

AGENDA  
CITY COUNCIL MEETING  
January 2, 2013

1. Approval of Minutes – December 18, 2012

2. Approval of Claims

Anyone desiring to view the Open Meetings Act may do so. The document is available for public inspection and is located on the south wall of the City Council Chambers.

Anyone desiring to speak on an agenda item is invited to do so, and should limit themselves to three minutes. After being recognized by the Chair, proceed to the rostrum and state your name and address for the record.

The City Council may go into closed session to discuss certain agenda items to protect the public interest or to prevent the needless injury to the reputation of an individual and if such individual has not requested a public hearing.

3. Action on 2013 Property and Casualty Insurance Package — Cap Peterson, Northeast Nebraska Insurance Agency

**Background:** There are only three options for insuring a city in Nebraska with a power plant our size: 1) Cornhusker Casualty; 2) Employers Mutual Company; and 3) the League of Nebraska Municipalities insurance pool called L.A.R.M. Wayne has bid this coverage out in the past and coverage has remained with EMC through Northeast Nebraska Insurance. We have not publicly solicited bids every year and did not this year. NE Nebraska did bid out our coverage between EMC and Cornhusker this year. We did not bid out to other agencies this year, nor did we ask L.A.R.M. for a bid this year, but we would expect to solicit public bids again in 2013.

The annual premium for 2013 is \$252,902 compared to \$232,898 for 2012. Most of the difference is the addition of the new wastewater treatment plant and the new ladder truck. \$74,544 of the premium is for Workers Comp. Our Workers Compensation Experience Modification Factor is .89 for 2013. That is favorable, and the direct result is the consistent focus of Gene Hansen and his staff Safety Committee, plus the awareness and care by our City staff that work with sewage, trenches, water tower, traffic, police and fire situations and live electric wires.

4. Action on Request of Community Activity Center Director to Purchase Permanent Basketball Hoops for the City Auditorium

**Background:** When the City Auditorium was renovated in 2003, the basketball hoops were removed and the striping was removed from the gym floor. In the last few years, the Wayne Basketball Association has been sponsoring more and larger tournaments and coaching more kids' teams. I have asked the CAC staff to keep at least one quarter of the CAC gym open after school for open play by members and our After School Program. For the past two years, we have been relocating some after-school City rec wrestling and basketball to the City Auditorium. Last summer when we refinished the auditorium floor, we added regulation basketball court lines.

We are currently using portable baskets that have to be folded down and rolled around the building on the sidewalk to the west outside stage door to move them out of the way for receptions, dances, sales, etc. Kelby Herman and the Wayne Basketball Association will donate wall-mounted baskets with your approval.

**Recommendation:** The Auditorium has a high quality, regulation basketball court, and there is almost no use of the building during the week. Reinstalling permanent baskets would be a change from the Mayor and Council's desire in 2003 to convert the Auditorium to a non-basketball venue. The use of the Auditorium is a matter of public choice, and we have no staff recommendation.

5. [Resolution 2013-1: Accepting Work on the 2012 Lagoon Sludge Removal and Application Project and Authorizing Final Payment Thereto](#)

**Recommendation:** This is final payment for work that was bid out and completed according to contract and approved by the project engineer.

6. [Ordinance 2012-62: Amending ATV Ordinance \(Second Reading\)](#)

7. [Action on Directing Staff to Make an Application to Request LB840 Funding for Highway 35 Sewer Crossing](#)

**Background:** The cost of new streets, water lines and sanitary sewer lines in Wayne are assessed on the basis of front footage to the properties they serve. We have a request from the owners to provide sewer to a new 5-acre lot on the north side of Highway 15 across from Pac N Save to serve a new retail business. The existing sewer main is on the south side of the highway. The proposed plan to subdivide the area to create a 5-acre lot would create 3 lots and a future street right-of-way. In addition, there is more potential development for the land uphill and behind the 5-acre lot we are requested to service.

**Recommendation:** To serve the probable future subdivision development north of Highway 15, we recommend installing a sanitary sewer crossing to the north side at the future street intersection where the current Pac N Save west driveway is located. This would serve all future development going north uphill from the Highway. We further recommend that we use \$35,000 of LB840 funds to build the sewer Highway crossing as we did with the Bomgaars' project. There is no frontage to assess this cost to crossing the highway, and it will provide some incentive to future economic development.

8. [Action to Start 30-Day Review Period for the Wellhead Protection Plan and Set Public Hearing for February 19<sup>th</sup> Council Meeting](#)

**Background:** In the 1990's the Nebraska Department of Environmental Quality established Wellhead Protection Areas for all municipal wells in Nebraska. These areas were designated using the probable direction of groundwater coming to municipal wells and the estimated lateral 20-year travel time for any contaminants in the groundwater. Calculations used the known geology and well log information at the time. NDEQ also recommended that each City develop a Wellhead Protection Plan to inventory possible threats to groundwater, and monitor the groundwater and land use in the wellhead protection area in order to give the land

owners and the City a heads-up instead of having a surprise show up at the point of the municipal wells.

In Wayne County and other counties with no zoning, cities have no legal jurisdiction over land in the wellhead protection areas outside the city zoning jurisdiction. The draft Wayne Plan has developed a good inventory of land use and aquifer status in our Wellhead Protection Area, and the news is all good except for Well #6 which is ½ mile west of the golf course. To date, 99 Nebraska cities have completed Wellhead Protection Plans that have been submitted and approved by NDEQ.

NDEQ has reviewed and approved the draft Wayne Wellhead Protection Plan for our five municipal wells. The next steps are local review and public hearing and Council action on a Resolution to adopt the Plan and submit it to NDEQ. This agenda item will set the 30-day public review period and the public hearing date.

9. [Appointment of Councilmember to Wayne Area Economic Development Board](#)

Background: Brian Frevert held this position representing the City Council on the WAED Board and a new Councilmember needs to be elected to serve on that Board.

10. [Recess](#)

- a. [Convene as Community Development Agency](#)
- b. [Approve Minutes – December 18, 2012](#)
- c. [Consideration and Action on a Memorandum of Understanding with a Commercial Retail Company to Enter into a Tax Increment Financing Agreement for New Construction on Lot 1 of the Administrative Replat of Lot 5 of Western Ridge Third Addition](#)

Background: This retail business has requested Tax Increment Financing to help pay for extensive site preparation costs, storm water retention required by the Department of Roads and infrastructure. The MOU is attached.

