

**AGENDA
CITY COUNCIL MEETING
January 19, 2010**

5:30 Call to Order

1. Approval of Minutes – January 5, 2010

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. Resolution 2010-2: Approving Letter Agreement for Professional Services with Olsson Associates for City of Wayne Improvements, Bencoter Addition “Project”

Background: Wayne customarily allows developers to select their own project engineer. The Bencoter Subdivision has been designed by Olsson Associates at the cost of the developers, Louis and Javanah Bencoter. The developers plan to pave Tomar Street and a portion of 4th Street in 2010, and install the storm water system and the water and sewer lines. The engineering and construction costs for the intersections and street paving that fronts city-owned property are of public benefit and are the “General Obligation” costs of the city. These areas are marked in green on the subdivision map that is attached. This agreement with Olsson Associates authorizes OA to also be the engineer for the city’s portion of the project and sets the hourly rate billed to the city for the engineering for the “General Obligation” portion of the project. An engineer from Olsson Associates will be at the Council meeting to provide you an update on the project and answer questions.

Attachments: Bencoter Subdivision map
Olsson Associates Agreement for Engineering Services

Recommendation: The recommendation of the City Administrator and the Certified Street Superintendent is to accept the developers’ selection of OA as the project engineer and to approve the agreement for services on a per hour rate as needed.

4. Resolution 2010-3: Establishing Sewer Rates

Background: The engineer’s estimate of the total cost to build the wastewater plant is \$8.5 million. The EPA grant will cover \$500,000 of that cost, and we plan to use \$1 million in accumulated cash reserves from the sewer and water utility operations. That leaves \$7 million remaining to be financed through the

Nebraska State Revolving Loan Fund over 20 years at 3% interest. The debt service required to repay this over 20 years will be about \$500,000 per year. The Nebraska Rural Water Association provides cost-of-service rate studies for member cities, and we have asked them to provide several sewer rate options for your consideration to collect the \$500,000 per year.

The revenue source options we will be proposing to you have been mentioned before and are as follows:

- 1) Increase sewer rates by \$500,000 per year;
- 2) Use a combination of \$350,000 per year from increased sewer rates, plus \$150,000 per year from water rates (no increase required for water); or
- 3) Use a combination of \$250,000 per year from sewer rates, \$150,000 per year from water rates, and \$100,000 per year from sales tax revenues for the first 14 years.

The fee allocation options for higher sewer rates are:

- 1) Raise the monthly fixed sewer charge on each sewer bill to pay for the new plant regardless of how much water you use;
- 2) Raise the rate per 1,000 gallons on the sewer bill so that the more you use, the more you pay; or
- 3) A combination of both 1 & 2.

We calculate the gallons of sewer usage based on the amount of water run through the house meter each month. This is less accurate in the summer season when some people water gardens and lawns, and that water doesn't go into the sewer. In the past, Wayne property owners were offered the option of separate irrigation meters to bill the irrigation water use separately so it didn't affect their sewer bill. However, the failure rate of the irrigation meters has proven to be very high and costly, because the meter indicator needles stick and break after long periods of non-use in the off season. As a result, we have been requiring people to take these meters out as they break down. A common practice by many cities is to average the monthly water usage in December, January and February for every residential sewer bill each year and use that average for billing the next twelve months. That is the method that the Rural Water Association has used to prepare these options for you to review.

A representative from Nebraska Rural Water Association will be at meeting to present the Rate Options for your review.

Attachments: Sewer Rate Options prepared for Wayne by Nebraska Rural Water Association.

Recommendation: No staff recommendation yet at this time.

[5. Ordinance 2010-2: Authorizing the Issuance of a Combined Utility Revenue Bond, 2010 Series in the Principal Amount of \\$1,050,00 in the form of a Promissory Note issued to Evidence Indebtedness to the Nebraska Department of Environmental Quality](#)

Background: This financing action covers the following water projects:

- 1) 2010 Water Main Looping Project;
- 2) 2009 Well #11 Project;
- 3) 2008 West Booster Pump Station Project; and
- 4) 2010 Muhs Acres Water Main Replacement Project.

We submitted these projects for Federal American Recovery and Reinvestment Act (Stimulus) funding. They were approved, the contracts were signed, and the financing for these projects has been bundled into one 20-year loan at 3% interest, with 25% thereof being forgivable.

Recommendation: Approval of this Ordinance is the last Council action required to finalize the stimulus funding and must be approved at this meeting to meet the accelerated federal stimulus funding timeline.

6. Resolution 2010-4: Authorizing City Clerk to File Snow Removal Lien on 204 W. 10th Street (First Tier)

Background: Our City Code requires all sidewalks to be cleared of snow within 24 hours of when the city crews have the streets cleared. Owners with sidewalks that aren't cleared after 24 hours are sent a certified notice to clear the walks. If the deadline in the notice is not met, our Code provides for the city to hire the walks to be cleared at the owner's cost. If the owner doesn't pay the bill, we forward the bill to you for Council action to file a lien on the property in the amount of the bill.

Recommendation: No staff recommendation. This action is the standard procedure established in the City Code

7. Resolution 2010-5: Authorizing City Clerk to File Snow Removal Lien on 120 W. 8th (Lisa Jeffers)

8. Resolution 2010-6: Authorizing City Clerk to File Snow Removal Lien on 215 W. Third Street (Best Assets –HUD)

9. Action Authorizing Staff to Meet with Wayne County Commissioners to Submit Joint Application to Apply for Owner-Occupied Rehab Funds through the Community Development Block Grant Program

Background: Wayne Community Housing and the City of Wayne have been successful for a number of years in securing CDBG Funds and Housing Trust Funds from the Nebraska Department of Economic Development (NDED) for housing development. Much of our housing stock is 80 years old or older and has not been maintained. These homes are starting to show up as Property Maintenance Code issues for the Wayne Problem Resolution Team (PRT). Are these homes built to make it 120 years old? What is the long-range outlook for our older neighborhoods?

As the PRT considers options for maintenance code enforcement on complaints received, the only current options are for the owners to fix the properties at their own cost or demolish them and clear the lot. For some structures, demolition is the best choice. Most are worth repairing.

There is \$200,000 in new “Owner Occupied Housing Rehab” grant funding available in 2010 through NDED if we submit a pre-application in February. That is grant funding that could provide loans of up to \$15,000 to home owners for repairs and energy reduction. However, Wayne is not eligible to apply until we have spent down more of the \$100,000 in unspent grant funds for down payment loans from the \$380,000 New Housing Construction Grant for Western Ridge. The Western Ridge down payment loans are dependent on future families buying homes at Western Ridge. Northeast Nebraska Economic Development District suggests that Wayne County is eligible to apply for an “Owner Occupied Housing Rehab” grant and those funds could then be available county-wide and not just in Wayne. Wayne Community Housing can administer this program for the County just as it does in their partnership with the City of Wayne.

The PRT would like to approach the Wayne County Commissioners about submitting an application in February, but because the PRT is appointed by the Mayor and Council, they want your input and approval before doing so.

10. [Action on Interlocal Agreement with the City of Laurel for Responsible Charge Services for their Trail Project](#)

Background: The additional new easement/property acquisition requirements and National Environmental Protection Act (NEPA) requirements to use the 80% federal funding for street and trail projects have proved to be extremely complex. As a result, the Nebraska Department of Roads (NDOR) has begun to require every city or county that uses NDOR funding to designate a city employee as the “Responsible Charge” (RC) and to be technically trained for following the new NDOR compliance regulations to prepare estimated cost projections, oversee the procurement of the engineering consultant, acquire any property or easements, project design, construction oversight, payments, contract documents and final approval. An indicator of the complexity and workload that this has also put on NDOR staff is that NDOR staff is so far behind in moving forward on existing projects such as the Wayne Phase II Trail Project that NDOR has put a one-year moratorium accepting any more applications for new projects until they get the existing ones moving. Additional new NDOR requirements for all projects is for the RC, with assistance from an engineer, to prepare an initial project cost estimate for NDOR funding approval for each new project, to have a different engineer to be procured for the project design, and to have a third engineer to be procured to oversee the project construction and review the design of the second engineer.

NDOR prohibits any engineering consulting firms from performing the role of RC because they consider engineers to be part of the problem in property acquisitions and project costs. Therefore, the local RC must be trained to oversee the engineers also. The local RC must be appointed by Council action for each specific project. By past Council Resolutions, you have designated Joel Hansen as the RC for Windom Street, Tenth Street, Phase II Trail and the Highway 35 Underpass that was officially approved for funding by the Governor’s office this week.

To get Joel trained as the RC for Wayne projects, we sent him to two weeks of NDOR certification training in 2009, and he spent another two weeks in on-line training and workshops required by NDOR to be certified. A number of

communities are looking for opportunities to share certified RC people, and Laurel has asked if they could join with us for a trail project for which they have NDOR cost-share funding. Olsson Associates is the engineer for both the Wayne Trail and the Laurel Trail Projects.

In the past, Norfolk has willingly assisted us with manpower when we needed certified water/wastewater coverage, and we have provided back-up coverage for Carroll and Winside as well. As municipal, county and school certification requirements get more complex and expensive in the future, I believe we will see a lot more sharing of expertise through area interlocal agreements. I have talked with Joel and with Lois about working with Laurel on this one project to see how it goes, and I have their approval. This will require Council action to approve an Interlocal Agreement to share services and be reimbursed for Joel's time.

