wireless facilities without first receiving a permit and entering into a SWF Agreement from the City.
- (3) A SWF Agreement with the City expressly authorizing use of the right-of-way for the small wireless facility, pole or tower proposed to be installed and maintained. The SWF Agreement may provide for the attachment to City poles or structures in the right-of-way in addition to poles or structures owned by unrelated third parties, provided that the applicant secures the written consent of the third party for such attachment. The City shall not be required to allow the collocation of small wireless facilities on utility poles owned, operated, or managed by the City except pursuant to a negotiated pole attachment agreement containing reasonable and nondiscriminatory terms and conditions, including, but not limited to, applicable rates, and the permit, operational, and safety requirements of the City. The pole attachment agreement may be separate from or a part of the SWF Agreement. Any annual pole attachment rate for the collocation of a small wireless facility supported by or installed on a utility pole owned, operated, or

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managed by the City shall be fair, reasonable, nondiscriminatory, and cost-based.

- (4) General Terms of a SWF Agreement.
  - (a) The term of a SWF Agreement shall be for up to 5 years. The SWF Agreement may be renewed for an additional term of 5 years, subject to the mutual written agreement of the City.
  - (b) The SWF Agreement authorizes the provider's non-exclusive use of the right-of-way for the sole purpose of installing, maintaining and operating wireless communication facilities, including any pole or tower built for the sole or primary purpose of supporting the wireless communication facilities and any tower, to provide the services expressly authorized in the SWF Agreement, subject to applicable laws, this Article and the terms and conditions of the SWF Agreement. The SWF Agreement authorizes use only of the right-of-way in which the City has an actual interest. It is not a warranty of title or interest in any right-of-way and it does not confer on the provider any interest in any particular location or to a superior or preferred location within the right-of-way. Nothing herein shall authorize the use of the City's poles, towers, support structures or other structures outside of the right-of-way. All use of City poles, towers, support structures, and other structures in the right-of-way may require a separate attachment agreement or be specifically provided for in the SWF Agreement, and shall include the payment of fees for such use.
  - (c) The provider shall, at its sole cost and expense, keep and maintain its wireless communication facilities, poles, support structures and towers in the right-of-way in a safe condition, and in good order and repair.
  - (d) In the event of an emergency regarding the provider's small wireless facilities, or related poles, support structures or towers, the provider shall immediately notify the City of the nature of the emergency and planned response to the emergency.
- (5) In the event of an emergency, a wireless provider or its duly authorized representative may relocate and work on existing small wireless facilities in the right-of-way prior to obtaining a permit, provided that the provider shall contact the City prior to commencing the work and shall apply for a permit as soon as reasonably possible, but not later than one business day after commencing the emergency work. For purposes of this subsection, an "emergency" means a circumstance in which immediate repair to damaged or malfunctioning facilities is necessary to restore lost service or prevent immediate harm to persons or property.
- (6) Permit Application Requirements. All applications for a permit for small wireless facility installations in the right-of-way shall be made to the City Manager or his

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or her designee. The application shall be submitted by the wireless provider or its duly authorized representative and shall contain the following:

- (a) The applicant's name, address, telephone number, and email address, including emergency contact information for the applicant.
- (b) The names, addresses, telephone numbers, and email addresses of all consultants, if any, acting on behalf of the applicant or provider with respect to the filing of the application.
- (c) A description of the proposed work and wireless communication facility sufficient to demonstrate compliance with the provisions of this Article. A scaled site plan is required. A scaled site plan shall clearly indicate the location, type, height and width of any proposed pole, on-site land uses and zoning, adjacent land uses and zoning, adjacent roadways, photo simulations, a depiction of all proposed transmission equipment, proposed means of access, setbacks from property lines, elevation drawings or renderings of the proposed pole and any other structures, topography, utility runs and other information deemed necessary to assess compliance with this Article.
- (d) If applicable, a copy of the authorization from the owner of the pole, tower or support structure—other than the City—on or in which the wireless communication facility will be placed or attached.
- (e) Detailed construction drawings and photo simulations regarding the proposed wireless communication facility. Such drawings and photo simulations may be included in the scaled site plan.
- (f) To the extent the proposed wireless communication facility involves collocation on a pole, tower or support structure, a structural report prepared by a Nebraska licensed professional engineer evidencing that the pole, tower or support structure will support the collocation (or that the pole, tower or support structure will be modified to meet structural requirements) in accordance with applicable codes.
- (g) For any new above-ground wireless communication facilities, accurate visual depictions or representations, if not included in the construction drawings or photo simulations, or in the scaled site plan.
- (h) A written report will be prepared, signed and sealed by a Nebraska licensed professional engineer or a qualified employee of the applicant, which assesses whether the proposed small wireless facility demonstrates compliance with the Radio Frequency ("RF") emissions limits established by the FCC. The qualified employee of the applicant shall submit his or her qualifications with the report.

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- (i) Any other submission requirements per published City policies, regulations, or ordinances.
- (7) Applications are public records that may be made publicly available pursuant to the statutes of Nebraska. Notwithstanding the foregoing, the applicant may designate portions of its application materials that it reasonably believes contain proprietary or confidential information as “proprietary” or “confidential” by clearly marking each portion of such materials accordingly, and the City shall treat the information as proprietary and confidential, subject to the law of Nebraska and the City’s determination that the applicant’s request for confidential or proprietary treatment of application materials is reasonable and in compliance with such law. The City shall not be required to incur any costs to protect the application materials from disclosure, other than the City’s routine procedures for complying with Nebraska law.
- (8) A permit from the City will authorize an applicant to undertake only the activities in the right-of-way specified in the application and permit, and in accordance with this Article and any conditions included in the permit. A permit does not authorize attachment to or use of existing poles, towers, support structures or other structures in the right-of-way. A SFW Agreement and/or pole attachment agreement is necessary for such attachment or use. A permit, without an SFW Agreement, does not authorize installation of small wireless facilities in the right-of-way. A permittee or wireless provider must obtain all necessary approvals from the owner of any pole, tower, support structure or other structure prior to any attachment or use. A permit does not create a property right for the applicant. A permit does not allow the applicant to interfere with other uses or users of the right-of-way.
- (9) Any permit for construction issued under this Article shall be valid for a period of one (1) year, provided that the one (1) year period may be extended for up to an additional one (1) year upon approval by the City Council or City Manager upon the written request of the applicant (made prior to the end of the initial one (1) year period) if the failure to complete construction is as a result of circumstances beyond the reasonable control of the applicant.
- (10) Unless otherwise provided in a SWF Agreement or agreed to in writing by the City, a performance and payment (for any subcontracted work) bond or other form of surety acceptable to the City equal to at least one hundred percent (100%) of the estimated cost of the work within the right-of-way shall be provided before the applicant commences work.
- (11) An applicant may submit no more than ten (10) sites in a consolidated application for small wireless facilities, provided that the proposed wireless communication facilities are to be deployed on the same type of structure using similar equipment within the City. A “site” for purposes of this Article shall mean one small

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wireless facility that meets the special conditions of this Article.

