

November 5, 2019

ALLIANCE CITY COUNCIL

REGULAR MEETING, TUESDAY, NOVEMBER 5, 2019

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

The Alliance City Council met in a Regular Meeting, November 5, 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 30, 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.

Mayor Dafney opened the November 5, 2019 regular meeting of the Alliance, Nebraska City Council at 7:00 p.m. Present were Mayor Dafney, Council Members Mischnick, Jones, Reynolds and Bentley. Also present were City Manager Sprock, Finance Director Waggener, City Attorney Hoelsing and City Clerk Jines.

- Mayor Dafney read the Open Meetings Act Announcement.
- Council was introduced to our newest employee Joshua Norris – Police Officer and the hiring of Marla Eagleton – Public Transit Driver was announced.
- The Consent Calendar was the next matter before Council. A motion was made by Councilman Reynolds, seconded by Councilman Mischnick to approve the Consent Calendar as follows:

CONSENT CALENDAR – NOVEMBER 5, 2019

1. Approval: Minutes of the Regular Meeting, October 15, 2019.
2. Approval: Payroll Costs for the period October 5 – 18, 2019: \$223,603.15.
3. Approval: Claims against the following funds for the period of October 10 – 30, 2019: General, General Debt Service, Trust and Agency, Street, Electric, Refuse Collection and

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Disposal, Sanitary Sewer, Water, Golf Course, Downtown Improvement Districts, R.S.V.P., Kenos, and Capital Improvement; \$348,395.68.

4. For Your Information: Attached is a listing of Demand Checks which were generated over the last financial quarter ending September 30, 2019. The report lists checks that have been issued which are not expenses within the budget. These are primarily made up of fund transfers, meter deposit refunds, utility overpayments and an occasional check which was required to be reissued.
5. Approval: Submittal of Unclaimed Property to the Nebraska State Treasurer's office in the amount of \$122.75.
6. Approval: Issuance of a Cemetery Certificate to Mary L. Gomez for the West One Half (W½) Lot Thirteen (13), Section One (1), Block Twenty-three (23) Fourth Addition to the Alliance Cemetery.
7. Acceptance: Certificate of Completion for the Storage Building No. 3000 Reconstruction Contract with K. L. Wood and Co., Inc.
8. Approval: The *Special Events Request Use of Public Facilities, Parks, Streets* of the Alliance Chamber of Commerce for the closure of Box Butte Avenue between 10th and 3rd Streets on Tuesday, December 3, 2019. The Chamber will be conducting their Holiday Kick-off Parade with line-up starting at 5:00 p.m. in the 800 and 900 blocks with the parade starting at 5:30 p.m. The parade participants will turn off at 4th Street and Santa will proceed to the 3rd Street Mini Park. A Certificate of Liability Insurance has been provided naming the City of Alliance an additional insured.
9. Approval: Resolution No. 19-98 approving Change Order No. 2 to the Runway 8/26 Rehabilitation Project with Werner Construction. The change order results in a deduction of \$200,785.76 as a result of changes to Bid Item 2 – pavement removal, Bid Item 8 – bituminous surface course w/PG70-28 binder, and Bid Item 20 – 7-inch PCC pavement. The original contract was \$3,678,595.00 and with Change Orders No. 1 and 2 the final contract price is \$3,493,186.24.

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.

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: Dafney, Mischnick, Jones, Reynolds, Bentley.

Voting Nay: None.

Motion carried.

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- Ordinance No. 2899 was next before Council on first reading and will amend Chapter 24 of the Alliance Municipal Code. The following information was provided for Council:

[Staff has prepared amendments to Chapter 24 of the Alliance Municipal Code, titled Rights-of-Way and Easement. The proposed amendments will give staff the ability to regulate the installation of telecommunication lines in City right-of-ways by telecommunications companies, such as Viaero and Verizon, that don't have franchise agreements with the City. Nebraska Statutes already grant telecommunication companies access to municipal right-of-ways; however it also grants municipalities the ability to regulate such installations.

This amendment to the Municipal Code will add the requirements that any company desiring to install any telecommunication lines in City right-of-ways will have to show proof they are qualified to do business as a telecommunications company in the State of Nebraska. They will also be required to hire a contractor licensed by the City of Alliance or obtain a City contractor's license, apply for and obtain a Construction, Excavation, or Obstruction of Right-of-Way Permit, and enter into a Right-of-Way Agreement with the City before placing such lines in City right-of-way.]