***The Interlocal Agreement will be e-mailed out to you separately.**

Recommendation: Recommendation of the City Administrator is to try this agreement for one project to see how it works and to recover some of the cost of Joel's training and time.

- 11. [Report on Snow Storm — Lance Webster, Police Chief and Nancy Braden, Finance Director](#)

Background: The counties in the two recent snowstorm events have been declared disaster areas and eligible for FEMA (75% reimbursement of excess costs of handling the snow). Nancy and Garry's guys have documented Wayne's eligible excess costs, and they will be submitted jointly with the Wayne County losses to FEMA. Lois had already asked us to keep track of the costs of these storms, so our crews had already started documenting hours worked and hours of use for all the equipment, repairs, etc. Lance and the street crews have been working on ideas for where snow can be thrown to and how to uncover corners and sidewalks that we have buried. Public comments generally to the office are running about twenty compliments per one complaint for the street crews. Lois thought you would be interested in some of the information that Nancy and Lance have to share about the storms, and we're interested in what comments or questions you might have.

- 12. [Adjourn](#)

APPROVED AS TO FORM AND CONTENT:

Mayor

City Administrator

January 5, 2010

The Wayne City Council met in regular session at City Hall on Tuesday, January 5, 2010, at 5:30 o'clock P.M. Mayor Lois Shelton called the meeting to order with the following in attendance: Councilmembers Brian Frevert, Jim Van Delden, Jon Haase, Dale Alexander, Doug Sturm, Kaki Ley, and Ken Chamberlain; City Attorney Kyle Dahl; City Clerk Betty McGuire. Absent: Councilmember Kathy Berry; City Administrator Lowell Johnson.

Notice of the convening meeting was given in advance by advertising in the Wayne Herald on December 24, 2009, 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.

Councilmember Chamberlain made a motion and seconded by Councilmember Frevert, whereas the Clerk has prepared copies of the Minutes of the meeting of December 15, 2009, 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 Shelton 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: AMAZON, SU, 250.45; AMERITAS, RE, 4313.52; ANDREW PARKER, RE, 52.92; APPEARA, SE, 110.68; ARNIE'S FORD-MERCURY, SE, 119.58; BANK FIRST, FE, 420.00; BARB FREVERT, SE, 30.00; BLACK HILLS ENERGY, SE, 207.15; BMI, FE, 305.00; BNA BOOKS, SU, 236.50; BOMGAARS, SU, 26.16; CITY OF WAYNE, RE, 112.03; CITY OF WAYNE, RE, 10000.00; CITY OF WAYNE, RE, 1370.91; CITY OF WAYNE, RE, 137.00; CITY OF WAYNE, PY, 114909.93; CITY OF WAYNE, SU, 113.68; CITY OF WAYNE, RE, 38000.00; CITY OF WAYNE, RE, 60.58; CITY OF WAYNE, RE, 94.00; CIVICPLUS, SE, 14811.00; COMMUNITY HEALTH, RE, 8.00; DLT SOLUTIONS, SE, 565.27; DUTTON-LAINSON, SU, 598.21; ED M FELD EQUIPMENT, SU, 2500.00; ELECTRIC

FIXTURE, SU, 125.68; FLOOR MAINTENANCE, SU, 541.41; FORT DEARBORN, SE, 1666.02; FOX INTERNATIONAL, SU, 145.86; GALE GROUP, SU, 285.00; HEARTLAND FIRE PROTECTION, SE, 343.47; HIGHSMITH INC, SU, 51.41; ICMA, RE, 10734.72; IRS, TX, 37743.97; JACK'S UNIFORMS, SU, 1145.30; JEO CONSULTING GROUP, SE, 30839.24; LERNER PUBLISHING GROUP, SU, 34.95; M. K. ERVIN, SU, 3030.00; MAEDC, FE, 425.00; MARK CHRISTIANSEN, RE, 25.59; MARSHALL CAVENDISH, SU, 270.01; MIDWEST TAPE, SU, 358.90; NE DEPT OF REVENUE, TX, 5779.49; NE HARVESTORE, SU, 528.70; NE LAW ENFORCEMENT, FE, 50.00; NE NEB INS AGENCY, SE, 61937.00; NE PUBLIC HEALTH, SU, 267.00; NEDA, FE, 150.00; NIBM, SU, 77.00; NORTHEAST EQUIPMENT, RE, 450.00; N.E NE AMERICAN RED CROSS, SE, 15.00; OLSSON ASSOCIATES, SE, 3740.88; PETERSON THERAPY SERVICES, SE, 2857.20; PITNEY BOWES, SU, 637.00; POSTMASTER, SU, 653.66; QUALITY BOOKS, SU, 69.39; QUILL, SU, 232.50; QWEST, SE, 427.10; SPAN PUBLISHING, SU, 144.00; STADIUM SPORTING GOODS, SU, 48.00; STANLEY SECURITY SOLUTION, SU, 63.01; STEVE HARRIS CONSTRUCTION, SE, 70332.34; UNITED STATES PLASTIC, SU, 89.59; VERIZON, SE, 140.85; WAYNE COUNTRY CLUB, SU, 1620.30; WAYNE STATE COLLEGE, RE, 1500.00; WAYNE STATE, RE, 100.00; ALL-AMERICAN PUBLISHING, SE, 215.00; AMERICAN BACKFLOW, SU, 70.00; AMERITAS, RE, 580.00; ARNIE'S FORD-MERCURY, RE, 1275.08; AS CENTRAL SERVICES, SE, 448.00; ASCAP, FE, 310.50; BINSWANGER GLASS, SU, 1000.84; BLACK HILLS ENERGY, SE, 909.04; BOARD OF EXAMINERS, FE, 10.00; BOMGAARS, SU, 998.15; CALIFORNIA CONTRACTORS, SU, 82.19; CARHART LUMBER COMPANY, SU, 549.61; CENTER FOR PREPAREDNESS, SE, 40.00; CHARTWELLS, SE, 4721.40; CITY OF WAYNE, RE, 2918.61; CITY OF WAYNE, RE, 2499.12; COPY WRITE, SE, 164.68; DUTTON-LAINSON, SU, 652.40; ELECTRIC FIXTURE, SU, 126.45; FREDRICKSON OIL, SU, 132.00; GILL HAULING, SE, 2118.90; GLEN'S AUTO BODY, RE, 65.90; HAUFF MID-AMERICAN SPORTS, SU, 25.00; JOHNSON FEED, SE, 250.00; KELLY SUPPLY, SU, 525.25; LIGHT & SIREN, SU, 590.45; LONGE, MELODIE, RE, 315.00; LP GILL, SE, 5163.34; MAIN STREET AUTO CARE, SE, 240.00; MARK McCRIGHT, RE, 500.00; MATT FRIEND TRUCKING, SU, 4315.00; MERCY MEDICAL CLINIC, SE, 106.00; MIKE TOWNE, SE, 800.00; MOONLIGHT TOWING, SE, 191.70; N.E. NEB ECONOMIC DEV DIS, SE, 4779.76; NIAGARA CONSERVATION CORP, SU, 1480.26; N.E. NE AMERICAN RED CROSS, RE, 59.24; NNPPD, SE, 2842.71; OTTE, GERALD, RE, 207.54; PAC N SAVE, SE, 1603.71; PAMIDA, SU, 235.85; PIEPER, MILLER & DAHL, SE, 1313.50; PLUNKETT'S PEST CONTROL, SE, 40.00; PROVIDENCE MEDICAL CENTER, SE, 65.00; QUALITY FOODS, SU, 48.69; QUILL, SU, 17.09; QWEST, SE, 163.24; S & S WILLERS, SU, 594.22; SEWER-MATIC, SE, 3700.00; SKARSHAUG TESTING, SE, 91.45; STATE STEEL SUPPLY, SU, 1506.43; UNITED WAY, RE, 32.32; VERIZON, SE, 671.50; VIAERO, SE, 72.33; WATERLINK, SE, 1053.42; WAER, RE, 6383.33; WAYNE CO SHERIFF, RE, 154.50; WHITE DOG LAWN SERVICE, SE, 350.00; WOOD PLUMBING & HEATING, SU, 25.00; ZACH OIL COMPANY, SU, 10407.32

Staff was directed to take the cost of the mirrors at the Community Activity Center out of the building fund budget in lieu of the general fund budget.

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

Mayor Shelton 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, she 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.

Mayor Shelton declared the time was at hand for the public hearing on the Engineering Report for the Construction of a Wastewater Treatment Facility as required for State Revolving Loan Funding from the Nebraska Department of Environmental Quality and other funding agencies.