- d. [Adjourn CDA and Reconvene as Council](#)

11. Resolution 2013-2: [Approving Memorandum of Understanding With Commercial Retail Company to Enter into a Tax Increment Financing Agreement for New Construction on Lot 1 of the Administrative Replat of Lot 5 of Western Ridge Third Addition](#)

12. [Adjourn](#)

APPROVED AS TO FORM AND CONTENT:

\_\_\_\_\_  
Mayor

\_\_\_\_\_

City Administrator

December 18, 2012

The Wayne City Council met in regular session at City Hall on Tuesday, December 18, 2012, at 5:30 o'clock P.M. Mayor Ken Chamberlain called the meeting to order with the following in attendance: Councilmembers Cale Giese, Jim Van Delden, Jon Haase, Dale Alexander, Kaki Ley, Jennifer Sievers and Jill Brodersen; City Attorney Amy Miller; City Administrator Lowell Johnson; and City Clerk Betty McGuire.

Notice of the convening meeting was given in advance by advertising in the Wayne Herald on December 6, 2012, and a copy of the meeting notice and agenda were simultaneously given to the Mayor and all members of the City Council. All proceedings hereafter shown were taken while the Council convened in open session.

The next item on the agenda was the mayoral appointment of a First Ward candidate.

Mayor Chamberlain stated he had interviewed seven different individuals for this seat, and he would have been comfortable appointing any one of those seven.

Mayor Chamberlain requested Council consideration to the following mayoral appointment: Nick Muir to fill the vacancy in First Ward.

Councilmember Brodersen made a motion, which was seconded by Councilmember Ley, approving the mayoral appointment of Nick Muir as First Ward Councilmember. Mayor Chamberlain stated the motion, and the result of roll call being all Yeas, the Mayor declared the motion carried.

Attorney Miller presented the oath of office to Nick Muir.

Councilmember Ley made a motion, which was seconded by Councilmember Brodersen, whereas, the Clerk has prepared copies of the Minutes of the meeting of

December 4, 2012, and that each Councilmember has had an opportunity to read and study the same, and that the reading of the Minutes be waived and declared approved.

Mayor Chamberlain stated the motion, and the result of roll call being all Yeas, the Mayor declared the motion carried and the Minutes approved.

The following claims were presented to Council for their approval:

**VARIOUS FUNDS:** AMERITAS, SE, 1925.34; APPEARA, SE, 104.76; BAKER & TAYLOR BOOKS, SU, 567.09; BANK FIRST, FE, 150.00; BARONE SECURITY SYSTEMS, SE, 138.00; BIG T ENTERPRISES, SU, 233.95; BLACKBURN MANUFACTURING, SU, 167.83; BMI, FE, 288.00; BOARD OF EXAMINERS, FE, 10.00; BOMGAARS, SU, 711.50; BROWN SUPPLY, SU, 180.00; CARHART LUMBER CO, SU, 1359.57; CHARTWELLS, SE, 5186.00; CITY OF NORFOLK, SE, 142.20; CITY OF WAYNE, RE, 150.00; CITY OF WAYNE, SE, 90.00; CITY OF WAYNE, RE, 100.00; CITY OF WAYNE, RE, 20.00; CITY OF WAYNE, PY, 61621.34; CITY OF WAYNE, RE, 2483.77; COMMUNITY HEALTH, RE, 3.00; CONSOLIDATED MANAGEMENT, SE, 106.75; COPY WRITE, SE, 613.25; CITY EMPLOYEE, RE, 63.16; DAVE'S UNIFORM CLEANING, SE, 54.00; DE LAGE LANDEN FINANCIAL, SE, 394.00; DEARBORN NATIONAL LIFE, SE, 1582.02; DRT BIOSOLIDS, SE, 157,500.00; DUTTON-LAINSON, SU, 1255.21; ECHO GROUP, SU, 101.08; ED. M FELD EQUIPMENT, SU, 687.10; EKBERG AUTO, SU, 31.49; ELECTRIC FIXTURE, SU, 12875.03; EMPLOYERS MUTUAL CASUALTY, RE, 165.54; ENVIRONMENTAL SYSTEM, SE, 266.25; FLOOR MAINTENANCE, SU, 44.47; GROSSENBURG IMPLEMENT, SU, 22.76; HANSEN REPAIR, SE, 72.10; HANSEN, GENE, RE, 216.00; CITY EMPLOYEE, RE, 30.72; HARDING & SHULTZ, SE, 1752.50; CITY EMPLOYEE, RE, 198.73; HEIKES AUTOMOTIVE, SE, 58.58; HIRERIGHT SOLUTIONS, SE, 53.15; ICMA, SE, 5607.89; INGRAM BOOK CO, SU, 9.95; IRS, TX, 19817.54; CITY EMPLOYEE, RE, 201.14; KEPSCO, SU, 7.55; KRIZ-DAVIS, SU, 226.31; KTCH, SE, 605.00; CITY EMPLOYEE, RE, 97.56; MERCY MEDICAL CLINIC, SE, 72.00; MIDSTATES ERECTORS, SU, 34481.00; MIDWEST LABORATORIES, SE, 848.00; MIRIAN AGUIRRE, SE, 90.00; NE AIR FILTER, SU, 166.77; NE DEPT OF LABOR, SE, 144.00; NE DEPT OF REVENUE, TX, 3128.43; NE PUBLIC HEALTH, SE, 98.00; N.E.NE AMERICAN RED CROSS, RE, 59.24; NNPPD, SE, 12418.90; NORTHWEST ELECTRIC, SU, 1409.79; NOVA HEALTH EQUIPMENT, SU, 14827.00; ORIENTAL TRADING CO, SU, 8.75; OVERHEAD DOOR CO, SU, 114.00; PAC N SAVE, SU, 109.42; PAUL VELDKAMP, RE, 500.00; PRESTO X, SE, 103.96; QUALITY FOODS, SU, 7.50; RANDOM HOUSE, SU, 72.75; ROBERT WOHLER & SONS, SE, 1722.50; SGP SERVICES, SE, 79.88; SHOPKO, SU, 21.28; SPARKLING KLEAN, SU, 2757.93; STATE NATIONAL BANK, RE, 28032.50; STEFFEN, SU, 206.12; THE DIAMOND CENTER, SU, 363.53; TRANS-IOWA EQUIPMENT, SU, 859.15; UNITED WAY, RE, 10.00; WAYNE AUTO PARTS, SU, 335.93; WAYNE COUNTY CLERK, SE, 192.00; WAYNE HERALD, SE, 891.73; WAYNE VETERINARY CLINIC, SE, 219.00; WESCO, SU, 208.74; WAPA,