A motion was made by Councilman Reynolds, seconded by Councilman Bentley to approve the first reading of Ordinance No. 2899. City Clerk Jines read the ordinance by title which follows in its entirety:

ORDINANCE NO. 2899

AN ORDINANCE OF THE CITY OF ALLIANCE, NEBRASKA, AMENDING THE MUNICIPAL CODE SECTION 24-4 TO DEFINE TELECOMMUNICATIONS COMPANY, ADOPTING SECTION 24-83 TO PROVIDE FOR REGULATION OF TELECOMMUNICATIONS COMPANY USE OF RIGHT-OF-WAY, REPEALING PRIOR PROVISIONS OF THE MUNICIPAL CODE THAT ARE INCONSISTENT WITH THIS ORDINANCE, PROVIDING FOR AN EFFECTIVE DATE, AND PROVIDING FOR PUBLICATION IN PAMPHLET FORM

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

SECTION 1. Section 24-4, of the City of Alliance, Nebraska Municipal Code is hereby amended in its entirety the following:

“Sec. 24-4. - Definitions.

The following words, terms, and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

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Alley means a minor way which is used primarily for utility services and vehicular service access to the back or side of properties otherwise abutting on or adjacent to a street; affording only a secondary means of access to abutting property.

Commercial sidewalk means a pedestrian sidewalk which extends from the street right-of-way line to the curb line.

Cul-de-sac means a street having one end open to traffic and the other being terminated by a vehicle turnaround.

Curb level means the mean level of the curb in front of the lot, or in case of a corner lot, along abutting streets where the mean curb level is the highest.

Curb line means the back of, or back face of constructed curbing or combination curb and gutter, designed to delineate the edge of the traveled portion of a roadway surface and to serve as a channel for storm water. Curb lines shall be determined by street right-of-way and roadway paving width standards of the city.

Curb sidewalk means a pedestrian sidewalk constructed adjacent to existing curb.

Curb strip means the area between the property line and the back of the curb and gutter.

Driveway means an access drive or entrance way to property from a roadway and situated within right-of-way.

Right-of-way means any dedicated street or alley of the city, including that portion which lies between the roadway proper and the platted lot line of private parcels of property, regardless of the location of public sidewalks.

Roadway means that portion of the street right-of-way used for vehicular traffic between established curb lines, or where no curbs are installed it shall mean that portion of the street which is, or has been, normally and regularly used for vehicular traffic. Where opposing traffic is separated by a median, wall, or other divider totally within the street right-of-way, it shall mean that portion of the right-of-way between curb lines and such dividers.

Sight vision triangle means the triangle created at the intersection of the front property line and the side street property line. It is created by measuring 25 feet from the intersection along each property line and drawing the hypotenuse between these two points.

Standard sidewalk means the pedestrian sidewalk installed in the curb strip and located parallel to and eight inches inside the street right-of-way line.

Street or avenue means the entire width between property lines of every thoroughfare or right-of-way dedicated to the use of the public as a matter of right for purposes of primary access, travel, and transportation.

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Telecommunications company means any person, firm, partnership, limited liability company, corporation, association, or governmental entity offering telecommunications service in Nebraska intrastate commerce.”

SECTION 2. Section 24-83, of the City of Alliance, Nebraska Municipal Code is hereby adopted as follows:

“Sec. 24-83. - Telecommunications in City Rights-of-Way.

It shall be unlawful for any telecommunications company to construct, operate, and maintain telecommunication lines and related facilities and conduit in, under, or upon any right-of-way of the City without first obtaining permission to do so from the City Manager or designee. Such permission shall be granted only upon the completion of a construction, excavation, or obstruction of public right-of-way permit application, payment of its associated fee, documentation from the applicant demonstrating that they are incorporated or qualified to do business as a telecommunications company in the State of Nebraska, and a right-of-way agreement with the City. At all times, any telecommunications company, or any contractor performing work for such telecommunications company, must also apply for and comply with any and all other contractor licensing and permit requirements in this Code, including but not limited to those located in Article V and Article VI of Chapter 24.”

SECTION 3: All ordinances or sections of ordinances passed and approved prior to the passage, approval, and publication of this Ordinance and in conflict with this Ordinance are hereby repealed.