**Section 18-604. - Routine Maintenance and Repair.**

A permit shall not be required for routine maintenance and repair. The provider or other person performing the routine maintenance and repair shall obtain any other permits required by applicable laws and shall notify the City in writing at least forty-eight (48) hours before performing the routine maintenance and repair.

**Section 18-605. – Rates and Fees.**

- (1) Applications pursuant to this Article shall be accompanied by the requisite application Fee required by the City, as established from time to time.
- (2) A SWF Agreement shall include fair, reasonable, and competitively neutral Rates annually for a small wireless facility, as established by the City from time to time.
- (3) Rates and Fees in this Article may not exceed those set by the Act or set by the FCC's September 27, 2018 Declaratory Ruling and Third Report and Order, as amended from time to time.

**Section 18-606. - Administrative Review.**

Small wireless facilities in the right-of-way may be approved through administrative review of the City Manager or his or her designee if the following requirements are met:

- (1) A complete application is submitted, all Fees are paid, a permit is obtained by the applicant, and an SWF Agreement is entered into; and
- (2) Each new, modified or replacement pole, tower or structure installed in the right-of-way shall not exceed the height limits of the respective zoning district. If a height limit is exceeded, then either a conditional use permit or special use permit is required, which permit need not be granted.
- (3) The applicant complies with all of the other requirements of this Article.
- (4) Design standards and design guidelines set forth in this Article shall be met by the applicant:

**Section 18-607. – Design Standards and Guidelines.**

All small wireless facilities shall be designed, installed, construction, and maintained as follows:

- (1) All small wireless facilities shall conform to the City's Comprehensive Plan.
- (2) Small wireless facilities must conform to all height, set-back, and other zoning limits of the City.

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- (3) Small wireless facilities shall be located and designed to minimize any significant adverse effect on abutting property or the highway and right-of-way. Small wireless facilities shall be placed in location where existing and future topography, vegetation, buildings, or other structures provide the greatest amount of screening, such as screened roof-top mounts, water towers, billboards, camouflaged sites, existing building or poles, heavy commercial or industrial zones, or near power transformation facilities.
- (4) Small wireless facilities shall be compatible and to scale as near as possible with existing, surrounding land uses.
- (5) Stealth features shall be incorporated into the installation and maintenance of small wireless facilities, unless the existing, surrounding land uses would be incompatible or unfamiliar with the use of stealth features.
- (6) Residential areas shall be avoided unless it is shown that location in nearby heavy commercial or industrial zones would be unreasonable, unduly burdensome, or significantly less effective to the applicant.
- (7) Any impact on existing natural resources, open trails, or recreational areas shall be minimized.
- (8) Poles installed shall conform to the style, height, shape, look, type, color, and feel of existing poles in the surrounding area. Decorative poles may be required, if applicable. Multi-purpose poles must maintain their multi-purpose nature, such as street-lighting features.
- (9) Color and finish of any small wireless facility must much, to the extent possible, existing and visible utilities located in the right-of-way, such as cable boxes, electrical power transformers, etc.
- (10) A good faith effort must be made to mount any small wireless facility on existing poles.
- (11) Ground-level small wireless facilities must be designed to match, to the extent possible, the existing aesthetics of the surrounding buildings and must be unobstructive to views for traffic and safety purposes.
- (12) Power supply to any small wireless facility must be inconspicuous and in conformance with all applicable codes, laws, and statutes.
- (13) No small wireless facility shall interfere with any existing uses of the right-of-way, and all Applications must show a collocation analysis for all other uses of the right-of-way. Small wireless facilities shall be located in such a manner as not to interfere with the usual traffic patterns (vehicular or pedestrian) or with the rights or reasonable convenience of owners of property that abut any right-of-way.

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- (14) Ground-mounted equipment for small wireless facilities may be used only to house equipment in support of the operation of the facilities.

**Section 18-608. – Right-of-Way Construction and Installation Requirements.**

All small wireless facilities shall be installed, construction, and maintained as follows:

- (1) Towers may not be artificially lighted, unless required by public safety, the FAA or applicable City regulation.
- (2) All towers and antennas must meet current standards and regulations of the FAA, FCC and any other agency of the local, state or federal government with authority to regulate towers and antennas.
- (3) To ensure the structural integrity of poles and towers, the applicant shall ensure that the pole or tower is maintained in compliance with Industry standards and applicable code standards.
- (4) Not more than one (1) time per year, each applicant owning a macro cell tower shall provide to the City an inventory of the wireless provider's existing towers, antennas, or sites approved for towers or antennas, that are either within the jurisdiction of the City or within two (2) miles of the border thereof, including specific information about the location and tower height. The City may share such information with other applicants applying for administrative review or other permits under this Article or other organizations seeking to locate antennas within the jurisdiction of the City, provided, however, that the City is not, by sharing such information, in any way representing or warranting that such sites are available or suitable.
- (5) To the extent feasible, the antennas shall be placed and colored to blend into the architectural detail and coloring of the host structure. Towers and antennas shall be painted a color that best allows them to blend into the surroundings. The use of grays, blues, greens, dark bronze, browns or other site-specific colors may be appropriate; however, each case shall be evaluated individually.
- (6) No facilities may bear any signage other than that required by law or expressly permitted or required by the City.
- (7) All small wireless facilities in residential districts, historic and downtown districts shall be sited and designed with stealth features to minimize adverse visual impacts on surrounding properties and the traveling public to the greatest extent reasonably possible, consistent with the proper functioning of the wireless communication facilities. Such wireless communication facilities and equipment enclosures shall be integrated through location and design to blend in with the existing characteristics of the site. Stealth and concealment techniques must be appropriate given the proposed location, design, visual environment, and nearby uses, structures, and natural features. Such wireless communication facilities

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shall also be designed to either resemble the surrounding landscape and other natural features where located in proximity to natural surroundings or be compatible with the built environment or be consistent with other uses and improvements permitted in the relevant zone.