Roger Protzman of JEO Consulting Group, the City's engineer on the project, advised the Council that the purpose of the public hearing is to allow the public to have a voice in the environmental impact of the proposed improvements to the wastewater treatment plant facility. This public hearing is very similar to the one that the City held as a requirement for the EPA funding; only now we are doing it for the Nebraska Department of Environmental Quality funding. All of the existing environmental solicitation letters are applicable here. The main comment received was from the U.S. Fish and Wildlife Association regarding the possible depletion issue on the Platte River,

and we were able to resolve that to their satisfaction. One of the others things that NDEQ wanted them to do was make sure they went over were the financing of the improvements. Originally we were looking at an \$8.5 million dollar project. The average user would have to pay in the neighborhood of \$41.00 a month to finance that debt. Since that time, the City has applied for and received an EPA grant. In addition, the City has decided they would contribute at least \$1 million dollars from the city sales tax to buy down the loan, thereby reducing the financing to about \$7 million dollars. JEO then ran some numbers using a 3% interest rate, and they came up with an average of \$35.46 per month. Staff is looking at other options to reduce the debt further. If the City would subsidize \$100,000 per year for 14 years, it would reduce the monthly user fee to \$31.07. If the City would subsidize \$250,000 per year for 14 years, it would reduce the monthly user fee then to \$24.50. Depending upon which options the City pursues in the financing will reflect what the user rates will be. How the City structures the rate is up to the Council (base charge and charge per thousand gallons).

It was noted that the Nebraska Rural Water Association is undertaking a rate study analysis for the City. They know which communities have upgraded their facilities and which communities have not upgraded their facilities. They will bring that perspective to the table as well.

Nancy Braden, Finance Director, advised the Council that the \$100,000 for 14 years would be from the City sales tax, and because this is a combined water and sewer system, staff is also recommending transferring \$150,000 from the water revenues for this project every year to help with the debt service (total subsidy would then be

\$250,000 per year for 14 years). For the remaining six years, only \$150,000 would be transferred, and the sewer rates would have to pick up the other \$100,000.

Mr. Protzman stated the \$8.5 million does not include the cost of moving the plant to a different location. They are in the process of finishing up the preliminary design, and their plan is to have a meeting with the staff to go over this and then discuss this with the Council at a subsequent meeting. It appears that there is going to be another round of stimulus funding, and they are trying to position themselves to go after some of that money as well for this project.

Mr. Protzman also advised the Council he ran another option taking the \$250,000 and applying it towards the principal rather than subsidizing the user rates, and if the user rates were kept at \$35.00 per month, the loan could be paid off in 14 years.

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

Cap Peterson with Northeast Nebraska Insurance Agency presented and reviewed the 2010 Property and Casualty Insurance Package. The 2010 premium is \$246,024, which is slightly lower than the 2009 premium. The City buildings and contents are insured at a 90% replacement value, with the exception of the power plant. The power plant building is insured at an agreed amount, which is \$28,324,200. The company provides and has done a risk management analysis of all city buildings, etc., at no cost. In addition, Mr. Peterson advised the Council that because of the safety programs initiated and the decline in workers compensation claims, the experience modification has dropped from 1.33 to 1.12. This represents a significant savings in the premium. Workers compensation represents approximately one-third of the total premium, which is not unusual. In addition, because the City is a policyholder, EMC offers what is called

“attorney access”, which allows up to 90 minutes of free legal consultation per calendar quarter.

Mr. Peterson, in response to Councilmember Haase’s inquiry, stated it is less expensive to insure the buildings and contents at 90% rather than at 80%. This idea was presented to the Council several years ago, and at that time, the Council did not want to change the percentage of coverage.

Councilmember Sturm made a motion and seconded by Councilmember Frevert approving the 2010 Property and Casualty Insurance Package with Northeast Nebraska Insurance Agency. Mayor Shelton stated the motion, and the result of roll call being all Yeas, the Mayor declared the motion carried.

Wes Blecke, Director of Wayne Area Economic Development, gave a report on the LB 840 Activity for the past six months. As of December 31, 2009, the Council has committed \$658,800 of the LB 840 Funds. Eight applications have been approved, of which 3 were performance-based loans, 3 were zero percent loans, and 2 were grants. Grants will not be paid back. The performance based loans are loans if the applicants do not meet the qualifications or benchmarks set forth by the committee. A little over 20% of the total LB 840 funds have already been committed. As the administrator of the program, it is his job to get the information out to potential businesses, organizations, and individuals that can utilize this money in some way. There is an Advisory Committee that reviews the applications and determines whether they are or are not going to forward a favorable recommendation to the Council. The Council makes the final determination. The Advisory Committee makes no decisions other than a recommendation to the Council.

Mr. Blecke also reviewed the matrix that the Committee uses to review the applications. There are ten different items that are looked at to either meet, somewhat meet or do not meet. They do not use a numbered scale to determine whether or not an application receives or does not receive a favorable recommendation. The projects that have come before them are so different that the Committee did not want to handcuff themselves by saying that the applicants had to meet a certain number to get funded. They have added a section regarding applications which provide for the expansion or enhancement of existing micro-enterprise (5 FTE's or fewer) business/entities in Wayne. The categories in the matrix can change if Council so desires.

Gary Boehle, who is also a member of the Committee, was present, and stated there are a lot of things happening in Wayne which is very positive, and the Committee has tried to be good stewards with the money.

Mayor Shelton stated with the economic situation we are in now, the fact that we have businesses that are interested in investing and coming to us for money speaks volumes.

Finance Director Nancy Braden stated the following Resolution would approve borrowing \$500,000 from the Electric Fund at 3% interest and transferring it to the LB 840 Fund to cash-flow and fund the LB 840 economic development projects that have been recommended by the Advisory Committee and approved by the Council. We do not have the funds collected yet from the LB 840 sales tax to disburse for the projects. The LB 840 plan allows us to borrow funds. The repayment schedule would be a five-year payback to the Electric Fund at 3% interest. If we were to go out and borrow the funds through bonds, we would be looking at a 4.5% interest rate. We are saving 1.5% to do

this internally. The City Sales Tax will pay back the 3% interest rate which is an allowable expense.

Councilmember Sturm stated for the record he did not like giving people free money and then paying interest on that money. You don't go very many places and get loans that don't require you to pay interest. He is not in favor of giving zero percent loans. In the future, it may be harder to convince him to give away money. He thought this was taking away sales tax money that could be loaned out. He does not like loaning money we don't have. He would prefer a very small payback in lieu of no interest loans. In addition, he did not believe the LB 840 money was going to be open to everybody, which is why he thinks the applicants should have to pay a small percentage back. If everybody that applied would get approved, then he could look at it differently, but some people will get a distinct advantage over other people. He felt it has happened with our Wayne Revolving Loan Fund and it is going to happen with this.

Mayor Shelton stated the interest is earning money in the electric fund. This was spelled out in the sales tax language and was approved. Some of the businesses who have received LB 840 money will be collecting or generating sales tax on items they will be selling. We have contributed to the overall expenses that they will be incurring to get the businesses up and running.

Councilmember Ley introduced Resolution No. 2010-1 and moved for its approval; Councilmember Chamberlain seconded.

RESOLUTION NO. 2010-1

A RESOLUTION OF THE LB 840 ECONOMIC DEVELOPMENT PLAN OF THE CITY OF WAYNE, NEBRASKA, AUTHORIZING THE BORROWING OF FUNDS FROM THE CITY OF WAYNE ELECTRIC FUND, WAYNE, NEBRASKA.

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

Discussion took place again on the Wage and Salary Schedule which had been tabled from the last meeting. Additional information was distributed to the Council.

Because Administrator Johnson was not at the meeting, Mayor Shelton read some of the comments he wanted to make:

- The wage scale is prepared using the league survey and was adjusted by a 2% cost of living increase.
- State Statute does state that municipalities shall set comparable wages and conditions for municipal employees.
- The scale that Council is looking at approving represents appropriate comparable pay ranges for comparable job descriptions. The scale is not based on people or job performance. It is based only on job descriptions.
- Pay ranges are for the standard comparable job descriptions.
- These changes do not mean that an employee will automatically go to the top of their range. Employees are placed on the scale based on job performance and years of service as they have always been.
- The budget for the wages is set, and it is Council's job to set the scale, but the Administrator's job to meet the budget.

In addition, in the Resolution there a couple of designations that were reversed: Chief of Electric Production and Power Plant Foreman should be reversed on the Labor Grade scale. The Power Plant Foreman should be a Labor Grade 21 and the Chief of Electric Production should be a Labor Grade 23.

The Building Inspector/Planner II position was moved from salary to hourly and placed in a Labor Grade 22.

It was explained that exempt status employees are salaried, and non-exempt status employees are paid hourly and subject to overtime. Exempt status employees do not get paid overtime or comp time.

Mayor Shelton advised the Council that she requested staff to put in the hourly rates next to the exempt salary monthly wages because she thought it would be easier for them to compare the non-exempt hourly wages with the exempt hourly wages. There are quite a few exempt employees that are making less than many of the hourly employees.

If an employee is at the top of their scale, they would receive a 2% cost of living increase. The scale was adjusted by 2%. If there is a comparable job at a higher pay rate, then the position could be moved on the scale which would then allow the employee some room to move. If an employee is not at the top of their scale, and they have a satisfactory performance evaluation, they could receive approximately a 4.55% increase, which includes the 2% cost of living increase. Job performance reviews are done annually on their anniversary dates, with the exception of the exempt status employees, which are done annually, usually in December.

Councilmember Alexander stated not all department heads work over 40 hours per week. In addition, he thought everyone that worked for the City had job security.