SECTION 4: This Ordinance shall become effective upon its passage, approval and publication, and shall be in pamphlet form.

Roll call vote with the following results:

Voting Aye: Dafney, Mischnick, Jones, Reynolds, Bentley.

Voting Nay: None.

Motion carried.

- The third reading of Ordinance No. 2897 was now before Council 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

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access nodes involving antennas, fiber, electricity 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.]

A motion was made by Councilman Mischnick, seconded by Councilman Reynolds to approve Ordinance No. 2897 on third 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

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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;
 - (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

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the installation of small wireless facilities within the rights-of-way.

Section 18-602. - Definitions.

For purposes of this Article XII, 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.*).

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.

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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 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

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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 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

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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.

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

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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 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

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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 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.

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- (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.
 - (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 statues 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%)

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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 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.

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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.
- (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.

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- (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.
- (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

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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 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

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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.

- (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

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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.

- (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

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provisions of this Article), whenever the City has determined, in its sole discretion, that such removal, relocation, change or alteration is necessary for the 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

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unreasonably withheld, the legal counsel providing the City's defense, and the applicant and the 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.

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.

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.

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SECTION 4. Effective Date.

This Ordinance shall take effect on the 1st 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: Dafney, Mischnick, Jones, Reynolds, Bentley.

Voting Nay: None.

Motion carried.

Mayor Dafney stated, “the passage and adoption of Ordinance No. 2897 has been concurred by a majority of all members elected to the Council, I declare it passed, adopted and order it published.”

- Resolution No. 19-99 which will approve the Economic Development Assistance Agreement with Johnna and Bob Wood dba 3 Little Birds Health & Healing House for funding to assist with their business was the next matter before 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 an Economic Development Assistance Agreement for Johnna and Robert Wood dba 3 Little Birds Health & Healing House 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 \$1,616.25 in Small Business Assistance funding to assist in providing handicap accessibility/sidewalk for the business.]

A motion was made by Councilman Jones, seconded by Councilman Mischnick to approve Resolution No. 19-99 which follows in its entirety:

RESOLUTION NO. 19-99

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;

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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 Johnna and Robert Wood d/b/a 3 Little Birds Health & Healing House 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 Johnna and Robert Wood d/b/a 3 Little Birds Health & Healing House 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 Johnna and Robert Wood d/b/a 3 Little Birds Health & Healing House is a qualifying business and that this allocation of funds does not exceed the limitations of Section 18-2717 of the Nebraska Revised Statutes.

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and City Council of Alliance, Nebraska, that the application of Johnna and Robert Wood d/b/a 3 Little Birds Health & Healing House 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 \$1,616.25 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 Johnna and Robert Wood d/b/a 3 Little Birds Health & Healing House.

Roll call vote with the following results:

Voting Aye: Dafney, Mischnick, Jones, Reynolds, Bentley.

Voting Nay: None.

Motion carried.

- Resolution No.19-95 was tabled at the last City Council meeting until additional information could be provided. The resolution will authorize the purchase of a mast lift for use in the municipal facilities if approved. Council received the following information:

[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

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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 #55-51-56-59-950. This purchase has been determined to be a sole source and staff is requesting Council authorize the purchase without completing the competitive bidding process.

This piece of equipment will be new to the City. Staff has researched the possibility of renting this type of unit; however, there is nothing available closer than Denver. The benefits of this unit will allow City staff to perform regular maintenance items which have been difficult to achieve in the past due to access issues. It will be used for filter changes monthly, light replacements weekly, changing of displays and décor as needed, gutter cleaning annually, heater element changes, flag pole repair, painting projects, and annual window maintenance. There is also interest by other departments outside of our Building Maintenance Department which have not been identified at this time.

At our last meeting, Council tabled action on this purchase in order to obtain information regarding the associated maintenance requirements and expenses of the lift. Attached are several documents including an Annual Machine Inspection Report, Bronze PM Agreement, JLG new product warranty, and a price listing for used equipment.

NMC Rental services has offered a Maintenance Agreement and Annual Machine Inspection Report. NMC Rental will complete the Annual Machine Inspection Report which inspects 57 items, along with checking the battery, and changing engine oil and filters for an annual fee of \$225.00. Any additional work needed would be charged at \$127.00 per hour. Information relating to maintenance costs on used equipment is not available to review.