SE, 31977.31; WESTERN ENVIRONMENTAL, SU, 384.62; WRIEDT, RON, SE, 457.00; ZACH OIL CO, SU, 5706.07; ZEE MEDICAL SERVICE, SU, 30.47; APPEARA, SE, 56.98; CITY EMPLOYEE, RE, 797.18; BLUE CROSS BLUE SHIELD, SE, 24,854.78; CITY EMPLOYEE, RE, 318.10; CITY OF WAYNE, RE, 100.00; DAKOTA BUSINESS SYSTEMS, SE, 103.50; DELL MARKETING, SU, 3696.99; ED. M FELD EQUIPMENT, SU, 1000.35; ELECTRONIC ENGINEERING, SE, 269.50; ELLIS PLUMBING & HEATING, SE, 98.00; CITY EMPLOYEE, RE, 40.67; HOA SOLUTIONS, SE, 4491.46; KRIZ-DAVIS, SU, 112.35; LERNER PUBLISHING GROUP, SU, 216.54; MAIN STREET AUTO CARE, SE, 100.00; CITY EMPLOYEE, RE, 702.83; MERCY MEDICAL CLINIC, SE, 86.00; MIDWEST SERVICE & SALES, SU, 8900.00; MSC INDUSTRIAL, SU, 126.14; NE ECONOMIC DEVELOP ASSN, FE, 200.00; NPPD, SE, 246870.26; OLSSON ASSOCIATES, SE, 3200.39; ONE CALL CONCEPTS, SE, 60.05; PITNEY BOWES, SE, 648.00; CITY EMPLOYEE, RE, 138.59; ROBERT WOehler & SONS, SU, 37.70; RON'S RADIO, SE, 272.50; ROSE EQUIPMENT, SU, 4762.32; STADIUM SPORTING GOODS, SU, 40.00; STATE NATIONAL BANK, RE, 200.00; UNITED RENTALS, SE, 603.24; VAKOC BUILDER'S RESOURCE, SU, 39.59; WAED, RE, 1285.00; WAED, RE, 7383.33; WAYNE STATER, SE, 24.00; FIREMAN, RE, 202.50

Councilmember Haase made a motion, which was seconded by Councilmember Alexander to approve the claims. Mayor Chamberlain stated the motion, and the result of roll call being all Yeas, the Mayor declared the motion carried.

Mayor Chamberlain advised the public that a copy of the Open Meetings Act was located on the south wall of the Council Chambers and was available for public inspection. In addition, he advised the public that the Council may go into closed session to discuss certain agenda items to protect the public interest or to prevent the needless injury to the reputation of an individual and if such individual has not requested a public hearing.

Phil Monahan, Fire Chief, was present requesting Council consideration to approving the membership application of Peter Phillips to the Wayne Volunteer Fire Department. Mr. Phillips was present to answer questions.

Councilmember Brodersen made a motion, which was seconded by Councilmember Van Delden, approving the membership application of Peter Phillips to

the Wayne Volunteer Fire Department. Mayor Chamberlain stated the motion, and the result of roll call being all Yeas, the Mayor declared the motion carried.

Phil Monahan, Fire Chief, was also requesting Council consideration to approving the membership application of Abraham Rodriguez to the Wayne Volunteer Fire Department. Mr. Rodriguez was unable to be at the meeting.

Councilmember Brodersen moved to table action on this matter until the next meeting, but then withdrew the same.

Councilmember Alexander made a motion, which was seconded by Councilmember Van Delden, approving the membership application of Abraham Rodriguez to the Wayne Volunteer Fire Department. Mayor Chamberlain stated the motion, and the result of roll call being all Yeas, the Mayor declared the motion carried.

Mayor Chamberlain declared the time was at hand for the public hearing to adopt the new Revolving Loan Fund Guidelines and to approve the Memorandum of Understanding between the City and Northeast Nebraska Economic Development District.

Holly Quinn, representing the District, was present to answer questions. Because the District will be taking over the administration of Wayne's revolving loan funds, new guidelines must be adopted.

City Clerk McGuire had not received any comments for or against this public hearing.

There being no further comments, Mayor Chamberlain closed the public hearing.

Councilmember Ley introduced Resolution No. 2012-92 and moved for its approval; Councilmember Alexander seconded.

RESOLUTION NO. 2012-92

A RESOLUTION OF THE CITY COUNCIL OF WAYNE, NEBRASKA, ADOPTING THE BUSINESS REVOLVING LOAN FUND GUIDELINES, WHICH ARE ATTACHED HERETO.

Mayor Chamberlain stated the motion, and the result of roll call being all Yeas, the Mayor declared the motion carried.

The following Resolution will approve the Memorandum of Understanding between the City and Northeast Economic Development, Inc., whereby the City agrees to assign all current CDBG (program income) economic development projects funded through the City of Wayne to Northeast Economic Development to be reused for economic development activities.

Councilmember Alexander introduced Resolution 2012-93 and moved for its approval; Councilmember Van Delden seconded.

RESOLUTION NO. 2012-93

A RESOLUTION APPROVING MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF WAYNE AND NORTHEAST NEBRASKA ECONOMIC DEVELOPMENT DISTRICT.

Mayor Chamberlain stated the motion, and the result of roll call being all Yeas, the Mayor declared the motion carried.

The following Resolution will approve the Service/Consultant Agreement with NNEDD regarding the administration of Wayne's Revolving Loan Fund Program.

Councilmember Alexander introduced Resolution 2012-94 and moved for its approval; Councilmember Brodersen seconded.

RESOLUTION NO. 2012-94

A RESOLUTION APPROVING SERVICE/CONSULTANT AGREEMENT WITH NORTHEAST NEBRASKA ECONOMIC DEVELOPMENT DISTRICT

TO ASSIST THE CITY WITH ITS REVOLVING LOAN FUND PROGRAM.

Mayor Chamberlain stated the motion, and the result of roll call being all Yeas, the Mayor declared the motion carried.

Councilmember Ley made a motion, which was seconded by Councilmember Alexander, to recess as Council and convene as the Community Development Agency. Mayor Chamberlain stated the motion, and the result of roll call being all Yeas, the Mayor declared the motion carried.

Chair Haase called the meeting of the Community Development Agency to order. Those in attendance were: Members Cale Giese, Jim Van Delden, Dale Alexander, Ken Chamberlain, Nick Muir, Kaki Ley, Jennifer Sievers and Jill Brodersen; City Attorney Amy Miller; City Administrator Lowell Johnson; and City Clerk Betty McGuire.

Chair Haase advised the public that a copy of the Open Meetings Act was located on the south wall of the Council Chambers and was available for public inspection.

Member Alexander made a motion and Member Ley seconded approving the minutes of the November 20, 2012, meeting. Chair Haase stated the motion, and the result of roll call being all Yeas, the Chair declared the motion carried.

The next item on the CDA agenda was to appoint a Chair for the CDA.

Member Ley made a motion to nominate or reappoint Member Haase as the Chair; Member Brodersen seconded. Chair Haase stated the motion, and the result of roll call being all Yeas, the Chair declared the motion carried.

The next item on the agenda was to consider and adopt CDA Resolution 2012-8 recommending approval of a Redevelopment Plan/Contract for MZRB Properties, LLC, a Limited Liability Company. This is for a market-rate rental duplex which will be built on

the property that was purchased by MZRB Properties and is located at the corner of Windom and 4<sup>th</sup> Street.