- (8) The installation or construction of any new pole or support structure or equipment associated with small wireless facilities shall not obstruct access to:
  - (a) any existing above ground or underground right-of-way user facilities or public facilities;
  - (b) any public infrastructure for traffic control, streetlight or public transportation purposes including, without limitation, any vehicular traffic sign or signal or pedestrian traffic sign or signal;
  - (c) any public transportation street furniture or other improvements at any public transportation stop;
  - (d) fire hydrants; or
  - (e) any doors, gates or other ingress and egress points to any building appurtenant to the right-of-way.
- (9) All pole-mounted transmission equipment shall be mounted as close as technically possible to the pole so as to reduce the overall visual profile to the extent feasible subject to applicable codes.
- (10) Prior to the installation or construction of a small wireless facility within the right-of-way or utility easement, the wireless provider must notify all utilities located within such right-of-way or utility easement regarding its proposed use of the right-of-way or utility easement.
- (11) All accessory equipment located at the base of a pole or tower shall be placed (at the provider's choice) underground, or in an equipment cabinet that is (a) designed to blend in with existing surroundings, using architecturally compatible construction and colors; and (b) be located so as to be unobtrusive as possibly consistent with the proper functioning of the wireless communication facilities.
- (12) Individual sites vary in the location of adjacent buildings, existing trees, topography and other local variables. By mandating certain design standards, there may result a project that could have been less intrusive if the location of the various elements of the project could have been placed in more appropriate locations within a given site. Therefore, the wireless communication facilities and supporting equipment may be installed so as to best camouflage, disguise or conceal them, to make the wireless communication facilities more closely compatible with and blend into the setting or host structure, upon approval by the City.

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- (13) The wireless provider shall furnish to City paper and electronic maps showing the location of its equipment in the right-of-way and as-builts after construction is completed.

**Section 18-609. - Attachment to and Replacement of Decorative Poles.**

Notwithstanding anything to the contrary in this Article, an applicant may not install a small wireless facility on a decorative pole, replace a decorative pole with a new decorative pole, or install new above-ground facilities in the Historic District, unless the City has determined, in its sole discretion, that each of the following conditions has been met:

- (1) The application qualifies for issuance of a permit; and
- (2) The attachments, facilities, and replacement pole are in keeping with the aesthetics of the decorative pole and Historic District

**Section 18-610. - General Work Requirements.**

- (1) The permittee shall employ due care during the installation, maintenance, or any other work in the right-of-way, and shall comply with all safety and construction requirements of applicable laws, City guidelines, standards and practices and any additional commonly accepted safety standards.
- (2) Unless otherwise specified in the permit, the permittee shall erect a barrier around the perimeter of any excavation and provide appropriate traffic control devices, signs and lights to protect, warn and guide the public (vehicular and pedestrian) through the work zone. The manner and use of these devices shall be as described within a traffic control plan. The permittee shall maintain all barriers and other traffic control and safety devices related to an open excavation until the excavation is restored to a safe condition or as otherwise directed by the City.
- (3) The permittee shall not interfere with any existing facilities or structures in the right-of-way.
- (4) Before beginning any excavation in the right-of way, the permittee shall comply with the Nebraska One Call Notification Act.
- (5) All construction practices and activities shall be in accordance with the permit and approved final plans and specifications. The City and its representatives shall be provided access to the work site and such further information as they may require to ensure compliance with such requirements. All work that does not comply with the permit, the approved plans and specifications for the work, or the requirements of this Article, shall be removed at the sole expense of the permittee. The City may stop work in order to assure compliance with the provisions of this Article.

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- (6) In addition to obtaining a permit for installation of a small wireless facility or pole, an applicant must obtain all other required approvals from the City, such as building permits.

**Section 18-611. - Location of New Facilities.**

- (1) The wireless provider shall not locate or maintain its wireless communication facilities so as to interfere with the use of the right-of-way by the City, by the general public or by other persons authorized to use or be present in or upon the right-of-way.
- (2) Whenever any existing electric utilities, natural gas, water or sewer lines (or other public improvements) and communications facilities are located underground within a right-of-way, the wireless provider with permission to occupy the same portion of the right-of-way shall locate its wireless communication facilities underground at its own expense where technically feasible. The City may, in its sole discretion, approve above-ground placement of equipment cabinets, pedestals and similar equipment. For facilities or equipment such as small wireless facilities that cannot, by their nature, operate unless located above-ground, the wireless provider and City shall work to find a suitable location for such facilities or equipment.
- (3) In performing any work in or affecting the right-of-way, the wireless provider, and any agent or contractor of the provider, shall comply with the provisions of this Article and all other applicable laws.
- (4) The wireless provider, or its agent or contractor, shall restore, repair and replace any portion of the right-of-way that is damaged or disturbed by the provider's wireless communication facilities or work in or adjacent to the right-of-way as required in this Article and all other applicable laws.
- (5) If the wireless provider fails to timely restore, repair or replace the right-of-way as required in this subsection, the City or its contractor may do so and the provider shall pay the City's costs and expenses in completing the restoration, repair, or replacement, including attorneys' fees and expenses.

**Section 18-612. - Removal, Relocation and Abandonment.**

- (1) Within thirty (30) days following written notice from the City, the wireless provider shall, at its own expense, protect, support, temporarily or permanently disconnect, remove, relocate, change or alter the position of any of its wireless communication facilities within the right-of-way, including relocation of above-ground wireless communication facilities underground (consistent with the provisions of this Article), whenever the City has determined, in its sole discretion, that such removal, relocation, change or alteration is necessary for the

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construction, repair, maintenance, or installation of any City improvement, the operations of the City in, under, or upon the right-of-way, or otherwise is in the public interest. The wireless provider shall be responsible to the City for any damages the City may incur as a result of the provider's failure to remove or relocate its wireless communication facilities.

- (2) The City retains the right and privilege to cut or move any wireless communication facility located within the right-of-way of the City, as the City may determine, in its sole discretion, to be necessary, appropriate, or useful in response to any public emergency. If circumstances permit, the City shall notify the wireless provider and give the provider an opportunity to move its own facilities prior to cutting or removing the wireless communication facilities. In all cases the City shall notify the wireless provider after cutting or removing the wireless communication facility as promptly as reasonably possible.
- (3) A wireless provider shall notify the City of abandonment of any wireless communication facility at the time the decision to abandon is made; however, in no case shall such notification be made later than thirty (30) days prior to abandonment. Following receipt of such notice, the wireless provider shall remove its wireless communication facility at the provider's own expense, unless the City determines, in its sole discretion, that the wireless communication facility may be abandoned in place. The wireless provider shall remain solely responsible and liable for all of its wireless communication facilities until they are removed from the right-of-way unless the City agrees in writing to take ownership of the abandoned wireless communication facilities.
- (4) If the wireless provider fails to timely protect, support, temporarily or permanently disconnect, remove, relocate, change or alter any of its wireless communication facilities or remove any of its abandoned wireless communication facilities as required in this subsection, the City or its contractor may do so and the provider shall pay all costs and expenses related to such work, including any damages the City incurs arising from the delay and attorneys' fees and expenses.