Councilmember Chamberlain stated there is job security until we have to squeeze another truck, etc., to make room for salaries.

Finance Director Braden stated that a lot of the departments have lost employees due to budget cuts. She also advised the Council that they use the mid-point of the comparability study, not the high.

Mayor Shelton advised the Council all they are doing are setting the pay ranges. They are not giving anybody an increase at this time. She noted that State Statutes require comparability, not the League of Nebraska Municipalities.

Councilmember Berry arrived at 6:55 p.m.

Councilmember Alexander made a motion and seconded by Councilmember Haase to table action on Resolution 2009-24 until the Council Retreat.

Mayor Shelton stated she did not think the Council Retreat was the proper venue for this discussion. She didn't understand what the issue was, because they were talking about salary ranges and not increases for any particular individual.

Councilmember Ley stated the Council is not comfortable making a decision at this time.

Councilmember Alexander stated by taking action at this time, they open it up and the salary ranges go right into effect. The Council opens that door to allow that to happen, and if we don't want it to happen, then we don't open that door. He wants more time to talk about it.

Councilmember Sturm opined he would prefer to table it to the next meeting rather than wait until the Council Retreat, because of the attendance at the Retreat.

Mayor Shelton stated the motion, and the result of roll call being all Yeas, with the exception of Councilmembers Sturm, Chamberlain and Frevert who voted Nay, the Mayor declared the motion carried.

Councilmember Sturm introduced Ordinance 2009-24, and moved for approval of the second reading thereof; Councilmember Frevert seconded.

ORDINANCE NO. 2009-24

AN ORDINANCE AMENDING CHAPTER 78, ARTICLE III, SECTION 78-96 LOCATION RESERVED FOR HANDICAPPED PARKING OF THE WAYNE MUNICIPAL CODE; TO PROVIDE FOR THE REPEAL OF CONFLICTING ORDINANCES OR SECTIONS; AND TO PROVIDE FOR AN EFFECTIVE DATE.

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

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

Councilmember Chamberlain made a motion and Councilmember Sturm seconded to move for final approval of Ordinance No. 2009-24. Mayor Shelton stated the motion, and the result of roll call being all Yeas, the Mayor declared the motion carried.

Mayor Shelton stated the following Ordinance would restrict parking (no parking midnight to 5:00 a.m.) on the south side of the Grace Lutheran Church (terrace parking). The exact amendment to the Code would read as follows:

The north side of the centerline of East Ninth Street from the east line of ~~Logan~~ Main Street east to the west line of Pine Heights Road.

Councilmember Chamberlain introduced Ordinance 2010-1, and moved for approval; Councilmember Sturm seconded.

ORDINANCE NO. 2010-1

AN ORDINANCE TO AMEND SECTION 78-127 OF CHAPTER 78, ARTICLE III, OF THE WAYNE MUNICIPAL CODE RELATING TO PARKING; RESTRICTED PARKING 12:00 MIDNIGHT TO 5:00 A.M.; NORTHEAST QUADRANT OF THE CITY; TO PROVIDE FOR THE REPEAL OF CONFLICTING ORDINANCES OR SECTIONS; AND TO PROVIDE FOR AN EFFECTIVE DATE.

Councilmember Chamberlain made a motion and Councilmember Sturm seconded to suspend the statutory rules requiring ordinances to be read by title on three

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

Councilmember Sturm made a motion and Councilmember Chamberlain seconded to move for final approval of Ordinance No. 2010-1. Mayor Shelton stated the motion, and the result of roll call being all Yeas, the Mayor declared the motion carried.

Mayor Shelton stated Amendment No. 1 to the agreement with Kirkham Michael for the Kardell Landfill Improvement Project will provide the construction engineering oversight to document that the work complies with the contract and to submit documentation back to the Nebraska Department of Environmental Control and the U.S. Army Corps of Engineers showing that the work is in compliance with their regulatory requirements.

Councilmember Frevert made a motion and seconded by Councilmember Alexander approving Amendment No. 1 to the Agreement with Kirkham Michael for professional construction engineering services for the Kardell Landfill Improvement Project. Mayor Shelton stated the motion, and the result of roll call being all Yeas, the Mayor declared the motion carried.

Mayor Shelton stated that Olsson Associates have submitted Certificate of Payment No. 1 on behalf of Robert Woehler & Sons Construction for the Muhs Acres Water Main Extension Project in the amount of \$38,526.37. Recommendation is to pay the same for materials ordered and stored.

Councilmember Sturm made a motion and seconded by Councilmember Alexander approving Certificate of Payment No. 1 to Robert Woehler & Sons Construction for the Muhs Acres Water Main Extension Project in the amount of

\$38,526.37. Mayor Shelton stated the motion, and the result of roll call being all Yeas, the Mayor declared the motion carried.

Mayor Shelton stated JEO Consulting Group has submitted Application for Payment No. 3 to Layne Christensen Co. for the Well House and Municipal Well 2009-1 Project in the amount of \$17,137.99. Recommendation is to pay the same.

Councilmember Frevert made a motion and seconded by Councilmember Ley approving Application for Payment No. 3 to Layne Christensen Co. for the Well House and Municipal Well 2009-1 Project in the amount of \$17,137.99. Mayor Shelton stated the motion, and the result of roll call being all Yeas, the Mayor declared the motion carried.

Mayor Shelton requested Council consideration to reappointing Galen Wisner to the Civil Service Commission (4-year term).

Councilmember Sturm made a motion and seconded by Councilmember Ley approving the reappointment of Galen Wisner to the Civil Service Commission (4-year term). Mayor Shelton stated the motion, and the result of roll call being all Yeas, the Mayor declared the motion carried.

Councilmember Haase made a motion and seconded by Councilmember Alexander to adjourn the meeting. Mayor Shelton stated the motion, and the result of roll call being all Yeas, the Mayor declared the motion carried and the meeting adjourned at 7:18 p.m.

CLAIMS LISTING JANUARY 19, 2010

AMERITAS LIFE INSURANCE	POLICE RETIREMENT	2,201.42
APPEARA	TOWEL AND LINEN SERVICE	69.68
AWWA	MEMBERSHIP DUES - J BRADY	295.00
BAKER & TAYLOR BOOKS	BOOKS	17.11
BANK FIRST	FRATERNAL ORDER OF POLICE DUES	210.00
BRETT KRAMER	ENERGY INCENTIVE	500.00
CABLEONE ADVERTISING	CAC TV ADVERTISING	300.00
CARRIE WALTON	ENERGY INCENTIVE	450.00
CINDY MILLIGAN	ENERGY INCENTIVE	500.00
CLAYTON BRATCHER	ENERGY INCENTIVE	200.00
CITY OF WAYNE	AUDITORIUM DEPOSIT REFUND	150.00
CITY OF WAYNE	BUILDING DEPOSIT REFUND	500.00
CITY OF WAYNE	CAT TRAP REFUND	20.00
CITY OF WAYNE	COMPUTER PURCHASE	1,144.85
CITY OF WAYNE	HEALTH REIMBURSEMENTS	1,053.10
CITY OF WAYNE	PAYROLL	57,274.93
CITY OF WAYNE	VISION REIMBURSEMENT	25.25
COMMUNITY HEALTH	HEALTH CHARITIES	4.00
DAVE'S DRY CLEANING	POLICE UNIFORM CLEANING	138.00
DEMCO INC	SHELVES/PROTECTORS/FRAME	1,004.77
ELECTRIC FIXTURE & SUPPLY	COIL	270.70
ENVIROTECH SERVICES	LIQUID DE-ICER	4,498.00
FIRST CONCORD GROUP LLC	PLAN DOCUMENTS	400.00
FLOOR MAINTENANCE	JANITORIAL SUPPLIES	207.24
FRANCES POEHLMAN	ENERGY INCENTIVE	500.00
FREDRICKSON OIL CO	TIRE REPAIR	50.00
GENE FLETCHER	ENERGY INCENTIVE	500.00
GLEN'S AUTO BODY	DOOR HANDLE REPAIR	85.14
GREAT PLAINS ONE-CALL	DIGGERS HOTLINE	29.94
HARPER BRUSH CENTRAL	PUSH BROOM/WASH BRUSH	190.60
HIRERIGHT SOLUTIONS INC	COLLECTION FEE	51.90
HYDRAULIC EQUIPMENT	REPAIR BASKET TRUCK BOOM	2,942.43
ICMA RETIREMENT TRUST	RETIREMENT	5,362.96
INGERSOLL-RAND CO	AIR DRYER-FIRE HALL	1,505.00
INGRAM BOOK COMPANY	BOOKS	499.04
IRS	FEDERAL WITHHOLDING	19,277.72
JOHN'S WELDING AND TOOL	DRIVE SHAFT FOR SNOW BLOWER	290.10
JOYCE SCHNECK	ENERGY INCENTIVE	51.23
KTCH AM/FM RADIO	CAC RADIO ADS	160.00
LAYNE CHRISTENSEN CO	WELL HOUSE	17,137.99
MAIN STREET AUTO CARE	TOWING	110.00
MARK EVETOVICH	ENERGY INCENTIVE	189.00
MATT FRIEND TRUCKING	V POWER EDGE FOR PLOW	374.00
MICHAEL TODD & CO INC	STREET SIGNS	997.30
MID-CONTINENT SALES	REBUILD FUEL PUMP	1,012.44