Mike McManigal, representing MZRB Properties, LLC, was present to answer questions. There will be six, 3-bedroom apartments. He will have one parking stall per bedroom. He is proposing to install a privacy fence on the south side of the property.

Member Chamberlain introduced CDA Resolution No. 2012-8 titled as follows and moved for its passage and approval by the Agency:

CDA RESOLUTION NO. 2012-8

A RESOLUTION OF THE COMMUNITY DEVELOPMENT AGENCY OF THE CITY OF WAYNE, NEBRASKA, RECOMMENDING APPROVAL OF A REDEVELOPMENT PLAN/CONTRACT FOR MZRB PROPERTIES, LLC.

Member Alexander seconded the motion.

On roll call vote, the following Agency Members voted in favor of the motion: Giese, Van Delden, Alexander, Chamberlain, Muir, Ley, Sievers, and Brodersen. The following Members voted against the motion: None; the following member was absent: None; and the following members abstained due to a conflict of interest: None. The Chair declared the motion carried.

Member Alexander made a motion and Member Van Delden seconded to adjourn as the Community Development Agency and reconvene as Council. Chair Haase stated the motion, and the result of roll call being all Yeas, the Chair declared the motion carried.

Mayor Chamberlain declared the time was at hand for the public hearing to obtain public comment prior to the consideration of a Resolution approving the Redevelopment Plan, including a redevelopment contract, for an area of the City previously declared

blighted and substandard and in need of redevelopment pursuant to the Community Development Law, Chapter 18, Article 21, Reissue Revised Statutes of Nebraska, as amended (the "Act"). The Mayor opened the public hearing and invited all interested persons to be heard.

City Clerk McGuire had not received any comments for or against this public hearing.

There being no further comments, Mayor Chamberlain closed the public hearing.

Councilmember Brodersen introduced Resolution No. 2012-95 and moved for its approval, contingent upon (1) a privacy fence being installed on the south side of the property (preferably to the front of the adjoining property owner's property), and (2) two shade trees being planted; Councilmember Alexander seconded.

#### RESOLUTION NO. 2012-95

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF WAYNE, NEBRASKA, APPROVING A REDEVELOPMENT PLAN/CONTRACT FOR MZRB PROPERTIES, LLC; AND RELATED MATTERS.

Mayor Chamberlain stated the motion, and the result of roll call being all Yeas, the Mayor declared the motion carried.

Mayor Chamberlain declared the time was at hand for the public hearing on the "Blight and Substandard Area Determination" for Wayne "Central" Redevelopment Area.

A map showing the redevelopment areas in Wayne was distributed to the Council. We are limited to 35% of the total area of the City limits being blighted and substandard. We are approaching that limit. We can delineate some areas, such as the Oaks and

Wayne East, which would bring our total area percentage down, and a proposal will be brought to the Council to decertify those areas in the near future.

No written or oral comments had been received by the City Clerk's Office concerning this public hearing.

BJ Woehler had a concern with the City using photos of someone's property in the blight study, but not giving those property owners a chance to improve their property with TIF funds. A lot of this money just goes towards new development.

There being no further comments, Mayor Chamberlain closed the public hearing.

Councilmember Ley introduced Resolution 2012-96, and moved for its approval; Councilmember Sievers seconded.

#### RESOLUTION NO. 2012-96

A RESOLUTION OF THE CITY OF WAYNE, NEBRASKA, MAKING FINDINGS AND DECLARING PORTIONS OF THE CITY TO BE BLIGHTED AND SUBSTANDARD PURSUANT TO THE NEBRASKA COMMUNITY DEVELOPMENT ACT.

Mayor Chamberlain stated the motion, and the result of roll call being all Yeas, the Mayor declared the motion carried.

City Clerk McGuire stated the following Resolution would approve a proposal with American Legal Publishing to recodify the Municipal Code Book. The last time the Municipal Code Book was recodified was in 2000. Monies have been budgeted for this project. The estimated cost is \$8,550.

Councilmember Sievers introduced Resolution 2012-97, and moved for its approval; Councilmember Brodersen seconded.

#### RESOLUTION NO. 2012-97

A RESOLUTION ACCEPTING PROPOSAL AND APPROVING

CODIFICATION AGREEMENT WITH AMERICAN LEGAL PUBLISHING CORPORATION FOR PROFESSIONAL SERVICES FOR THE RECODIFICATION OF THE CITY'S MUNICIPAL CODE BOOK.

Mayor Chamberlain stated the motion, and the result of roll call being all Yeas, the Mayor declared the motion carried.

Administrator Johnson stated the following Resolution would amend the winter months used for averaging sewer rates from December, January and February to January, February and March because of the mild fall/winter we have had. This would allow those people who were still watering their lawns in November to not be penalized with a higher sewer average.

Councilmember Brodersen had a concern because she hoped to be watering in March. A suggestion was to average two months (January and February) instead of three months.

Councilmember Brodersen introduced Resolution 2012-98, and moved for its approval subject to changing the months used in averaging residential sewer bills to January and February; Councilmember Ley seconded.

RESOLUTION NO. 2012-99

RESOLUTION AMENDING SEWER SERVICE AND USE RATES.

Mayor Chamberlain stated the motion, and the result of roll call being all Yeas, the Mayor declared the motion carried.

Joel Hansen, Zoning Administrator, brought forward new language concerning the Parking Ordinance that was tabled at the last meeting. He thought this addressed the issue of new construction. That language is as follows:

*(b) Minimum off-street parking and loading requirements.* Off-street motor vehicle parking and loading space shall be provided on any lot on which any of the indicated structures and uses are

hereafter established. **These requirements are thus only applicable to construction of a new structure (regardless of whether or not another building previously existed on the property), when a structure's use changes from one use (as listed in the "Schedule of Minimum Off-Street Parking and Loading Requirements" in this chapter) to another, or to any existing multiple family structure to which an addition is constructed that results in more dwelling units than existed prior to the addition.**

In addition, a change was made to the table inset: Residential Structures (multiple family & townhouse).

Councilmember Sievers introduced Ordinance 2012-60, and moved for approval thereof; Councilmember Ley seconded.

#### ORDINANCE NO. 2012-60

AN ORDINANCE AMENDING WAYNE MUNICIPAL CODE CHAPTER 90, ARTICLE VIII, BY AMENDING SECTION 90-710(c) PARKING OR DRIVEWAY SURFACES, INTERIOR OF THE LOT BY; AND BY ADDING SUBPARAGRAPH (f) DESIGN STANDARDS FOR PARKING LOTS; TO PROVIDE FOR THE REPEAL OF CONFLICTING ORDINANCES OR SECTIONS; AND TO PROVIDE FOR AN EFFECTIVE DATE.

Mayor Chamberlain stated the motion, and the result of roll call being all Yeas, the Mayor declared the motion carried.