**Section 18-613. - Indemnification.**

The applicant and wireless provider shall defend, indemnify, and hold harmless the City, its agents, officers, officials and employees from any and all damages, liabilities, injuries, losses, attorneys' fees, costs, and expenses, whether for personal injury, death or property damage, arising out of or in connection with the activities or performance of the applicant or wireless provider. In the event the City becomes aware of any actions or claims, the City shall promptly notify the applicant and wireless provider and reasonably cooperate in the defense. It is expressly agreed that the City shall have the right to approve, which approval shall not be unreasonably withheld, the legal counsel providing the City's defense, and the applicant and the

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wireless provider, as applicable, shall reimburse the City for any costs, expenses, and attorneys' fees directly and necessarily incurred by the City in the course of the defense.

**Section 18-614. - Insurance.**

- (1) No person shall own or operate a small wireless facility within the City without having secured and at all times maintained in place the following insurance coverage: Comprehensive general liability, automobile, workers compensation, employers' liability and umbrella insurance in amounts satisfactory to the City;
- (2) For a small wireless facility in the right-of-way, the commercial general liability insurance policy shall specifically include the City and its officers, officials, employees, and agents as additional insureds;
- (3) All insurance policies shall be issued by an agent or representative of an insurance company licensed to do business in the State and with a Best's rating of at least A-; and
- (4) Such policies shall not be modified or cancelled without thirty (30) days prior written notice being given to the City and the insurance must be replaced by the owner of the wireless communication facility up to its original amounts.

**Section 18-615. – Reviews.**

- (1) The City shall approve any Eligible Facilities Request for a modification of an existing tower or base station that does not result in a substantial change to the physical dimensions of such tower or base station. Eligible Facilities Requests shall be governed by the provisions of Federal law, including, but not limited to, application review, the sixty (60) day shot clock, tolling and the deemed granted remedy. Eligible Facilities Requests are subject to administrative review by the City.
- (2) It is presumed that the City shall have sixty (60) days to review and act on any Application regarding the collocation of small wireless facilities on existing structures. These requests shall be governed by the provisions of Federal law including, but not limited to, application review and incompleteness, resetting of the sixty (60) day review period upon timely notice of incompleteness, tolling and available remedies.
- (3) It is presumed that the City shall have ninety (90) days to review and act on any Application regarding the deployment of a small wireless facilities on new structures. These requests shall be governed by the provisions of Federal law including, but not limited to, application review and incompleteness, resetting of the ninety (90) day review period upon timely notice of incompleteness, tolling and available remedies.

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- (4) It is presumed that the City shall have one-hundred fifty (150) days to review and act on any Application regarding new macro cell tower applications. These requests shall be governed by the provisions of Federal law including, but not limited to application review, the one hundred fifty (150) day review period, and tolling.

**Section 18-616. - Relief**

Any applicant desiring relief, waiver or exemption from any aspect or requirement of this Article may request such, provided that the relief, waiver or exemption is contained in the submitted application. The burden of proving the need for the requested relief, waiver, or exemption is solely on the applicant. No such relief, waiver, or exemption shall be approved unless the applicant demonstrates by clear and convincing evidence that, if granted the relief, waiver or exemption will have no significant effect on the health, safety and welfare of the City, its residents and other service providers.

**Section 18-617. - Other Approvals.**

All other proposed installations within the right-of-way involving wireless communication facilities (for example, where the facilities do not qualify as small wireless facilities), shall require the issuance of a franchise, or of a conditional use permit or special use permit under the Municipal Code.

**Section 18-618. - Violation of this Article.**

Violation of any of the provisions of this Article shall be punishable with a fine from \$0 to \$1,000 for each violation. Each day that a violation occurs or is allowed to exist by the applicant or wireless provider constitutes a separate offense.

**Section 18-619. - Laws, Rules and Regulations.**

T This Article shall be subject to all applicable laws, rules and regulations now or hereafter enacted.”

SECTION 2. Amendment

The various parts, sentences, paragraphs, sections and clauses of this Ordinance are hereby declared to be severable. If any part, sentence, paragraph, section or clause is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of the Ordinance shall not be affected thereby.

SECTION 3. Conflict.

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In the event of a conflict between the provisions of this Ordinance, Federal law and the Act, Federal law or the Act, as applicable, shall control. Any other ordinance or part thereof in conflict with the provisions of this Ordinance is hereby repealed to the extent of such conflict.

SECTION 4. Effective Date.

This Ordinance shall take effect on the 1<sup>st</sup> day of December 2019, following its passage, approval, and publication in pamphlet form according to law.

Roll call vote with the following results:

Voting Aye: Mischnick, Jones, Reynolds, Bentley.

Voting Nay: None.

Motion carried.

- Ordinance No. 2898 which will adopt the proposed City Council 2020 Meeting Schedule was the next matter before Council. The following information was provided to Council:

[Council has previously established its meeting calendar as 7:00 p.m. at the Board of Education Meeting Room on the first and third Tuesdays of each month. At first sight, staff does not see any conflicts to our normal scheduling.

Staff would like Council to consider establishing a Special Meeting for the end of our fiscal year for final bill approval and would recommend Wednesday, September 30<sup>th</sup>. This has traditionally been a very short meeting in the morning hours to allow the Finance Department to complete year-end payments.

Although set forth by ordinance, Council may alter the established time and date that is to its members' convenience. Should Council wish to make any further changes, amendments may be made to the proposed ordinance.]

A motion was made by Councilman Bentley, seconded by Councilman Jones to approve the second reading of Ordinance No. 2898. City Clerk Jines read the ordinance by title which follows in its entirety:

ORDINANCE NO. 2898

AN ORDINANCE ESTABLISHING THE TIME AND PLACE OF REGULAR COUNCIL MEETINGS FOR THE CALENDAR YEAR 2020.

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

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SECTION 1. Nebraska Statutes at Section 19-615 provide that ". . . the Council shall meet at such time and place as it may prescribe by ordinance, but not less frequently than twice each month in cities of the first class."