MID-STATES ORGANIZED	ANNUAL MEMBERSHIP	100.00
MIDWEST LABORATORIES, INC	BOD TESTS	230.85
MUNICIPAL SERVICE	SLUDGE PUMP	5,885.81
NE DEPT OF REVENUE	STATE WITHHOLDING	2,916.02
NE DEPT OF REVENUE	COUNTY LODGING TAX	33.30
NE EMERGENCY SERVICE	NESCA MEMBERSHIP	75.00
NORTHEAST EQUIPMENT	SNOW BLOWER REPAIR/CHAIN/BOLTS ETC	314.12
NWOD	MEMBERSHIP FEE- JUNCK	10.00
OLSSON ASSOCIATES	KARDELL PAVING & DRAINAGE/MUHS/TRAIL	1,922.33
PAMIDA INC	READING SUPPLIES-WRAP	14.17
PARTS ENGINEERING CO	HYDRAULIC UNLOADER	472.74
PEPSI-COLA	CAC POP	403.10
POSTMASTER	BOX FEE	110.00
PRESTO X COMPANY	PEST CONTROL	77.20
PROVIDENCE MEDICAL CENTER	POLICE SERVICES	206.00
PURCHASE POWER	POSTAGE	500.00
QWEST	TELEPHONE CHARGES	1,194.22
ROBERT CARHART	ENERGY INCENTIVE	376.67
ROBERT KRUGMAN	ENERGY INCENTIVE	500.00
ROBERT WOehler & SONS	MUHS ACRES	38,526.37
SIOUX CONTRACTORS, INC	PAINT & EXTERIOR CAULKING I-BEAMS	1,968.00
STATE NATIONAL BANK	SAFE DEPOSIT BOX RENT	40.00
STATE NATIONAL BANK	PETTY CASH	470.93
THE WAKEFIELD REPUBLICAN	SUBSCRIPTION	25.00
US BANK	LODGING/CONFERENCE/MEALS/X-BOX ETC	5,217.89
WAYNE COMMUNITY SCHOOLS	PARKING TICKETS	6,732.50
WAYNE COUNTY CLERK	FILING FEES	5.50
WAYNE GRAIN & FEED INC	SCALE CHARGES	68.00
WAYNE HERALD	CAC ADS	541.50
WAYNE STATE COLLEGE	LIGHTING EFFICIENCY	1,200.00
WAYNE VETERINARY CLINIC	DOG & CAT IMPOUNDS	238.00
WAYNE WESSEL	ENERGY INCENTIVE	500.00
WESTERN AREA POWER ADMIN	ELECTRICITY	30,441.78
WOOD PLUMBING & HEATING	SOFTENER TIMER	80.75
GRAND TOTAL		166,873.66

EMP #	NAME	AMOUNT
01-0008	CHANELLE J BELT	870.46
01-0012	NANCY BRADEN	1,437.70
01-0020	LORI DICKES	106.22
01-0038	JOEL HANSEN	1,082.60
01-0048	LOWELL JOHNSON	1,790.87
01-0052	BRIAN KESTING	914.43
01-0058	GERALD KRUGER	813.12
01-0065	MELODIE LONGE	897.66
01-0067	BETTY MCGUIRE	1,421.78
01-0073	DAWN R NAVRKAL	853.01
01-0204	ART F BARKER	115.71
01-0009	JESSICA BOLLES	869.01
01-0018	MARLEN CHINN	1,413.11
01-0025	EDWIN FOOTE	471.92
01-0035	RICHARD HAASE	1,338.62
01-0055	GERALD KLINETOBE	982.31
01-0085	KATHLEEN PRINCE	896.84
01-0093	PHILIP SHEAR	1,404.45
01-0101	BRIAN SWANSON	1,041.27
01-0112	LANCE WEBSTER	1,630.36
01-0115	LEE WREDE	1,155.38
01-0170	STEVEN A SCHWARZ	1,192.51
01-0226	DOMENIC T CONSOLI	950.31
01-0258	HEATHER J THOR	945.28
01-0270	RENA S ALONSO	823.86
01-0298	CHAD M JENSEN	783.63
01-0117	JEFFERY ZEISS	1,073.38
01-0199	BRANDON R FOOTE	171.46
01-0237	KARLA S JENSEN	31.84
01-0247	BRETT J GEBHARDT	250.41
01-0260	MADDY E MOSER	221.75
01-0261	COURTNEY M PRESTON	192.74
01-0264	TAYLOR J RACELY	80.29
01-0276	ZACHARY D BRAUN	117.80
01-0279	CORY L HARM	71.98
01-0284	AMANDA PEARSON	98.24
01-0087	JOHN REBENS DORF	441.24
01-0122	FRANCES A POEHLMAN	200.52
01-0205	NORMA L BACKSTROM	14.42
01-0259	PENNY L VOLLBRACHT	1,001.11
01-0296	RICHARD E BARELMAN	510.14
01-0003	BONNIE ANDERSEN	185.60
01-0041	HEATHER L HEADLEY	103.29
01-0057	LINDA KRUCKENBERG	157.07
01-0064	LAURAN LOFGREN	879.10
01-0077	JULIE OSNES	728.86
01-0202	RITA C MCLEAN	558.04
01-0211	ALISSA M JOHNSON	101.81
01-0233	PAULA M ERICKSON	129.82
01-0263	EMILY A HENDERSON	170.59

EMP #	NAME	AMOUNT
01-0042	LOWELL HEGGEMEYER	1,585.16
01-0044	TODD HOEMAN	1,974.94
01-0138	JERRY M SPERRY	44.80
01-0177	GEORGE BEHLERS	43.60
01-0179	JASON JORGENSEN	1,251.47
01-0243	LANDON STENDER	281.84
01-0297	SETH G LISTON	1,027.90
01-0015	WILLIAM BREITKREUTZ	868.27
01-0021	KEITH DOESCHER	979.79
01-0037	GENE HANSEN	1,374.42
01-0050	DANIEL KARDELL	1,172.44
01-0106	JEFFREY TRIGGS	1,459.11
01-0004	ROBERT BACKMAN	1,162.85
01-0029	TERRY FRY	1,178.76
01-0063	BRIAN LOBERG	1,284.59
01-0084	GARRY POUTRE	1,596.29
01-0100	TIMOTHY SUTTON	1,498.92
01-0013	JEFFREY BRADY	1,310.23
01-0022	DOUGLAS ECHTENKAMP	1,657.91
01-0231	ADAM C JUNCK	966.51

TOTAL PRINTED: 70

56,413.72

EMP NO	EMPLOYEE NAME	TYPE	CHECK DATE	CHECK AMOUNT	CHECK NO.
0277	JARVI, MICHELLE B	R	1/13/2010	147.17	068370
0235	HEADLEY, DAVID A	R	1/13/2010	206.73	068371
0273	HANSEN, KATHERINE E	R	1/13/2010	196.69	068372
0282	BOSHART, SAMUEL L	R	1/13/2010	310.62	068373

RESOLUTION NO. 2010-2

A RESOLUTION APPROVING LETTER AGREEMENT FOR PROFESSIONAL SERVICES BETWEEN THE CITY OF WAYNE AND OLSSON ASSOCIATES FOR THE CITY OF WAYNE IMPROVEMENTS, BENSCOTER ADDITION PROJECT.

WHEREAS, the Wayne City Council is desirous of entering into an Agreement with Olsson Associates for professional services regarding the "City of Wayne Improvements, Bencoter Addition Project"; and

WHEREAS, a proposal has been requested and received from Olsson Associates; and

WHEREAS, staff recommendation is to accept said proposal of Olsson Associates.

NOW, THEREFORE BE IT RESOLVED, by the Mayor and City Council of the City of Wayne, Nebraska, that the Letter Agreement between the City of Wayne and Olsson Associates for the "City of Wayne Improvements, Bencoter Addition Project" be accepted as recommended, and the City Administrator and/or Mayor is authorized and directed to execute said agreement for the professional services on behalf of the City.

PASSED AND APPROVED this 19th day of January, 2010.

THE CITY OF WAYNE, NEBRASKA,

By _____
Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM AND CONTENT:

City Attorney



LETTER AGREEMENT FOR
PROFESSIONAL SERVICES

January 12, 2010

City of Wayne
Attn: Lowell Johnson
306 Pearl Street
Wayne, NE 68787

Re: **AGREEMENT FOR PROFESSIONAL SERVICES**
City of Wayne Improvements, Benscoter Addition "Project"
Wayne, Nebraska

Dear Lowell:

It is our understanding that the City of Wayne ("Client") requests Olsson Associates ("Olsson") to perform the following services pursuant to the terms of this Letter Agreement for Professional Services, any signed Master Agreement, Olsson's General Provisions and any exhibits attached thereto (hereinafter "the Agreement") for the Project.