Although used equipment may be available, it is sold on an "as is" basis and not widely available. Should a unit be identified as viable, we would need to have it inspected and if satisfactory then shipped. Staff is not comfortable with this process and do not believe it will be cost effective.]

A motion was made by Councilman Jones to take this item off the table in order for Council to consider at this time. The motion was seconded by Councilman Mischnick.

Roll call vote with the following results:

Voting Aye: Dafney, Mischnick, Jones, Reynolds, Bentley.

Voting Nay: None.

Motion carried.

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A motion was made by Councilman Jones and seconded by Councilman Reynolds 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 mast 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.

Public Works Director Grant addressed Council and answered questions regarding the piece of equipment and the proposed uses.

Roll call vote with the following results:

Voting Aye: Dafney, Mischnick, Jones, Reynolds, Bentley.

Voting Nay: None.

Motion carried.

- Council next considered Resolution No. 19-100 which will award the Airport Storage Building No. 3001 Reconstruction Project to Eric Reichert Construction of Scottsbluff, NE. The following information was provided for Council's consideration:

[M.C. Schaff and Associates, on behalf of the City of Alliance, prepared an Invitation to Bid for the Airport Storage Building No. 3001 Reconstruction. The project was advertised for three weeks with six prime contractors and one subcontractor requesting plans and specifications.

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Six bids were opened at the scheduled time on October 24, 2019 at the City of Alliance Municipal Building. The Engineer has reviewed the bids with no pricing errors identified and compliance noted with bid bond requirements. The lowest, responsive and responsible bidder was Eric Reichert Construction, headquartered in Scottsbluff, Nebraska at a base bid of \$453,095. The engineer's recent estimate for the project was \$630,000.

All bids are summarized in the following chart.

Bidder	Base Bid	ALT-#1 Bid	ALT-#2 Bid	ALT-#2B Bid
Eric Reichert Construction	\$453,095.00	\$12,500.00	\$22,500.00	\$30,900.00
R&J Industries	\$490,829.12	\$14,893.00	\$27,900.00	\$37,800.00
KL Wood Construction	\$501,600.00	\$18,500.00	\$22,500.00	\$30,600.00
Anderson/Shaw Construction	\$519,094.34	\$21,039.93	\$29,700.00	\$40,920.00
Fuller Construction	\$525,000.00	\$32,000.00	\$23,250.00	\$31,650.00
Paul Reed Construction	\$528,273.25	\$30,082.16	\$25,890.00	\$35,664.00
<i>Engineer's Estimate</i>	<i>\$630,000.00</i>	<i>\$17,500.00</i>	<i>\$25,500.00</i>	<i>\$34,800.00</i>

M.C. Schaff and Associates is recommending that the Council approve the base bid proposal from Eric Reichert Construction in the amount of \$453,095 for the Airport Storage Building No. 3001 Reconstruction Project. The base bid costs have been submitted to the City of Alliance insurance carrier for review and have been approved for acceptance.

Along with the base bid, will be the acceptance of all alternate bid items 1, 2, and 2B in the amount of \$65,900. The first alternate item is a new concrete loading dock to be located on the north side of the building. This will ensure that the new building has a loading dock, which could be utilized by both Building Nos. 3000 and 3001 if the same tenant leases both. The second alternate bid item is for the removal and replacement of concrete pavement around the south and east sides of the Building No. 3001. This item will allow the contractor to tie in the new building floor with the existing concrete pavement that exists. The alternate item 2B is for the removal and replacement of concrete pavement around Building No. 3000. Alternate 2B was discussed during last Council meeting as Change Order No. 6 and was tabled with the request for more information. This matter was reviewed with our engineer Jeff Wolfe and it is his opinion that the City should move forward with this concrete work identified in Alternate 2B.

The City has the budget authority to approve both the base bid and all alternatives; however, this will increase the debt load for the Airport Fund. If alternate 2B is awarded an amendment to M.C. Schaff's engineering agreement will be made in the amount of \$4,500.]