Councilmember Sievers made a motion and Councilmember Brodersen seconded to suspend the statutory rules requiring ordinances to be read by title on three different days. Mayor Chamberlain stated the motion, and the result of roll call being all Yeas, the Mayor declared the motion carried.

Councilmember Sievers made a motion and Councilmember Brodersen seconded to move for final approval of Ordinance No. 2012-60. Mayor Chamberlain stated the motion, and the result of roll call being all Yeas, the Mayor declared the motion carried.

Councilmember Ley introduced Ordinance 2012-61, and moved for approval of the second reading thereof; Councilmember Brodersen seconded.

#### ORDINANCE NO. 2012-61

AN ORDINANCE TO AMEND WAYNE MUNICIPAL CODE CHAPTER 78, ARTICLE III, PARKING, BY ADDING SECTION 78-143 RESTRICTED PARKING FROM 7:00 A.M. TO 9:00 A.M., MONDAY THROUGH FRIDAY; TO PROVIDE FOR THE REPEAL OF CONFLICTING ORDINANCES AND SECTIONS; AND TO PROVIDE FOR AN EFFECTIVE DATE.

Mayor Chamberlain stated the motion, and the result of roll call being all Yeas, the Mayor declared the motion carried.

Councilmember Sievers made a motion and Councilmember Ley seconded to suspend the statutory rules requiring ordinances to be read by title on three different days.

Councilmember Giese preferred not waiving the three reading requirement since school would not be in session at the time of the next Council meeting.

Mayor Chamberlain stated the motion, and the result of roll call being all Yeas, with the exception of Councilmember Giese who voted Nay, the Mayor declared the motion carried.

Councilmember Sievers made a motion and Councilmember Ley seconded to move for final approval of Ordinance No. 2012-61. Mayor Chamberlain stated the motion, and the result of roll call being all Yeas, with the exception of Councilmember Giese who voted Nay, the Mayor declared the motion carried.

City Attorney Miller reviewed the changes they are recommending be made to the ATV Ordinance. Those changes, which are under the Section entitled "Additional R requirements are:

- The ATV's must be registered every year.
- There is a \$25 operating fee for anyone operating the ATV.
- The vehicle license shall be renewed no later than April 1<sup>st</sup> of each year. You can license the vehicle at any time, and the same would be prorated to April 1<sup>st</sup>.
- A person shall renew his or her annual registration within 30 days prior to the licensed date of expiration. Each and every owner of an ATV or a utility vehicle shall possess an ATV operator's permit and carry said permit on his or her person while in operation of the ATV.

Every person that wants to operate the ATV also has to renew their operator's permit every year as well.

Councilmember Ley introduced Ordinance 2012-62, and moved for approval thereof, including those changes recommended by the City Attorney's office; Councilmember Giese seconded.

#### ORDINANCE NO. 2012-62

AN ORDINANCE AMENDING WAYNE MUNICIPAL CODE, CHAPTER 78 BY ADDING ARTICLE VII. TO ALLOW THE OPERATION OF ALL TERRAIN VEHICLES AND UTILITY-TYPE VEHICLES WITHIN THE CORPORATE LIMITS UNDER CERTAIN CIRCUMSTANCES; TO IMPOSE RESTRICTIONS ON THE USE OF ALL-TERRAIN VEHICLES AND UTILITY-TYPE VEHICLES; TO ESTABLISH PENALTIES FOR VIOLATION; TO REPEAL CONFLICTING ORDINANCES AND SECTIONS; AND TO PROVIDE AN EFFECTIVE DATE.

Police Chief Chinn advised the Council that there are only eight ATV's registered at this time.

Mayor Chamberlain stated the motion, and the result of roll call being all Yeas, with the exception of Councilmember Alexander who voted Nay, the Mayor declared the motion carried. The second reading will take place at the next Council meeting.

Administrator Johnson stated a change order has been received on the Benscoter Addition – Phase 1 Paving and Utility Improvement Project in the amount of \$7,310.98.

Councilmember Alexander questioned the remobilization charges (\$3,500) on the change order, and the delay charges of \$4,280.

Administrator Johnson reminded Council that these additional costs are billed to the Improvement District, not the City, as an assessment. The City's share of this \$3,500

would be about \$525, the hotel's share would be around \$350, and the remainder would be assessed to Benscoter.

Garry Poutre, Supt. of Public Works & Utilities, stated when Sioux City Engineering came to Wayne, the project was not ready for them. This was due to a change in the grading (raising it up by 2'). When that decision was made, Sioux City Engineering took their grading machine off site and went to another project to work. There were also some things that weren't anticipated, such as the driveway at the Villa, and the fact that 4<sup>th</sup> Street went farther west than what was originally planned because of the storm sewer.

Councilmember Alexander stated he did not want this project to cost the City any more than it already has. It was bid out to be \$281,734 and now it's at \$316,473.

Councilmember Ley made a motion, which was seconded by Councilmember Giese approving Change Order No. 2 (Final) — \$7,310.98 for the Benscoter Addition – Phase 1 Paving and Utility Improvement Project. Mayor Chamberlain stated the motion, and the result of roll call being all Yeas, the Mayor declared the motion carried.

Administrator Johnson stated a pay request has been received from Sioux City Engineering Company for the Benscoter Addition – Phase I Paving Project in the amount of \$48,775.62. The engineer on the project has approved the same.

Councilmember Brodersen made a motion, which was seconded by Councilmember Ley, approving Certificate of Payment No. 3 (Final) for the Benscoter Addition – Phase 1 Paving Project in the amount of \$48,775.62 to Sioux City Engineering Company. Mayor Chamberlain stated the motion, and the result of roll call being all Yeas, the Mayor declared the motion carried.

Administrator Johnson stated a change order has been received on the Western Ridge Paving – Phase II Project in the amount of \$950.98. This is an adjustment for final paving quantities.

Councilmember Alexander made a motion, which was seconded by Councilmember Giese, approving Change Order No. 1 for the Western Ridge Paving – Phase II Project. Mayor Chamberlain stated the motion, and the result of roll call being all Yeas, the Mayor declared the motion carried.

Administrator Johnson stated a pay request has been received from Luxa Construction for the Western Ridge Paving – Phase II Project in the amount of \$8,084.21. The engineer on the project has approved the same and this is the final payout.

Councilmember Alexander made a motion, which was seconded by Councilmember Ley approving Certificate of Payment No. Final for the Western Ridge Paving – Phase II Project in the amount of \$8,084.21 to Luxa Construction. Mayor Chamberlain stated the motion, and the result of roll call being all Yeas, the Mayor declared the motion carried.

Mayor Chamberlain requested Council consideration to the appointment of Councilmembers Giese, Haase and Muir to the Audit Committee.

Councilmember Alexander made a motion, which was seconded by Councilmember Brodersen, approving the appointment of Councilmembers Giese, Haase, and Muir to the Audit Committee. Mayor Chamberlain stated the motion, and the result of roll call being all Yeas, the Mayor declared the motion carried.