1. Olsson has acquainted itself with the information provided by Client relative to the Project and based upon such information offers to provide the services described below for the Project. Client warrants that it is either the legal owner of the property to be improved by this Project or that Client is acting as the duly authorized agent of the legal owner of such property. Client acknowledges that it has reviewed the General Provisions (and any exhibits attached thereto), which are expressly made a part of and incorporated into the Agreement by this reference. In the event of any conflict or inconsistency between this Letter Agreement, any Master Agreement and/or the General Provisions regarding the services to be performed by Olsson, the requirements of this Letter Agreement shall take precedence.
2. Olsson shall provide Client all Basic Services for the Project. Services include additional topographical survey, design of construction documents, client meetings, bid services, and construction services for the City of Wayne portion of the Benscoter Subdivision Improvements. Should Client request work not described and included in the above Description of Basic Services, such as Additional Services, Olsson shall invoice Client for such services on the basis of Salary Costs times a factor of 2.5 for services rendered by our principals and employees engaged directly on the Project plus Reimbursable Expenses, unless otherwise agreed to by both parties. Olsson shall not commence work on Additional Services without Client's prior approval in writing.

Olsson agrees to provide all of its services in a timely, competent and professional manner, in accordance with applicable standards of care, for projects of similar geographic location, quality and scope.

SCHEDULE FOR OLSSON'S SERVICES

3. Unless otherwise agreed, Olsson would expect to begin performing its services under the Agreement promptly upon your signing.

Olsson will endeavor to start its services on the Anticipated Start Date and to complete its services on the Anticipated Completion Date. However, the Anticipated Start Date, the Anticipated Completion Date and any milestone dates are approximate only, and Olsson reserves the right to readjust its schedule and any or all of those dates at its sole discretion, for any reason, including, but not limited to, delays caused by Client or delays caused by third parties.

COMPENSATION

4. Client shall pay to Olsson for the performance of the Basic Services the actual time of personnel performing such Services at the professional and staff rates set forth on the Schedule of Hourly Billable Rates and all actual reimbursable expenses in accordance with the Schedule contained in the General Provisions attached to this Letter Agreement. Olsson shall submit invoices on a monthly basis, are due upon presentation and shall be considered past due if not paid within 30 calendar days of the due date.

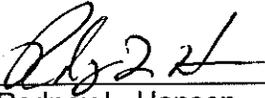
Schedule of Hourly Billable Rates

<u>Classification</u>	<u>Fee/Hour</u>
Professional Engineer	\$112.00
Licensed Surveyor	\$112.00
Engineer In Training (EIT)	\$80.00
Survey Technician	\$59.00
Engineering Technician	\$59.00
Associate Scientist	\$67.00

TERMS AND CONDITIONS OF SERVICE

5. We have discussed with you the risks, rewards and benefits of the Project and our fees for services and the Agreement represents the entire understanding between Client and Olsson with respect to the Project. The Agreement may only be modified in writing signed by both parties.
6. If this proposal satisfactorily sets forth your understanding of our agreement, please sign in the space provided below (indicating Client's designated Project representative if different from the party signing). Retain a copy for your files and return an executed original to Olsson. This proposal will be open for acceptance for a period of 30 days from the date set forth above, unless changed by us in writing.
7. By signing below, you acknowledge that you have full authority to bind Client to the terms of the Agreement.

OLSSON ASSOCIATES

By 
Rodney L. Hanson

By 
Terry Rothanzl

If you accept the preceding proposal and the Agreement,
please sign:

Lowell Johnson "Client"

By _____

Title _____

Dated: _____

If different from above,

Client's Designated Project Representative

G:\OASStandards\AGREEMENTS\NE\Letter Agreement.DOC

GENERAL PROVISIONS

These General Provisions are attached to and made a part of a LETTER AGREEMENT, dated January 12, 2010 between the City of Wayne ("Client") and Olsson Associates ("Olsson") for professional services in connection with City of Wayne Improvements, Benscoter Addition, (hereinafter called the "Project").

SECTION 1—OLSSON'S BASIC SERVICES

Services include additional topographical survey, design of construction documents, client meetings, bid services, and construction services for the City of Wayne portion of the Benscoter Subdivision Improvements.

SECTION 2—ADDITIONAL SERVICES OF OLSSON

2.1 Unless otherwise expressly included, Olsson's normal and customary engineering services described here or in the LETTER AGREEMENT do not include the following categories of work which shall be referred to as Additional Services.

2.2. If Client and Olsson mutually agree to perform any of the following Additional Services, Client will provide written approval of the agreed upon scope of services, and Olsson shall perform or obtain from others such services and will be paid therefore as provided in the LETTER AGREEMENT. EITHER CLIENT or Olsson may elect not to perform all or any of the following Additional Services without cause or explanation:

2.2.1 Preparation of applications and supporting documents for governmental financial support of the Project in addition to those required under Basic Services; preparation or review of environmental studies and related services; and assistance in obtaining environmental approvals.

2.2.2 Services to make measured drawings of or to investigate existing conditions of facilities.

2.2.3 Services resulting from significant changes in the general scope, extent or character of the Project or major changes in documentation previously accepted by Client where changes are due to causes beyond Olsson's control.

2.2.4 Providing renderings or models.

2.2.5 Preparing documents for alternate bids requested by Client for work which is not executed or for out-of-sequence work.

2.2.6 Detailed consideration of operations, maintenance and overhead expenses; value engineering and the preparation of rate schedules, earnings and expense statements, cash flow and economic evaluations, feasibility studies, appraisals and valuations.

2.2.7 Furnishing the services of independent professional associates or consultants for work other than Basic Services.

2.2.8 If Olsson's compensation for Basic Services is not on the basis of Direct Labor or Salary Costs, Additional Services shall include services necessary due to the Client's

award of more than one prime contract for the Project, services necessary due to the construction contract containing cost plus or incentive-savings provisions, services necessary in order to arrange for performance by persons other than the prime contractor and those services necessary to administer Client's contract(s).

2.2.9 Services in connection with staking out the work of Contractor(s).

2.2.10 Services during out-of-town travel other than visits to the site.

2.2.11 Preparation of operating and maintenance manuals to supplement Basic Services.

2.2.12 Services to redesign some or all of the Project.

2.2.13 Preparing to serve or serving as a consultant or witness or assisting Client with any litigation, arbitration or other legal or administrative proceeding except where required as part of Basic Services.

2.3 When required by the Agreement or Contract Documents in circumstances beyond Olsson's control, Olsson shall perform or obtain from others any of the following Additional Services as circumstances require during construction and without waiting for specific instructions from Client, and Olsson will be paid therefore as provided in the Letter Agreement:

2.3.1 Services in connection with work directive changes and change orders to reflect the changes requested by Client if the resulting change in compensation for Basic Services is not commensurate with the additional services rendered.

2.3.2 Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitutions proposed by Contractor(s); services after the award of each contract in evaluating and determining the acceptability of an unreasonable or excessive number of substitutions proposed by Contractor; and evaluating an unreasonable or extensive number of claims submitted by Contractor(s) or others in connection with the work.

2.3.3 Services resulting from significant delays, changes or price increases occurring as a direct or indirect result of material, equipment or energy shortages.

2.3.4 Additional or extended services during construction made necessary by (1) work damage by fire or other causes during construction, (2) a significant amount of defective, inefficient or neglected work by any Contractor, (3) acceleration of the progress schedule involving services beyond normal working hours, (4) default by any Contractor.

SECTION 3—CLIENT'S RESPONSIBILITIES

3.1. Client shall provide all criteria and full information as to Client's requirements for the Project; designate and identify in writing a person to act with authority on Client's behalf in respect of all aspects of the Project; examine and respond promptly to Olsson's submissions; and give prompt written notice to Olsson whenever Client observes or otherwise becomes aware of any defect in the Olsson's service.

3.2 Client agrees to pay Olsson the amounts due for services rendered and expenses within thirty (30) days after Olsson has provided its invoice for such services. In the event Client disputes any invoice item, Client shall give Olsson written notice of such disputed item within fifteen (15) days after receipt of such invoice and shall pay to Olsson the undisputed portion of the invoice according to the provisions hereof. If Client fails to pay any invoiced amounts when due, interest will accrue on each unpaid amount at the rate of thirteen percent (13%) per annum from the date due until paid according to the provisions of this Master Agreement. Interest shall not be charged on any disputed invoice item which is finally resolved in Client's favor. Payment of interest shall not excuse or cure any default or delay in payment of amounts due.

3.2.1 If Client fails to make any payment due Olsson for services and expenses within thirty (30) days after receipt of Olsson's statement therefore, Olsson may, after giving seven days' written notice to Client, suspend services to Client under this Agreement until Olsson has been paid in full all amounts due for services, expenses and charges.

3.3 Payments to Olsson shall not be withheld, postponed or made contingent on the construction, completion or success of the Project or upon receipt by the Client of offsetting reimbursements or credit from other parties who may have caused Additional Services or expenses. No withholdings, deductions or offsets shall be made from Olsson's compensation for any reason unless Olsson has been found to be legally liable for such amounts.

3.4 Client shall also do the following and pay all costs incident thereto:

3.4.1 Furnish to Olsson any borings, probings and subsurface explorations, hydrographic surveys, laboratory tests and inspections of samples, materials and equipment; appropriate professional interpretations of all of the foregoing; environmental assessment and impact statements; property, boundary, easement, right-of-way, topographic and utility surveys; property descriptions; zoning and deed restrictions; all of which Olsson may rely upon in performing services hereunder.