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A motion was made by Councilman Bentley, seconded by Councilman Reynolds to approve Resolution No. 19-100 which follows in its entirety:

RESOLUTION NO. 19-100

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

WHEREAS, Storage Building No. 3001 which is owned by the City of Alliance and leased to Vitalix, Inc. was destroyed in a fire on June 22, 2018; and

WHEREAS, An Invitation to Bid for the Airport Storage Building No. 3001 Reconstruction Project was published and bids were opened; and

WHEREAS, The bid of Eric Reichert Construction of Scottsbluff, Nebraska appears to be the lowest, responsive, and responsible bid for the base bid and Alternates 1, 2 and 2B in the amount of Five Hundred Eighteen Thousand Nine Hundred Ninety-five Dollars and no/100ths (\$518,995); and

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the City of Alliance, Nebraska, that the Mayor is authorized to sign the contract and documents associated with the Airport Storage Building No. 3001 Reconstruction from Eric Reichert Construction of Scottsbluff, NE in the amount of Five Hundred Eighteen Thousand Nine Hundred Ninety-five Dollars and no/100ths (\$518,995) for the Base Bid and Alternates 1, 2 and 2B.

BE IT FURTHER RESOLVED that payment for this service will be made from Account No. 22-41-43-59-915, Airport Capital Outlay-Buildings.

Roll call vote with the following results:

Voting Aye: Dafney, Mischnick, Jones, Reynolds, Bentley.

Voting Nay: None.

Motion carried.

- The next item before Council was Resolution No. 19-101 which adopts a Social Media Comment Policy for the City of Alliance social media sites. The following information was provided to Council:

[Social media is a crucial tool to communicate City activities to the public. Unfortunately, this tool can be misused by bad actors that choose to use social media as a weapon to promote discrimination, defame City personnel/officials, bully, and encourage illegal activity. To control this behavior, the City needs a Social Media Comment Policy that allows staff to police comments.

The City Attorney has drafted a Social Media Comment Policy for Council to consider enacting via resolution. This policy is based on what other municipalities in the State of Nebraska already have in place. With this policy in place, staff would

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be able to restrict or remove any content that is deemed in violation of this Social Media Policy or any applicable law.]

A motion was made by Councilman Bentley, seconded by Councilman Mischnick to approve Resolution No. 19-101 which follows in its entirety:

RESOLUTION NO. 19-101

WHEREAS, The City of Alliance has decided to adopt a Social Media Comment Policy to orderly promote free speech and eliminate speech that is otherwise deleterious, harmful, and subject to censorship, while maintaining the rights of all individuals involved; and

WHEREAS, The City of Alliance desires to focus upon and maintain a strong and active social media presence, wants to invite participation and activity of its Citizens on its social media, and wants to encourage the feedback and voice of its Citizens on social media; and

WHEREAS, The City of Alliance, notwithstanding the encouragement of feedback and the voice of its Citizens on social media, wants to maintain the ability to legally monitor and prevent content-based comments that are subject to censorship.

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and City Council of Alliance, Nebraska, that the City of Alliance Social Media Comment Policy is hereby adopted and approved to be published by the City on its Social Media sites.

Mr. Larry Bolinger, 507 Niobrara Avenue, Alliance, NE addressed Council to discourage any action which would violate the first amendment rights of citizens.

Roll call vote with the following results:

Voting Aye: Dafney, Mischnick, Jones, Reynolds, Bentley.

Voting Nay: None.

Motion carried.

- Council now had before them Resolution No. 19-102 which will authorize the purchase of a mini track loader for the Electric Department. The following information was provided for Council's consideration:

[The Electric Department is requesting a replacement for a 2004 Mini Track Loader. This unit has unknown hours and is in need of a substantial amount of mechanical work to make it operational. The replacement of this piece of equipment was budgeted within this fiscal year.

Electric Superintendent Bridge has received three bids for like machines. The lowest, reasonable and responsive bid was from Sandberg Implement Inc., for a Bobcat MT85 Mini Track Loader. This bid is per Nebraska Contract #14660 OC with the quoted price of \$24,939.20. Electric Superintendent Bridge is

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recommending this purchase and that the 2004 unit be sold at the City's next public auction.]