Administrator Johnson stated that Agenda Item No. 26 has been pulled from the agenda.

Councilmember Brodersen made a motion, which was seconded by Councilmember Alexander, to adjourn the meeting. Mayor Chamberlain stated the motion, and the result of roll call being all Yeas, the Mayor declared the motion carried and the meeting adjourned at 7:17 p.m.

## CLAIMS LISTING JANUARY 2, 2013

4IMPRINT	PENCILS	228.12
AMERITAS LIFE INSURANCE	ANNUAL BASE FEE	2,530.91
APPEARA	LINEN & MAT SERVICE	102.79
AS CENTRAL SERVICES	TELECOMMUNICATION SERVICE	448.00
BANK FIRST	FRATERNAL ORDER OF POLICE DUES	150.00
BLACK HILLS ENERGY	GAS BILLS	586.19
BOMGAARS	FD-BOLTS/HINGE/WHEEL/TAPE	108.06
CECILIA MODRELL	LETTER TRANSLATION	60.00
CITY EMPLOYEE	HEALTH REIMBURSEMENT	1,940.82
CITY OF WAYNE	PAYROLL	58,731.05
CITY OF WAYNE	REFRING	180.00
COMMUNITY HEALTH	HEALTH CHARITIES-PAYROLL DEDUCTION	3.00
DEARBORN NATIONAL LIFE	VFD INSURANCE	106.64
DHHS	10 <sup>TH</sup> STREET-REVIEW PROCESS	399.48
ECHO GROUP INC JESCO	BALLAST	48.13
EISENBRAUN & ASSOC.	10TH ST DESIGN	4,212.00
ELLIS PLUMBING & HEATING	FAUCET SENSOR	188.00
FLOOR MAINTENANCE	TISSUE/CLEANER	109.20
CITY EMPLOYEE	HEALTH REIMBURSEMENT	166.45
GENO'S STEAKHOUSE	APPRECIATION DINNER	4,173.76
GLEN'S AUTO BODY	DOOR BUSHING REPAIR	207.56
HANK'S FRONT END SERVICE	FREIGHTLINER ALIGNMENT	80.00
ICMA RETIREMENT TRUST	ICMA RETIREMENT	5,613.86
IRS	FEDERAL WITHHOLDING	19,297.54
JEO CONSULTING GROUP	LAGOON SLUDGE REMOVAL	1,094.05
KEPCO ENGRAVING	NAMEPLATES	11.90
KRIZ-DAVIS COMPANY	LIGHTS	203.68
LEAGUE OF NEBRASKA	W/W OP CONF-ECHTENKAMP/JUNCK	150.00
LUXA CONSTRUCTION	WESTERN RIDGE PAVING II	8,084.21
MAEDC	MEMBERSHIP RENEWAL-N BRADEN	300.00
MAIN STREET AUTO CARE	TOWING FEE	90.00
CITY EMPLOYEE	HEALTH REIMBURSEMENT	68.35
NE DEPT OF REVENUE	STATE WITHHOLDING	3,070.21
NE HARVESTORE	BRUSHES	559.34
NE PUBLIC HEALTH ENVIRONM	NITRATES/COLIFORM TESTING	355.00
NIFA	REGISTRATION-L JOHNSON	100.00
NORTHEAST NE PUBLIC POWER	ELECTRICITY	3,670.00
NWOD	MEMBERSHIP RENEWAL-JUNCK	10.00
PRESTO X COMPANY	PEST CONTROL	105.01
SIOUX CITY ENGINEERING	BENSCOTER ADDITION-PAVING	48,775.62
SKARSHAUG TESTING LAB INC	CLEAN & TEST GLOVES	134.94
STATE NATIONAL BANK	PETTY CASH	499.63
TOM'S BODY & PAINT SHOP	SEAT BUCKLE	22.00
TOP SAFETY	SUBSCRIPTION RENEWAL	138.60
TRANS-IOWA EQUIPMENT, INC	SHEAVE	65.20
UNITED STATES PLASTIC	VINYL HOSE/CAP/JUG	125.63
VAKOC BUILDER'S RESOURCE	TILE	49.40
VERIZON WIRELESS SERVICES	CELL PHONES	222.10
VESSCO INC	FILTERS	450.05
VIC'S ENGINE SERVICE	CHAIN	79.95
WARREN GARAGE DOOR, INC	GARAGE DOOR REPAIR	296.00
WAYNE AREA ECONOMIC DEVEL	CHAMBER BUCKS	25.00
CITY EMPLOYEE	VISION REIMBURSEMENT	86.00

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City of Wayne  
PO Box 8  
Wayne, NE 68787

NORTHEAST NEBRASKA  
INSURANCE AGENCY, INC.  
111 WEST 3<sup>RD</sup>, PO Box 100  
WAYNE, NE 68787 - 0100  
(402)375-2696

12-27-12

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DATE	DESCRIPTION	PREMIUM	BALANCE
1/4/2013 - 1/4/2014	Business Package		
	Inland Marine	\$ 4,538.00	
	Automobile	\$ 21,198.00	
	Workers' Compensation	\$ 74,544.00	
	Umbrella	\$ 15,641.00	
	Other-Property	\$ 64,523.00	
	Commercial Output	\$ 47,662.00	
	General Liab. OC	\$ 17,083.00	
	Government Crime	\$ 858.00	
	Linebacker	\$ 3,827.00	
	Law Enforcement	\$ 3,028.00	
	Total Premium	\$252,902.00	

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## Betty McGuire - Auditorium Basketball Hoops

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**From:** Alex Koch  
**To:** Lowell Johnson  
**Date:** 12/21/2012 2:07 PM  
**Subject:** Auditorium Basketball Hoops  
**CC:** Betty McGuire

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Lowell,

I would like to get on the minutes for the next council meeting. I am wanting to put some permanent hoops in the auditorium. From October until the end of February we use the auditorium at least 3 nights a week for 3 hours at a time. The hoops we have in there now are a bit of a safety issue and a hassle to move when other events come in for usage. These permanent hoops are 1700 a piece. Kelby Herman is generous enough to donate the money for one of them. The rest will be paid by revenue from the basketball tournament in February. There is a possibility I will not be able to attend the next council meeting. If so I will have a member of the rec commission there along with Lee Stegemen the head of the basketball association in town.