3.4.2 Guarantee access to and make all provisions for Olsson to enter upon public and private property.

3.4.3 Provide such legal, accounting, independent cost estimating and insurance counseling services as may be required for the Project, any auditing service required in respect of Contractor(s)' applications for payment, and any inspection services to determine if Contractor(s) are performing the work legally.

3.4.4 Provide engineering surveys to establish reference points for construction.

3.4.5 Furnish approvals and permits from all governmental authorities having jurisdiction over the Project.

3.4.6 If more than one prime contractor is to be awarded the contract for construction, designate a party to have responsibility and authority for coordinating the activities of the various prime contractors.

3.5 Client shall pay all costs incident to obtaining bids or proposals from Contractor(s).

3.6 Client shall pay all permit application review costs for government authorities having jurisdiction over the Project.

3.7 Contemporaneously with the execution of the LETTER AGREEMENT, Client shall designate in writing an individual to act as its duly authorized Project representative.

SECTION 4—MEANING OF TERMS

4.1 As used herein, the term "this Agreement" refers to these General Provisions, the LETTER AGREEMENT to which these General Provisions refer, and any other exhibits or attachments made a part thereof as if they were part of one and the same document.

4.2 The "construction cost" of the entire Project (herein referred to as "Construction Cost") means the total cost to Client of those portions of the entire Project designed and specified by Olsson, but it will not include Olsson's compensation and expenses, the cost of land, rights-of-way, or compensation for or damages to, properties unless this Agreement so specifies, nor will it include Client's legal, accounting, insurance counseling or auditing services, or interest and financing charges incurred in connection with the Project or the cost of other services to be provided by others to Client pursuant to Section 3.

4.3 The "Salary Costs": Used as a basis for payment mean salaries and wages (basic and incentive) paid to all Olsson's personnel engaged directly on the Project, including, but not limited to, engineers, architects, surveyors, designers, draftsmen, specification writers, estimators, other technical and business personnel; plus the cost of customary and statutory benefits, including, but not limited to, social security contributions, unemployment, excise and payroll taxes, workers' compensation, health and retirement benefits, sick leave, vacation and holiday pay and other group benefits.

4.4 "Reimbursable Expenses: The expenses incurred by Olsson or Olsson's independent professional associates or consultants directly or indirectly in connection with the Project, and shall be included in periodic billing as applicable as follows:

<u>Classification</u>	<u>Costs</u>
Automobiles	\$0.50/mile*
Suburbans and Pick-Ups	\$0.68/mile*
Duplication	
In-house	Actual Cost
Outside	Actual Cost+10%

<u>Classification</u>	<u>Costs</u>
Meals	Actual Cost
Postage & Shipping	
Charges for Project	
Related Materials	Actual Cost
Film and Photo	
Developing	Actual Cost+10%
Telephone and	
Fax Transmissions	Actual Cost+10%
Miscellaneous Materials	
& Supplies Applicable	
only to this Project	Actual Cost+10%
Subconsultants	Actual Cost+10%

* IRS Standard Mileage Rate (Subject to Change)

4.5 "Certify" or "a Certification": A statement of Olsson's opinion, based on its observation of conditions, to the best of Olsson's professional knowledge, information and belief. Such statement of opinion does not constitute a warranty, either express or implied. It is understood that Olsson's certification shall not relieve the Client or the Client's contractors of any responsibility or obligation they may have by industry custom or under any contract.

4.6 "Cost Estimate": An opinion of probable construction cost made by Olsson. In providing opinions of probable construction cost, it is recognized that neither the Client nor Olsson has control over the costs of labor, equipment or materials, or over the Contractor's methods of determining prices or bidding. The opinion of probable construction costs is based on Olsson's reasonable professional judgment and experience and does not constitute a warranty, express or implied, that the Contractor's bids or the negotiated price of the work on the project will not vary from the Client's budget or from any opinion of probable cost prepared by Olsson.

4.7 "Day": A calendar day of 24 hours. The term "days" shall mean consecutive calendar days of 24 hours each, or fraction thereof.

4.8 "Inspect" or "Inspection": The visual observation of the Contractor's completed work to permit Olsson, as an experienced and qualified professional, to determine that the inspected work, generally conforms to the Contract Documents. Client understands and agrees that such visual observations are discrete sampling procedures and that such procedures indicate conditions that exist only at the locations and times the observations were performed. In making such visual observations, Olsson makes no guarantees for, and shall have no authority or control over, the Contractor's performance or the Contractor's failure to perform any work in accordance with the Contract Documents. Olsson shall have no responsibility for the means, methods, techniques, sequences or procedures selected by the Contractor or for the Contractor's safety precautions and programs nor for failure by the Contractor to comply with any laws or regulations relating to the performance or furnishing of any work by the Contractor.

4.9 "Record Documents": Drawings prepared by Olsson upon the completion of construction based upon the drawings and other data furnished to Olsson by the Contractor and others showing significant changes in the work on the project made during construction. Because Record Documents are prepared based on unverified information provided by others,

Olsson makes no warranty of the accuracy or completeness of the drawings.

SECTION 5—TERMINATION

5.1 Either party may terminate this Agreement for cause upon giving the other party not less than seven (7) calendar days' written notice of default for any of the following reasons provided, however, that the notified party shall have the same seven (7) calendar day period in which to cure the default:

5.1.1 Substantial failure by the other party to perform in accordance with the terms of this Agreement and through no fault of the terminating party;

5.1.2 Assignment of this Agreement or transfer of the Project by either party to any other entity without the prior written consent of the other party;

5.1.3 Suspension of the Project or Olsson's services by the Client for more than ninety (90) calendar days, consecutive or in the aggregate;

5.1.4 Material changes in the conditions under which this Agreement was entered into, the Scope of Services or the nature of the Project, and the failure of the parties to reach agreement on the compensation and schedule adjustments necessitated by such changes.

5.2 In the event of a "for cause" termination of this Agreement by either party, the Client shall within fifteen (15) calendar days of termination pay Olsson for all services rendered and all reimbursable costs incurred by Olsson up to the date of termination, in accordance with the payment provisions of this Agreement.

5.3 The Client may terminate this Agreement for the Client's convenience and without cause upon giving Olsson not less than seven (7) calendar days' written notice. In the event of any termination that is not the fault of Olsson, the Client shall pay Olsson, in addition to payment for services rendered and reimbursable costs incurred, for all expenses reasonably incurred by Olsson in connection with the orderly termination of this Agreement, including but not limited to demobilization, reassignment of personnel, associated overhead costs, any fees, costs or expenses incurred by Olsson in preparing or negotiating any proposals submitted to Client for Olsson's Basic or Additional Services under this Agreement and all other expenses directly resulting from the termination and a reasonable profit of not less than 10% of Olsson's actual costs incurred.

SECTION 6—DISPUTE RESOLUTION

6.1. Mediation

6.1.1 All questions in dispute under this Agreement shall be submitted to mediation. On the written notice of either party to the other of the election to submit any dispute under this Agreement to mediation, each party shall designate their representatives and shall meet within ten (10) days after the service of the notice. The parties themselves shall then attempt to resolve the dispute within ten (10) days of meeting.

6.1.2 Should the parties themselves be unable to agree on a resolution of the dispute, then the parties shall appoint a third party who shall be a competent and impartial party and who shall be acceptable to each party, to mediate the dispute. Any third party mediator shall be qualified to evaluate the performance of both of the parties, and shall be familiar with the design and construction progress. The third party shall meet to hear the dispute within ten (10) days of their selection and shall attempt to resolve the dispute within fifteen (15) days of first meeting.

6.1.3 Each party shall pay the fees and expenses of the third party mediator and such costs shall be borne equally by both parties.

6.2 Arbitration or Litigation

6.2.1 Olsson and Client agree that from time to time, there may be conflicts, disputes and/or disagreements between them, arising out of or relating to the services of Olsson, the Project or this Agreement (hereinafter collectively referred to as "Disputes") which may not be resolved through mediation. Therefore, Olsson and Client agree that all Disputes, arising out of this Agreement or related to the services provided under this Agreement shall be resolved by binding arbitration or litigation at the sole discretion and choice of Olsson. If Olsson chooses arbitration, the arbitration proceeding shall proceed in accordance with the Construction Industry Arbitration Rules of the AAA.

6.2.2 Client hereby agrees that Olsson shall have the right to include Client, by consolidation, joinder or other manner, in any arbitration or litigation involving Olsson and a subconsultant or subcontractor of Olsson or Olsson and any other person or entity, regardless of who originally initiated such proceedings.

6.2.3 If Olsson chooses arbitration or litigation, either may be commenced at any time prior to or after completion of the Project, provided that if arbitration or litigation is commenced prior to the completion of the Project, the obligations of the parties under the terms of this Agreement shall not be altered by reason of the arbitration or litigation being conducted. Any arbitration hearings or litigation shall take place in the County and State of the project location, or in the State of Olsson's home office, Nebraska.

6.2.4 The prevailing party in any arbitration or litigation relating to any Dispute shall be entitled to recover from the other party those reasonable attorney fees, costs and expenses incurred by the prevailing party in connection with the Dispute.