A motion was made by Councilman Mischnick, seconded by Councilman Bentley to approve Resolution No. 19-102 which follows in its entirety:

RESOLUTION NO. 19-102

WHEREAS, The City of Alliance Electric Department is desiring to purchase a mini track loader for use in maintaining the electric system; and

WHEREAS, The new piece of equipment will replace our current 2004 unit; and

WHEREAS, Electric Superintendent Bridge is recommending the purchase of a MT85 Mini Track Loader from Sandberg Implement, Inc. of Gering, NE; and

WHEREAS, The purchase is in the amount of Twenty-four Thousand Nine Hundred Thirty-nine Dollars and 20/100ths (\$24,939.20) utilizing the State of Nebraska Contract No. 14660-OC; and

WHEREAS, Adequate funding has been budgeted for this purchase within Account No. 55-51-53-59-950.

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 MT85 Mini Track Loader from Sandberg Implement, Inc. of Gering, NE, in the amount of Twenty-four Thousand Nine Hundred Thirty-nine Dollars and 20/100ths (\$24,939.20) from Account No. 55-51-53-59-950.

BE IT FURTHER RESOLVED that the City Council is authorizing the sale of the 2004 unit at the City's next public auction.

Electric Superintendent Kirby Bridge was in attendance and answered questions of Council regarding the uses for this piece of equipment.

Roll call vote with the following results:

Voting Aye: Dafney, Mischnick, Jones, Reynolds, Bentley.

Voting Nay: None.

Motion carried.

- Resolution No. 19-103 was the next item for Council. This resolution will approve Change Order No. 1 to the contract with Wynne Contracting for additional improvements to the softball complex. The following information was provided to Council:

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[The City of Alliance issued a Request for Qualifications (RFQ) and Bid Proposals for field improvements at the Hal Murray Softball Complex. The RFQ was advertised in accordance with State Statute. Five general contractors submitted bids for this project. The bid was awarded to Wynne Contracting of Bayard, NE in the amount of \$105,278.69 at the September 17, 2019 Council meeting.

City staff is pleased that the bid was substantially under the \$160,000.00 that was included in the 2019/20 budget. Staff informed Council at the September 17th meeting that research was being completed to evaluate additional improvements that could be completed during the renovation. Staff is recommending the following additional services be added to the contract with Wynne Contracting with the approval of Change Order No. 1.

Additional Work Identified	Additional Cost
Reconstruct pitcher mound, home plate, batter box and bases with a clay brick foundation to provide long term stabilization in these high traffic areas.	\$9,379.20
Complete additional grade adjustment to manage excessive water flow from around the concession stand during high rain events. Initial project scope included field areas and areas directly adjacent to the field for grade adjustments to improve run off. Staff would like to complete some additional grade adjustments between the concession stand and field to ensure excessive run off is contained away from the field.	\$1,676.00
Purchase and install a gate in existing fencing for access to the batting cage.	\$600.00

A motion was made by Councilman Mischnick, seconded by Councilman Bentley to approve Resolution No. 19-103 which follows in its entirety:

RESOLUTION NO. 19-103

WHEREAS, The City of Alliance owns and operates the Hal Murray Softball Complex; and

WHEREAS, A Request for Qualifications and Bid Proposal for field improvements was published and bids were opened; and

WHEREAS, The contract was awarded to Wynne Contracting of Bayard, NE in the amount of One Hundred Five Thousand Two Hundred Seventy-eight Dollars and 69/100ths (\$105,278.69); and

WHEREAS, Change Order No. 1 has been submitted and will increase the contract amount by Eleven Thousand Six Hundred Fifty-five Dollars and 20/100^{ths} (\$11,655.20) to reconstruct the pitcher mound, home plate, batter box and bases with a clay brick foundation; complete additional grade adjustments to manage excessive water flow from around the concession stand; and purchase and install a gate in the current fencing to allow access to the batting cage.

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NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the City of Alliance, Nebraska, that Change Order No. 1 to the Hal Murray Softball Complex Field Improvements Project with Wynne Contracting is hereby approved bringing the adjusted contract price to One Hundred Sixteen Thousand Nine Hundred Thirty-three Dollars and 89/100ths (\$116,933.89).

BE IT FURTHER RESOLVED that the Mayor is hereby authorized to sign Change Order No. 1.

Roll call vote with the following results:

Voting Aye: Dafney, Mischnick, Jones, Reynolds, Bentley.

Voting Nay: None.

Motion carried.