Thanks

Alex Koch  
Wayne Rec Director  
901 W 7th St  
Wayne, NE 68787  
Office: 402-375-4803  
Cell: 402-369-6206

**RESOLUTION NO. 2013-1**

**A RESOLUTION ACCEPTING WORK ON THE “2012 LAGOON SLUDGE REMOVAL AND APPLICATION PROJECT” AND AUTHORIZING FINAL PAYMENT THERETO.**

WHEREAS, on the 18<sup>th</sup> day of September, 2012, the City of Wayne approved Resolution No. 2012-73 awarding the contract on the “2012 Lagoon Sludge Removal and Application Project” to DRT Biosolids, Inc.; and

WHEREAS, the contract has been completed according to the terms and specifications of the plans and specifications and according to the report of the project engineer, JEO Consulting Group, Inc.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of Wayne, Nebraska, that the “Recommendation of Acceptance” by the project engineer, JEO Consulting Group, Inc., for the work on the “2012 Lagoon Sludge Removal and Application Project” be and the same is hereby accepted.

BE IT FURTHER RESOLVED, by the Mayor and Council of the City of Wayne, Nebraska, that the City Administrator is authorized to make final payment to the contractor, including the retainage, pursuant to the project contract.

PASSED AND APPROVED this 2<sup>nd</sup> day of January, 2013.

THE CITY OF WAYNE, NEBRASKA

By \_\_\_\_\_  
Mayor

ATTEST:

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



December 19, 2012



Mayor Ken Chamberlain and Council  
City of Wayne, NE  
PO Box 8  
Wayne, NE 68787

RE: Wayne, NE  
2012 Lagoon Sludge Removal and Application  
JEO Project No. 120635

Dear Mr. Chamberlain and Council:

Previously it was indicated that 10% of the project contract funds were recommended to be withheld until final paperwork was completed. This paper work is now complete; therefore a final pay request is being submitted by the Contractor. This releases the retainage being held and closes the contract with the Contractor.

JEO recommends approval in the amount of \$17,500. Enclosed is a copy of the pay application for your consideration. Also enclosed is the Recommendation of Acceptance for the project.

A final report is being prepared for the City's files documenting the sludge activity. I have reviewed draft reports from our subconsultant and final editorial changes are being made. This should be available by January for the City's file. If you have any questions or comments, please feel free to contact me at your convenience.

Sincerely,

A handwritten signature in blue ink that reads 'Roger S. Protzman'.

Roger S. Protzman  
Senior Project Engineer

RSP:skw  
Enclosures

Pc: Garry Poutre, Utility Superintendent

120635LTR121912a-payapp2.docx

**APPLICATION FOR PAYMENT NO. 2 (Final)**

To: City of Wayne, Nebraska  
 From: DRT Biosolids, Inc.  
 Contract For: 2012 Lagoon Sludge Removal and Application  
 ENGINEER's Project No. 120635  
 For Work accomplished through the date of: November 13, 2012

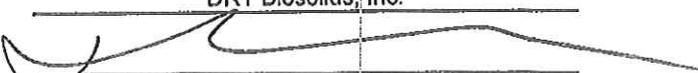
1. Original Contract Price:	\$ 175,000.00
2. Net change by Change Orders and Written Amendments (+ or -):	
3. Current Contract Price (1 plus 2):	\$ 175,000.00
4. Total completed and stored to date:	\$ 175,000.00
5. Percent of Project Completed <u>100%</u>	
6. Retainage (per agreement):	
<u>0%</u> of completed Work and Stored Materials:	\$ -
(10% of the first 50% of work completed & stored)	
Total Retainage:	\$ -
7. Total completed and stored to date less retainage (4 minus 6):	\$ 175,000.00
8. Less previous Application for Payments:	\$ 157,500.00
<b>9. DUE THIS APPLICATION (7 MINUS 8):</b>	<b>\$ 17,500.00</b>

Accompanying Documentation:

CONTRACTOR'S Certification:

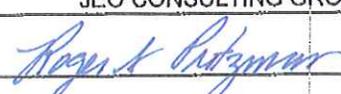
The undersigned CONTRACTOR certifies that (1) all previous progress payments received from OWNER on account of Work done under the Contract referred to above have been applied on account to discharge CONTRACTOR's legitimate obligations incurred in connection with Work covered by prior Applications for Payment numbered 1 through 1 inclusive; (2) title of all Work, materials and equipment incorporated in said Work or otherwise listed in or covered by this Application for Payment will pass to OWNER at time of payment free and clear of all Liens, security interests and encumbrances (except such as are covered by a Bond acceptable to OWNER indemnifying OWNER against any such Lien, security interest or encumbrance); and (3) all Work covered by this Application for Payment is in accordance with the Contract Documents and not defective.

Dated: 12-18-12

By:   
 DRT Biosolids, Inc.

Payment of the above AMOUNT DUE THIS APPLICATION is recommended.

Dated: 12/19/12

By:   
 JEO CONSULTING GROUP, INC.

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

Date: \_\_\_\_\_

ATTEST: City of Wayne, Nebraska

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

Title: \_\_\_\_\_

**CONTRACTOR'S PROGRESS ESTIMATE**

**Owner:** City of Wayne, Nebraska

**Date:** December 18, 2012

**Project:** 2012 Lagoon Sludge Removal and Application

**Estimate No.:** 2(Final)

**Contractor:** DRT Biosolids, Inc.

**JEO Project No.:** 120635

ITEM NO.	CONTRACT QTY	UNIT	DESCRIPTION	QTY TO DATE	UNIT PRICE	TOTAL
<b>GROUP A</b>						
1	1944.44	DRY TONS	Lagoon Sludge Removal and Application	1944.44	\$90.00	\$175,000.00
<b>TOTAL PROJECT COSTS</b>						<b>\$175,000.00</b>

**EXHIBIT "E"**  
**RECOMMENDATION OF ACCEPTANCE**

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DATE OF ISSUANCE: November 13, 2012

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OWNER: City of Wayne, Nebraska

CONTRACTOR: DRT Biosolids, Inc.

Contract: 2012 Lagoon Sludge Removal and Application, Wayne, Nebraska

Project: 2012 Lagoon Sludge Removal and Application

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OWNER's Contract No.: \_\_\_\_\_

ENGINEER's Project No.: 120635

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This Recommendation of Acceptance applies to all Work under the Contract Documents or to the following specified parts thereof:

To: City of Wayne, Nebraska  
OWNER

And To: DRT Biosolids, Inc.  
CONTRACTOR

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The Work to which this Recommendation of Acceptance applies has been inspected by authorized representatives of OWNER, CONTRACTOR and ENGINEER, and that Work is hereby declared to be complete in accordance with the Contract Documents on 11/15/12, expressly subject to the provisions of the related Agreement documents and the terms and conditions set forth herein.