SECTION 2. The City Code provides at Section 2-25, that "The City Council shall hold its regular meeting on the first and third Tuesday of each month. The Council may, by adoption of a calendar each year, establish regular meeting dates other than the first and third Tuesday of each month."

SECTION 3. Attached hereto is a "proposed 2020 calendar," which is incorporated herein by reference as if fully set forth.

SECTION 4. The City Council of Alliance, Nebraska shall conduct regular meetings during calendar year 2020 on the dates that are indicated on the attached proposed 2020 calendar at the hour of 7:00 o'clock P.M. at the Board of Education Room, 1604 Sweetwater Avenue, Alliance, Nebraska. The time and place of these meetings may be changed from time to time as provided by law.

SECTION 5. This Ordinance shall be in full force and effect from and after its passage, approval, and publication according to law.

A motion was made by Councilman Jones, seconded by Councilman Reynolds to suspend the statutory rule requiring three separate readings of Ordinance No. 2898.

Roll call vote to suspend three readings of the ordinance with the following results:

Voting Aye: Mischnick, Jones, Reynolds, Bentley.

Voting Nay: None.

Motion carried.

Roll call vote to approve Ordinance No. 2898 on final reading with the following results:

Voting Aye: Mischnick, Jones, Reynolds, Bentley.

Voting Nay: None.

Motion carried.

Vice Mayor Mischnick stated, "the passage and adoption of Ordinance No. 2898 has been concurred by a majority of all members elected to the Council, I declare it passed, adopted and order it published."

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- Resolution No. 19-92, which is an application made by Rossa Zaffiro, LLC dba A-Town Zesto for the use of economic development funding to assist with their business, was next for Council. The following information was provided:

[At the October 3, 2019 City's Economic Development Plan Application Review Committee (EDPARC) meeting, the Committee voted unanimously to recommend to City Council approval of the Application of Rossa Zaffiro, LLC dba A-Town Zesto for Small Business Assistance funding. The proposal meets the requirements of the City as it is a qualifying business within the definition of the Economic Development Plan.

The Committee has recommended approval of \$5,000 in Small Business Assistance funding to assist in roof and HVAC repairs for the business.]

A motion was made by Councilman Jones, seconded by Councilman Bentley to approve Resolution No. 19-92 which follows in its entirety:

#### RESOLUTION NO. 19-92

*WHEREAS*, The voters of the City of Alliance approved an Economic Development Plan which had been adopted by the City Council in 2001 and in 2010, pursuant to the authority of Nebraska Revised Statutes 18-2701 through 18-2738;

*WHEREAS*, An Application Review Committee has been appointed by the City Council pursuant to law to review applications for assistance under the Economic Development Plan;

*WHEREAS*, The Economic Development Plan is funded by a portion of City sales tax which was also approved by the voters in 2001 and in 2007;

*WHEREAS*, The application of Rossa Zaffiro, LLC, dba A-Town Zesto has been received for assistance pursuant to the Economic Development Plan, and it is a qualifying business pursuant to the requirements of the Economic Development Plan;

*WHEREAS*, The Application Review Committee has approved the application of Rossa Zaffiro, LLC, dba A-Town Zesto and recommended to the Program Administrator that the project be approved;

*WHEREAS*, The Program Administrator has accepted the recommendation of the Application Review Committee, and recommends that the City Council approve the project;

*WHEREAS*, The Economic Development funds in the project requesting assistance are not the sole or primary funding source; and

*WHEREAS*, The City Council finds that Rossa Zaffiro, LLC, dba A-Town Zesto is a qualifying business and that this allocation of funds does not exceed the limitations of Section 18-2717 of the Nebraska Revised Statutes.

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*NOW, THEREFORE, BE IT RESOLVED*, by the Mayor and City Council of Alliance, Nebraska, that the application of Rossa Zaffiro, LLC, dba A-Town Zesto for assistance from the Economic Development Fund pursuant to the Local Option Municipal Economic Development Act is hereby approved. Funding will be provided in the amount of \$5,000 as part as the Small Business Assistance Funding.

*BE IT FURTHER RESOLVED*, that the Mayor is hereby authorized to execute on behalf of the City the Economic Development Assistance Agreement between the City of Alliance and Rossa Zaffiro, LLC, dba A-Town Zesto.

Roll call vote with the following results:

Voting Aye: Mischnick, Jones, Reynolds, Bentley.

Voting Nay: None.

Motion carried.

- Council next considered Resolution No. 19-93 which will award the 2019 Alliance Storm Drain Jetting and Inspection Project to Midlands Contracting, Inc. dba Johnson Service Company of Kearney, NE. The following information was provided to Council:

[The City has identified the need for ongoing cleaning and inspecting of storm sewers. Specifications were provided and advertised in accordance with State law. On September 23, 2019 at 1:30 p.m. a bid opening was held at the Public Works Facility. The only respondent to the request was Midlands Contracting, Inc. dba Johnson Service Company. The bid specifications requested a total as well as per hour and per lineal foot prices. Midlands Contracting submitted a bid in the amount of \$118,000. The amount included within the budget for this project is \$100,000 in the Sewer Fund CNTSVC (Contracted Services) Other Account No. 24-41-41-44-479. Staff recommends awarding the bid to Midlands Contracting, Inc. dba Johnson Service Company with the understanding the work will not exceed the budgeted dollar amount of \$100,000.]

A motion was made by Councilman Reynolds, seconded by Councilman Bentley to approve Resolution No. 19-93 which follows in its entirety:

#### RESOLUTION NO. 19-93

*WHEREAS*, The City of Alliance owns and maintains the street and storm drainage system for the residents of the City of Alliance; and

*WHEREAS*, In order to maintain the quality of the facilities the City is performing maintenance and inspections on our system; and

*WHEREAS*, The City issued a Request for Qualification and Bid Invitation which

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included the plans and specifications for the 2019 Alliance Storm Drain Jetting and Inspection Project which was advertised and one bid was received; and

*WHEREAS*, The lowest, responsive and responsible bidder was Midlands Contracting, Inc. dba Johnson Service Company of Kearney, NE in the amount of One Hundred Eighteen Thousand Dollars and no/100ths (\$118,000.00) and our engineer in recommending the contract award; and

*WHEREAS*, Funding has been budgeted for this project in the Sewer Fund CNTSVC (Contract Services) Other - Account No. 24-41-41-44-479 in the amount of \$100,000.00; and

*WHEREAS*, The bid was provided using unit pricing which will allow the City to outline the work to be accomplished not to exceed \$100,000.00.