- Next item before Council was Resolution No. 19-104 which will adopt Police Policy 55.08 – Enhanced Wireless 911/Call Location Data from Rapid SOS. The following information was provided to Council:

[The Alliance Police Department is adding an additional policy (55.08) for the Use of Enhanced Wireless 911/ Call Location from Rapid SOS operations. The 911 calls from wireless devices is presented via the Automatic Number Information/Automatic Location Information (ANI/ALI) screen on the GEO application and displayed graphically on the GEO mapping application. The location information is derived from triangulation technology employed by the wireless service providers. To obtain good data, the wireless device must be able to connect with three separate cell towers known as triangulation.

This policy and procedure will allow for dispatchers to enter the data into Rapid SOS as long as the line is active. The dispatcher will be able to track the cellphone while it is moving. In 2018, the Alliance Police Communication Center received 7032 wireless 911 calls. Of those, 59.8% were Phase II calls which coordinates received are 90% confident that they are within 30 meters. Another 40.2% of the calls are only provided by Phase I information, these calls are tracked to one tower and cannot be triangulated without two additional towers.]

A motion was made by Councilman Reynolds, seconded by Councilman Mischnick to approve Resolution No. 19-104 which follows in its entirety:

RESOLUTION NO. 19-104

WHEREAS, The City of Alliance Police Department maintains a Policy and Procedure Manual which has been adopted by the Alliance City Council; and

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WHEREAS, The Alliance Police Department desires to add an Enhanced Wireless 911/Call Location Data from Rapid SOS Policy; and

WHEREAS, The City Council believes it is in the best interest of the City of Alliance to add Policy 55.08 as recommended by the Police Chief.

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and City Council of Alliance, Nebraska, that the City of Alliance Police Department Policy 55.08 - Enhanced Wireless 911/Call Location Data from Rapid SOS is hereby added as recommended by the Police Chief and will be effective November 6, 2019.

Public Safety Dispatcher Leigh Shakes was in attendance and described how this new technology works and how it will be beneficial for our community.

Roll call vote with the following results:

Voting Aye: Dafney, Mischnick, Jones, Reynolds, Bentley.

Voting Nay: None.

Motion carried.

- The presentation of the Fourth Quarter Financial Statement was the next matter before Council. Finance Director Randy Waggener reviewed the dashboards which covered: ambulance fees, building permit sales, City sales tax, franchise fees, hotel occupation taxes and reserves, keno revenue, municipal equalization, pool revenue, catering revenue, Carhenge financial trends, golf revenue, highway allocation, motor vehicle fees, electric usage and revenue, water usage and revenue, external debt trends, general fund cash trends, health fund trends and fund reserves as percent of health claims. He also provided a quick review of the highlights within the Fourth Quarter Financial Statement.

A motion was made by Councilman Mischnick, seconded by Councilman Jones to accept the Fourth Quarter Financial Statement presented by Finance Director Waggener.

Roll call vote with the following results:

Voting Aye: Dafney, Mischnick, Jones, Reynolds, Bentley.

Voting Nay: None.

Motion carried.

- A Board appointment and announcements were the last items on the agenda.

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A motion was made by Councilman Jones, seconded by Councilman Mischnick to appoint Derek Shafer to serve on the Alliance Park and Tree Board with a term ending February 28, 2022.

Roll call vote with the following results:

Voting Aye: Dafney, Mischnick, Jones, Reynolds, Bentley.

Voting Nay: None.

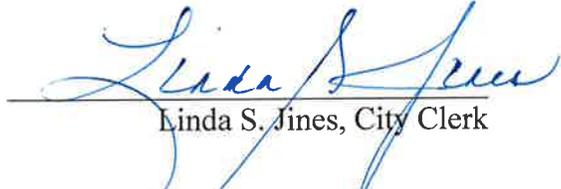
Motion carried.

Councilman Jones announced there remains vacancies on the Board of Adjustment, Economic Development Plan Citizen Advisory Board, youth representatives on the Library Board, the Museum Board, the Park and Tree Board and the alternate position on the Planning Commission. Anyone interested in serving on these Boards should contact the City Clerk's Office. Information on all of the City Boards is also available on our web site, www.cityofalliance.net.

There being no further business before Council, Mayor Dafney adjourned the meeting at 7:56 p.m.


Mike Dafney, Mayor

(SEAL)


Linda S. Jines, City Clerk

Complete minutes of the Alliance City Council may be viewed by the public during regular work hours at the City Clerk's Office, 324 Laramie Avenue, Alliance, Nebraska.