**CONDITIONS OF RECOMMENDATION OF ACCEPTABILITY OF WORK**

The Recommendation of Acceptability of Work ("Recommendation") on the front side of this sheet is expressly made subject to the following terms and conditions to which all persons who receive said Recommendation and rely thereon agree:

1. Said Recommendation is given with the skill and care ordinarily used by members of the engineering profession practicing under similar conditions at the same time and in the same locality.
2. Said Recommendation reflects and is an expression of the professional judgment of ENGINEER.
3. Said Recommendation is given as to the best of ENGINEER's knowledge, information, and belief as of the date hereof.
4. Said Recommendation is based entirely on and expressly limited by the scope of services ENGINEER has been employed by OWNER to perform or furnish during construction of the Project (including observation of the CONTRACTOR's work) under ENGINEER's Agreement with OWNER and under the Construction Contract referenced herein, and applies only to facts that are within ENGINEER's knowledge or could reasonably have been ascertained by ENGINEER as a result of carrying out the responsibilities specifically assigned to ENGINEER under ENGINEER's Agreement with OWNER and the Construction Contract referenced herein.

5. Said Recommendation is not a guarantee or warranty of CONTRACTOR's performance under the Construction Contract referenced herein nor an assumption of responsibility for any failure of CONTRACTOR to furnish and perform the Work thereunder in accordance with the Contract Documents. The responsibilities between OWNER and CONTRACTOR for security, operation, safety, maintenance, heat, utilities, insurance and warranties and guarantees shall be as follows:

OWNER: Responsible for security, operation, safety and maintenance.

CONTRACTOR: Responsible for the one-year warranty and guarantee shall commence to run as of the date of acceptance by the OWNER shown below.

The following documents are attached to and made a part of this Recommendation of Acceptance:

This Recommendation of Acceptance does not constitute an acceptance of Work not in accordance with the Contract Documents nor is it a release of CONTRACTOR's obligation to complete the Work in accordance with the Contract Documents.

Executed by ENGINEER on 12-19-12  
Date

JEO Consulting Group, Inc.  
ENGINEER

By: *Robert Rodriguez*  
(Authorized Signature)

CONTRACTOR accepts this Recommendation of Acceptance on 12-18-12  
Date

DRT Biosolids, Inc.  
CONTRACTOR

By: *[Signature]*  
(Authorized Signature)

OWNER accepts this Recommendation of Acceptance on \_\_\_\_\_  
Date

City of Wayne, Nebraska  
OWNER

By: \_\_\_\_\_  
(Authorized Signature)

## MEMORANDUM OF UNDERSTANDING

This **MEMORANDUM OF UNDERSTANDING** (the “**MOU**”) is made and entered into this \_\_\_ day of January, 2013, between the City of Wayne, Nebraska (the “**City**”), the Community Development Agency of the City of Wayne, Nebraska (the “**Agency**”), and \_\_\_\_\_ LLC, a Nebraska limited liability company (the “**Company**”).

**WHEREAS**, the Company has indicated an interest in developing certain real property in the City legally described on Exhibit A (the “**Property**”) and constructing a commercial building thereon (the “**Project**”);

**WHEREAS**, upon completion, the Company intends to operate a retail business on the Property; and

**WHEREAS**, the City and the Agency find it in the public interest to consider any future request for tax increment financing (TIF) to promote the development of business activity in the City.

**NOW, THEREFORE**, the parties hereby set forth their understanding in regard to improvements that the Company will make prior to any request for TIF but which shall be eligible for reimbursement from proceeds of a future TIF bond issue:

1. *Definitions.* Capitalized terms used in this MOU shall have the meanings assigned herein.

2. *Company's Obligations.* Upon execution of this MOU, the Company may proceed with the following actions:

a. *Development of Project.* The Company agrees to use its best efforts to acquire the Property and commence construction on the Project no later than June 1, 2013.

b. *Maintain or Create Jobs.* The Company agrees to use its best efforts to maintain or create new retail jobs within the City.

c. *Indemnification.* The Company agrees to indemnify and hold the Agency and the City, their employees, agents, independent contractors and consultants harmless from and against any and all suits, claims, costs of defense, damages, injuries, liabilities, costs and/or expenses, resulting from, arising out of, or in any way connected with this MOU.

3. *City's and Agency's Obligations.* The Agency shall consider, after appropriate proceedings as required by law, authorizing tax increment financing to make a grant to pay costs eligible for reimbursement as redevelopment project costs as defined by Neb. Rev. Stat. 18-2103(12), including Property acquisition and preparation for redevelopment. Such grant shall be

payable only from Agency funds generated by the Property pursuant to Neb. Rev. Stat. 18-2147(1)(b). The Agency and the City in entering into this MOU are in no manner binding themselves to utilize TIF for the project. The Agency and/or the City, without any liability to the Company, may ultimately decline to utilize TIF for the project, and if either or both do so, the Company shall have no claim against the Agency or the City. The Company knowingly and intelligently accepts its own risk in purchasing the Property or commencing site preparation prior to the Agency's approval of TIF.

4. *Economic Feasibility.* The Company hereby declares to the City and the Agency that development of the Project constitutes a commercial real estate venture being considered by the Company in difficult economic times in which obtaining both equity capital and debt financing for the costs of the Project depend upon an overall analysis of the cash flow requirements related to the Project and that without the reduction in cash flow requirements expected to result from tax increment financing, the Project is not economically feasible and the Project will not occur in the proposed community redevelopment area without the use of tax-increment financing. The accommodation of the City's requirements for obtaining the means to acquire the site and invest in site preparation at the Company's initial cost or investment of funds, will not alter the Company's determination, based upon its analysis of cash flow requirements, not to construct the Project in the proposed location unless tax increment financing is ultimately provided by the City and the Agency. Neb. Rev. Stat. 18-2116(1) requires the City to make findings as follows if a TIF application requests the use of funds as described in Section 3 above: (i) the Project would not be economically feasible without the use of tax-increment financing, (ii) the Project would not occur in the redevelopment area without the use of tax-increment financing. Due to the proposed construction schedule of the Project and the impact of weather concerns on such schedule, the Company desires to purchase the Property immediately. The purpose of this MOU is to make clear the parties intention to consider as eligible for TIF funding if, and only if, the Agency approves TIF for the project even if the Property is acquired prior to the approval of TIF by the Agency or the City. The parties hereto agree that if the Property is acquired prior to the approval of TIF, if approved at all, the cost for site acquisition will remain eligible for reimbursement from a grant from TIF funds.

5. *Counterparts.* This MOU may be executed in two or more counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument. The parties may execute this MOU and all other agreements, certificates, instruments and other documents contemplated by this MOU and exchange the counterparts of such documents by means of facsimile transmission. The parties agree that the receipt of such executed counterpart shall be binding on such parties and shall be construed as originals.

6. *Time.* This MOU and all obligations contained herein shall terminate September 1, 2013.

7. *Governing Law.* This MOU shall be governed by the laws of the State of Nebraska.

**COMMUNITY DEVELOPMENT AGENCY  
OF THE CITY OF WAYNE, NEBRASKA**

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

**CITY OF WAYNE, NEBRASKA**

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

\_\_\_\_\_, LLC

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

DRAFT

Exhibit A  
Property Legal Description

DRAFT