*NOW, THEREFORE, BE IT RESOLVED*, by the Mayor and City Council of Alliance, Nebraska, the Mayor is authorized to enter into and execute a contract with Midlands Contracting, Inc. dba Johnson Service Company of Kearney, NE for the 2019 Alliance Storm Drain Jetting and Inspection Project subject to terms and conditions of the bid in an amount not to exceed One Hundred Thousand Dollars and no/100ths (\$100,000.00).

Roll call vote with the following results:

Voting Aye: Mischnick, Jones, Reynolds, Bentley.

Voting Nay: None.

Motion carried.

- Next item before Council was Resolution No. 19-94 which awards the Library/Learning Center Janitorial Contract to A&J Janitorial in the amount of \$30,520. The following information was provided:

[Staff is recommending the renewal of the following janitorial contracts for a 14 month contract period beginning November 1, 2019. Staff is recommending a 14 month renewal period so that future contracts expire during the winter months. This allows staff to conduct bid processes during the winter when things are a little less busy.

**Alliance Airport**: A Request for Qualifications and Bid (Alliance Airport 1201-12-2017) was issued for janitorial services at the Alliance Airport in December of 2017 and two bidders responded. L & J Janitorial Services was the lowest most responsive bidder. Staff is recommending this contract be renewed for an additional fourteen months in accordance with bid specifications. There is no change in the monthly contract price.

Alliance Airport

L & J Janitorial - \$8,458.38

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**SkyView Golf Course & Alliance Utility Facility:** A Request for Qualifications and Bid (ITB 7176-06-2017) was issued for janitorial services in June 2017 for multiple city facilities. At that time bids for various facilities were received from five providers. Low bids were awarded to the lowest most responsive bidders. The following contractors were awarded contracts and are recommend for renewal for an additional fourteen month term to begin November 1, 2019 in accordance with the bid specifications. There is no change in the monthly contract price on these contracts.

SkyView Golf Course	L & J Cleaning - \$ 3,282.00
Alliance Utility Facility	L & J Cleaning - \$13,286.00

**Knight Museum and Sandhills Center:** Staff is further recommending a contract renewal to A & J Janitorial for cleaning services at the Knight Museum and Sandhills Center for a fourteen month period. *They are requesting a 3% increase in the contract amount to cover the increased cost of supplies.*

Knight Museum & Sandhills Center	A & J Janitorial - \$12,530.00
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**Alliance Learning Center:** Staff made the determination not to recommend renewal of the existing contract for janitorial services at the Library Learning Center to FGB Service. This decision to rebid this contract was made as a result of consistent performance issues such as repeatedly leaving the building unsecured at night, non-completion of duties, children working in the building late in the evening, and inconsistent cleaning quality. For these reasons a Request for Qualifications and Bid (ITB 71-77-09/2019) was issued for janitorial services at the Alliance Learning Center. The following two bids were received for janitorial services. Staff recommends awarding the bid to A & J Janitorial in the amount of \$30,520.00. In order to meet the additional expense of janitorial services, operational fund transfers will be made to cover the shortfall.

Bidder	Annual Costs
ABM Janitorial	\$67,586.04
A & J Janitorial	\$30,520.00

A motion was made by Vice Mayor Mischnick, seconded by Councilman Reynolds to approve Resolution No. 19-94 which follows in its entirety:

RESOLUTION NO. 19-94

*WHEREAS*, The City of Alliance operates the Alliance Library/Learning Center, Knight Museum and Sandhills Center, SkyView Golf Course, Airport, and the Public Works Facility;  
and

*WHEREAS*, As a result of normal use the buildings require cleaning on a regular basis;  
and

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*WHEREAS*, The City previously issued an Invitation to Bid for the Janitorial Services for the City operated facilities and desires to continue janitorial services with the same vendor, L & J Cleaning, Inc. for the Airport, SkyView Golf Course, and Utility Facility for an additional 14 months with no change in the contract price; and

*WHEREAS*, A & J Janitorial has agreed to continue janitorial services at the Knight Museum and Sandhills Center for an additional 14 months with a 3% adjustment for increased supply costs; and

*WHEREAS*, The janitorial contract for the Library/Learning Center was recently re-bid due to performance concerns and two bids were received; and

*WHEREAS*, The lowest, responsible and responsive bid for the Library/Learning Center was received from A & J Janitorial in the amount of \$30,520.00 for a 14 month contract.

*NOW, THEREFORE, BE IT RESOLVED*, by the Mayor and City Council of Alliance, Nebraska, that the Mayor is authorized to sign Agreements with the listed vendors to provide for janitorial services at the following locations, effective November 1, 2019.

Facility	Vendor	Annual Contract Amount
Alliance Library/Learning Center	A & J Janitorial	\$30,520.00
Knight Museum & Sandhills Center	A & J Janitorial	\$12,530.00
Public Works Facility	L & J Cleaning, Inc.	\$13,286.00
Airport	L & J Cleaning, Inc.	\$8,458.38
SkyView Golf Course	L & J Cleaning, Inc.	\$3,282.00

Roll call vote with the following results:

Voting Aye: Mischnick, Jones, Reynolds, Bentley.

Voting Nay: None.

Motion carried.

- Resolution No. 19-95 which authorizes the purchase of a mast lift for use in municipal facilities was next on the agenda for Council. The following information was provided:

[Facility Maintenance staff has identified the need for a mast lift in several areas. Many of the municipal buildings require maintenance that cannot be achieved with existing equipment. The JLG T26E has been selected as the only piece of equipment that will reach height requirements while remaining small enough to maneuver where needed. JLG is a global company with several distributors all sharing the same pricing. NMC Rental Services in Gering, NE is the closest available distributor. They have provided a quote on this machine for \$40,767 which is within the budget allotted in Account No. 55-51-56-59-950. This purchase

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has been determined to be a sole source and staff is requesting Council authorize the purchase without completing the competitive bidding process.]

A motion was made by Councilman Bentley, seconded by Vice Mayor Mischnick to approve Resolution No. 19-95 which follows in its entirety:

RESOLUTION NO. 19-95

*WHEREAS*, The City of Alliance Facilities Maintenance Department is desiring to purchase a man lift to perform maintenance in several of the municipal facilities; and

*WHEREAS*, The JLG T26E has been selected as the only piece of equipment that will reach height requirements while remaining small enough to maneuver within our facilities and transportable between facilities making this a sole source purchase; and

*WHEREAS*, NMC Rental Services in Gering, Nebraska, is a licensed distributor for this piece of equipment and has quoted a purchase price in the amount of Forty Thousand Seven Hundred Sixty-seven Dollars and no/100ths (\$40,767.00); and

*WHEREAS*, Funding has been budgeted for this purchase within Account No. 55-51-56-59-950.

*NOW, THEREFORE, BE IT RESOLVED* by the Mayor and Council of the City of Alliance, Nebraska, that the City Manager be and hereby is authorized to enter into a purchase agreement for the JLG T26E Mast Lift with NMC Rental Services in Gering, Nebraska, in the amount of Forty Thousand Seven Hundred Sixty-seven Dollars and no/100ths (\$40,767.00).

*BE IT FURTHER RESOLVED* that the City Manager is hereby authorized to sign the necessary documents related to this purchase as sole source procurement.

A motion was made by Vice Mayor Mischnick, seconded by Councilman Reynolds to table Resolution No. 19-95 until the next meeting to allow staff to research maintenance costs and the expected usage of the equipment.

Roll call vote with the following results:

Voting Aye: Mischnick, Jones, Reynolds, Bentley.

Voting Nay: None.

Motion carried.

- Council next had Resolution No. 19-96 before them. This resolution will approve the recently negotiated contract for the Alliance Police Officer's Association Fraternal Order of Police Lodge 51. The following information was provided for Council:

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[The Fraternal Order of Police (“FOP”) requested a renegotiation of the contract with the City. Recently, those negotiations were completed. The FOP has voted in favor of the terms, pending Council approval.

Major highlights include:

- Vacation leave carryover increased from 80 to 108 hours.
- Bidding for one week of vacation leave during the shift bid process. This will help make sure staff receives essential time away from the position while at the same time allowing management sufficient time to cover vacancies. Scheduled vacation will count as hours worked for overtime purposes.
- Sergeants will receive FTO (Field Training Officer) pay when assigned a trainee. Many of our FTO Officers have been promoted to Sergeant and the remaining officers are either on special assignment or not seasoned to be assigned FTO responsibility.
- Day light savings time and holiday hours were further clarified since shifts may span multiple days. Additional language regarding shift bidding and on-call were further explained.
- The wage agreement (which has been frozen for 4 years) includes the same COLA increase as all employees this year at 2.5% and 2% each the following two years after which wages will be reevaluated. In addition, step 1 on the Police Officer pay grid will be eliminated and shifted to add another step on the top. This will help ensure our wages remain attractive as recruiting efforts continue.

The resolution will:

Adopt a new 9-step grid, as a part of the contract, for the positions of Police Officer, Sergeant, Public Safety Dispatcher, and Public Safety Dispatch Supervisor.

The new contract and wages become effective on October 5th.]

A motion was made by Councilman Jones, seconded by Councilman Bentley to approve Resolution No. 19-96 which follows in its entirety:

#### RESOLUTION NO. 19-96

*WHEREAS*, The Alliance Police Officer’s Association Fraternal Order of Police Lodge 51 has been recognized as the current exclusive bargaining unit for the sworn officers and public safety dispatchers; and

*WHEREAS*, Negotiating teams for the City of Alliance and the Lodge have met on several occasions and have negotiated a proposed contract; and

*WHEREAS*, The Alliance Police Benevolent Association Fraternal Order of Police have met and approved the contract proposal; and

*WHEREAS*, The pay grid has been modified based on comparability and is shown on Page 27 of the contract; and

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*WHEREAS*, Placement of current personnel has been agreed upon and established within the pay grid.

*NOW, THEREFORE, BE IT RESOLVED* by the Mayor and Council of the City of Alliance, Nebraska, that the contract proposal is hereby approved by the Alliance City Council, and the Mayor and City staff are authorized to execute the contract on behalf of the City of Alliance.

*BE IT FURTHER RESOLVED* that the placement of personnel within the modified pay grid, attached as Page 27 is adopted.

Roll call vote with the following results:

Voting Aye: Mischnick, Jones, Reynolds, Bentley.

Voting Nay: None.

Motion carried.

- Council next discussed the possibility of terminating the lease with Vitalix Inc. for buildings and land located at the Airport. The following information was provided:

[Council granted staff two weeks to work on a mutual termination agreement with Vitalix. City Manager Sprock contacted Vitalix Owner Greg Olson by phone on October 1, 2019 to discuss the agreement and followed up with an email asking for a meeting. Mr. Olson responded to City Manager Sprock that Vitalix did not have the money to clean up nor the money to put in escrow, so no movement forward occurred.

Staff is strongly recommending unilateral termination of the Vitalix lease on the grounds of a default by Vitalix for failure to manufacture products at the Alliance site and improper upkeep of the leased property. The City has reached out to Vitalix multiple times to find out their intentions with the property, to attempt to start negotiations to let them out of the lease, and this last attempt at mutual termination of the lease. It is very apparent at this point that Vitalix will continue to remove molasses from the tanks and they have removed the items they wanted and will be leaving the rest. Staff was hopeful at one point that clean up may have begun when a rotting grain pile was gone; but that rotting material was found, they had simply moved it to the back of the lot to hide it from view. Multiple times Vitalix has stated they would be cleaning up the leased area and stopping the payment of rent which has not happened. The current timeframe for cleaning up is spring which is what we were told last year.

Staff believes that based on this recent negotiation, and a history of challenging issues with Vitalix it is in the best interest of the City to do anything necessary to end the agreement with Vitalix. Staff can document many instances during the time leading up to the new lease and since entering into the new lease where

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processes were not followed as outlined. A small amount of clean up has been done, but some has not been done properly, and the most recent removal of the blue office building resulted in the sewer not being capped off properly and we are left with a large hole.

A unilateral terminated lease would allow the City to seek claims for rent until Vitalix's property was removed from the site. Staff is prepared to do what is necessary to mitigate the damages by finding new tenants to lease any buildings available. If and when other areas become open it will be a priority to clean, fix, and lease to new tenants.

Prolonging the end of this lease only increases the costs of clean-up.]

A motion was made by Council Reynolds pursuant to Section 84-1410 Reissue Revised Status of Nebraska 1943, that the Alliance City Council finds it necessary to enter into a closed session to protect the public interest to discuss a potential litigation matter. The City Manager, City Clerk, and Airport Manager were requested to remain for the session. The motion was seconded by Councilman Bentley.

Roll call vote with the following results:

Voting Aye: Mischnick, Jones, Reynolds, Bentley.

Voting Nay: None.

Motion carried.

The closed session began at 7:30 p.m. and concluded at 8:32 p.m. No additional action was taken.

A motion was made by Councilman Reynolds to terminate the lease with Vitalix, Inc. unilaterally. The motion was seconded by Councilman Bentley.

Roll call vote with the following results:

Voting Aye: Mischnick, Jones, Reynolds, Bentley.

Voting Nay: None.

Motion carried.

- Next on the agenda for Council's consideration was Resolution No. 19-97 which will approve Change Order No. 6 to the Reconstruction of Building 3000 Contract at the Airport. The following information was provided:

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[The City of Alliance entered into a contract with K. L. Wood & Company, LLC in May of 2018 to reconstruct Airport Storage Building #3000. Change Order No. 6 will allow for the removal of existing concrete on the north, south and east sides of new building adjacent to existing concrete pavement that does not slope away from the new building. This change order will also allow for grade work on the north side of the building and the installation of new concrete pavement around the building which will be sloped away from the building for proper drainage. This is necessary due to the subsequent fire and removal of buildings owned by Vitalix from the area. This change order will increase the revised contract price with K. L. Wood & Company, LLC \$34,800. The new contract amount is \$535,935 which includes six change orders. The original contract amount was \$530,115.

If Change Order No. 6 is approved, M. C. Schaff & Associates is requesting an amendment to their engineering contract for this project in the amount of \$4,500. The adjustment will cover the additional material testing and construction inspection services related to Change Order No. 6.

Staff is recommending that Change Order No. 6 and the amendment to the Engineering Agreement be approved. This improvement to the drainage issues will ensure water does not enter into the building, making the building more desirable by a tenant. The amount needed for this change order along with the amendment for engineering is \$39,300; the Airport has spending authority through project carry over from last year. This authority is not budgeted; however, staff could use \$39,300 from Capital Outlay Buildings from the portion designated for a hangar which is unlikely to require any funding this year.]

A motion was made by Councilman Bentley, seconded by Councilman Reynolds to approve Resolution No. 19-97 which follows in its entirety:

RESOLUTION NO. 19-97

*WHEREAS*, The City of Alliance owns and operates the Alliance Municipal Airport; and

*WHEREAS*, Storage Building No. 3000 which is owned by the City of Alliance and leased to Vitalix, Inc. was destroyed in a storm on June 12, 2017; and

*WHEREAS*, Invitations to Bid for the Reconstruction of Storage Building No. 3000 were published and bids were opened; and

*WHEREAS*, The contract was awarded to K. L. Wood and Company, LLC of Alliance, Nebraska in the amount of Five Hundred Thirty Thousand One Hundred Fifteen and no/100ths (\$530,115.00) which included the base bid and alternates 1 through 7; and

*WHEREAS*, As the result of the need to improve drainage around the facility, removal of existing concrete, grade work and the installation of new concrete is necessary at an increase of Thirty-four Thousand Eight Hundred Dollars and no/100ths (\$34,800.00) to the contract; and

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*WHEREAS*, Engineering services for the additional material testing and construction inspections by M. C. Schaff & Association as a result of Change Order No. 6 will cost Four Thousand Five Hundred Dollars and no/100ths (\$4,500.00).

*NOW, THEREFORE, BE IT RESOLVED* by the Mayor and Council of the City of Alliance, Nebraska, that Change Order No. 6 to the Storage Building No. 3000 Reconstruction Contract with K. L. Wood and Company, LLC with an increase in the amount of Thirty-four Thousand Eight Hundred Dollars and no/100ths (\$34,800.00) is hereby approved.

*BE IT FURTHER RESOLVED* that the Mayor is hereby authorized to sign Change Order No. 6 increasing the final contract amount to Five Hundred Thirty-five Thousand Nine Hundred Thirty-five Dollars and no/100ths (\$535,935.00).

*BE IT FURTHER RESOLVED* additional engineering services for material testing and construction inspections by M. C. Schaff & Association for Change Order No. 6 in the amount of Four Thousand Five Hundred Dollars and no/100ths (\$4,500.00) are hereby approved.

A motion was made by Councilman Reynolds, seconded by Councilman Jones to table Resolution 19-97 in order for staff to conduct additional research on possible alternative drainage options.

Roll call vote with the following results:

Voting Aye: Mischnick, Jones, Reynolds, Bentley.

Voting Nay: None.

Motion carried.

- Council next heard a presentation by City Manager Sprock regarding various construction options for the repurposing of 1200 Flack Avenue. The following information was provided:

[As directed by Council, staff and the City Attorney have reviewed construction methods to look at available options for the Bomgaars Building. The City Attorney drafted a memo on construction bidding and design requirements, which has been included with your materials. The memo lays out when architect/engineer involvement is required, and the process for bidding, design, and construction allowed to municipalities by State Statute. Please read the memo for full details on the requirements for involving an engineer, and the statutory procedures involved with Design-Build and Construction Management at Risk.

First, as indicated in the memo Nebraska Revised Statute § 81-3445 provides that, except for exempted projects (which are discussed in the attached memo), the City of Alliance cannot engage in the construction of public works that involves architecture or engineering and that is estimated to cost more than \$100,000 (as adjusted from time to time) unless the plans, specifications, and estimates have been prepared and the construction observed by an architect or professional engineer.

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Therefore, the City has three options available for construction projects that exceed \$100,000: Design-Bid-Build (traditional method), Construction Management at Risk, and Design-Build.

### **Design-Build**

In addition to the information provided in the memo, here are some of the advantages to the Design-Build process:

- A single point of responsibility.
- Opportunity for innovation and faster project delivery.
- Efficiency in that the design and construction expertise are housed together.
- Fewer changes and implementation simplified often reduction of claims (or number of claims).
- Increased flexibility to address changed conditions.
- Reduced administrative burden for the City.
- Cost savings and more certainty of final price.
- Greater ability to evaluate contractors on factors other than cost.

The disadvantages to Design-Build include:

- Loss of control and reduced City involvement in design.
- Cost of tendering (to all parties).
- Difficulty/time in comparing different designs.
- Danger of Design-Build becoming Build-Design.
- Limited pool of qualified Design-Builders.
- QA/QC largely in contractor's hands.
- Disputes tend to be larger and more complex.
- Some lack of project definition prior to contract award.
- Consequences of default more drastic than for Design-Bid-Build.

### **Construction Management at Risk**

In addition to the information provided in the memo, here are some of the advantages to the Construction Management at Risk:

- Construction manager assumes the legal responsibility to deliver a construction project within a contracted price.
- Reduced administrative burden for the owner.
- Cost savings and more certainty of final price.
- Good cost estimating at early stages in the project.
- Can create the best collaborative team structure.
- Incentive for construction manager to work with subcontractor to reduce costs.
- General contractor chosen primarily on qualifications, secondarily on price.
- There is a faster transition from design documents to start of construction.