SECTION 7—MISCELLANEOUS

7.1 Reuse of Documents

All documents, including Drawings and Specifications prepared or furnished by Olsson (and Olsson's independent professional associates and consultants) pursuant to this Agreement, are instruments of service in respect of the Project and Olsson shall retain an ownership and property interest therein whether or not the Project is completed. Client may make and retain copies for information and reference in connection with the use and occupancy of the Project by Client and others; however,

such documents are not intended or represented to be suitable for reuse by Client or others on extensions of the Project or on any other project. Any reuse without written verification or adaptation by Olsson for the specific purpose intended will be at Client's sole risk and without liability or legal exposure to Olsson, or to Olsson's independent professional associates or consultants, and Client shall indemnify and hold harmless Olsson and Olsson's independent professional associates and consultants from all claims, damages, losses and expenses including attorneys' fees arising out of or resulting therefrom. Any such verification or adaptation will entitle Olsson to further compensation at rates to be agreed upon by Client and Olsson.

7.2 Electronic Files

By accepting and utilizing any electronic file of any drawing, report or data transmitted by Olsson, the Client agrees for itself, its successors, assigns, insurers and all those claiming under or through it, that by using any of the information contained in the attached electronic file, all users agree to be bound by the following terms. All of the information contained in any electronic file is the work product and instrument of service of Olsson, who shall be deemed the author, and shall retain all common law, statutory law and other rights, including copyrights, unless the same have previously been transferred in writing to the Client. The information contained in any electronic file is provided for the convenience to the Client and is provided in "as is" condition. The Client is aware that differences may exist between the electronic files transferred and the printed hard-copy original signed and stamped drawings or reports. In the event of a conflict between the signed original documents prepared by Olsson and the electronic files, which may be transferred, the signed and sealed original documents shall govern. Olsson specifically disclaims all warranties, expressed or implied, including without limitation, and any warranty of merchantability or fitness for a particular purpose with respect to any electronic files. It shall be Client's responsibility to confirm the accuracy of the information contained in the electronic file and that it accurately reflects the information needed by the Client. Client shall not retransmit any electronic files, or any portion thereof, without including this disclaimer as part of any such transmissions. In addition, Client agrees, to the fullest extent permitted by law, to indemnify and hold harmless Olsson, its officers, directors, employees and sub consultants against any and all damages, liabilities, claims or costs, including reasonable attorney's and expert witness fees and defense costs, arising from any changes made by anyone other than Olsson or from any reuse of the electronic files without the prior written consent of Olsson.

7.3 Opinions of Cost

Since Olsson has no control over the cost of labor, materials, equipment or services furnished by others, or over the Contractor(s)' methods of determining prices, or over competitive bidding or market conditions, Olsson's opinions of probable Total Project Costs and Construction Cost provided for herein are to be made on the basis of Olsson's experience and qualifications and represent Olsson's best judgment as an experienced and qualified professional engineer, familiar with the construction industry; but Olsson cannot and does not guarantee that proposals, bids or actual Total Project or Construction Costs will not vary from opinions of probable cost

prepared by Olsson. If prior to the Bidding or Negotiating Phase Client wishes greater assurance as to Total Project or Construction Costs, Client shall employ an independent cost estimator as provided in paragraph 3.4.3. Olsson's services to modify the Contract Documents to bring the Construction Cost within any limitation established by Client will be considered Additional Services and paid for as such by Client.

7.4 Controlling Law and Venue

7.4.1 The parties agree that this Agreement and any legal actions concerning its validity, interpretation or performance shall be governed by the laws of the State of Nebraska or the State of the project locale. It is further agreed that any legal action between the parties arising out of this Agreement or the performance of services shall be brought in a court of competent jurisdiction in Nebraska or the project State locale.

7.5 Subconsultants

Olsson may utilize as necessary in its discretion Subconsultants and other subcontractors. Olsson will be paid for all services rendered by its subconsultants and other subconsultants as set forth in this Agreement.

7.6 Assignment

7.6.1 Client and Olsson each is hereby bound and the partners, successors, executors, administrators and legal representatives of Client and Olsson (and to the extent permitted by paragraph 7.6.2 the assigns of Client and Olsson) are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements and obligations of this Agreement.

7.6.2. Neither Client nor Olsson shall assign, sublet or transfer any rights under or interest in (including, but without limitation, moneys that may become due or moneys that are due) this Agreement without the written consent of the other, except to the extent that any assignment, subletting or transfer is mandated by law or the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. Nothing contained in this paragraph shall prevent Olsson from employing such subconsultants and other subcontractors as Olsson may deem appropriate to assist in the performance of services under this Agreement.

7.6.3 Nothing under this Agreement shall be construed to give any rights or benefits in this Agreement to anyone other than Client and Olsson, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Client and Olsson and not for the benefit of any other party. There are no third-party beneficiaries of this Agreement.

7.7 Indemnity

Olsson and the Client mutually agree, to the fullest extent permitted by law, to indemnify and hold each other harmless from any and all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, relating to personal injury or property damage and arising from their own negligent acts, errors or omissions in the performance of their services under this Agreement, but only to the extent that each party is responsible for such damages, liabilities or costs on a comparative basis of fault.

7.8 Limitation on Damages

7.8.1 Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither the Client nor Olsson, their respective officers, directors, partners, employees, contractors or subconsultants shall be liable to the other or shall make any claim for any delay damages, any punitive damages or any incidental, indirect or consequential damages arising out of or connected in any way to the Project or to this AGREEMENT. This mutual waiver of delay damages and consequential damages shall include, but is not limited to, disruptions, accelerations, inefficiencies, increased construction costs, increased home office overhead, loss of use, loss of profit, loss of business, loss of income, loss of reputation or any other delay or consequential damages that either party may have incurred from any cause of action including negligence, strict liability, breach of contract and breach of strict or implied warranty. Both the Client and Olsson shall require similar waivers of consequential damages protecting all the entities or persons named herein in all contracts and subcontracts with others involved in this Project.

7.8.2 Notwithstanding any other provision of this Agreement, Client agrees that, to the fullest extent permitted by law, Olsson's total liability to the Client for any and all injuries, claims, losses, expenses, damages, or claims expenses of any kind arising from any services provided by or through Olsson under this Agreement, shall not exceed the total amount of Olsson's fees earned under this Agreement. Client acknowledges that such causes include, but are not limited to, Olsson's negligence, errors, omissions, strict liability, breach of contract or breach of warranty.

7.9 Entire Agreement

This Agreement supersedes all prior communications, understandings and agreements, whether oral or written. Amendments to this Agreement must be in writing and signed by the Client and Olsson.

G:\OASStandards\AGREEMENTS\NE\General Provisions.DOC

[Back to Top](#)

Sewer Rate Information Sheets

City of Wayne

Jan. 2010



Randy Hellbusch

Office 1-800-842-8039

Cell 402-443-8535

Email: randy@nerwa.org

NEBRASKA RURAL WATER ASSOCIATION

SEWER RATE STUDY FOR CITY OF WAYNE Jan. 2010

EXPENSES (2009)

ADMINISTRATION

Personnel Services	\$ 52,987.51
Contractual Services	\$ 3,213.70
Commodities	\$ 46,877.88
TOTAL ADMINISTRATION	\$ 103,079.09

SEWER

Personnel Services	\$ 88,544.65
Contractual Services	\$ 85,474.18
Commodities	\$ 142,764.97
TOTAL SEWER	\$ 316,783.80
12% O&M RESERVE	\$ 50,383.50
TOTAL O&M COSTS	\$ 470,246.39
Debt (7mil. At 3% for 20yrs.)	\$ 471,000.00
TRANSFERS	(\$250,000.00)
TOTAL DEBT COSTS	\$ 221,000.00
DEPRECIATION	\$ 75,000.00
TOTAL REVENUE REQUIRED	\$ 766,246.39

NEBRASKA RURAL WATER ASSOCIATION

SEWER RATE STUDY FOR CITY OF WAYNE Jan. 2010

Suggested Rate: (w/\$250,000.00 transfers)
\$14.50 per month + \$3.35 per 1000 gals.
based on winter ave. usage

Units	Cost per unit		Annual Revenue
1704	\$14.50	\$	296,496.00
142,000	\$3.35	\$	475,700.00
Annual Revenue		\$	772,196.00

NEBRASKA RURAL WATER ASSOCIATION

SEWER RATE STUDY FOR CITY OF WAYNE Jan. 2010

Suggested Rate: (w/\$250,000.00 transfers)
\$13.00 per month res. + \$3.35 per 1000 gals.
based on winter ave. usage & comm. meter size

	Units	Cost per unit	Annual Revenue
Res. & 3/4" comm	1634	\$13.00	\$ 254,904.00
1" Comm	39	\$18.90	\$ 8,845.20
1.25" Comm	2	\$26.50	\$ 636.00
1.5" Comm	9	\$35.90	\$ 3,877.20
2" Comm	18	\$59.75	\$ 12,906.00
3" Comm	6	\$127.65	\$ 9,190.80
4" Comm	1	\$222.80	\$ 2,673.60
6" Comm	1	\$494.65	\$ 5,935.80
1,000 gals. Units sold	142,000	\$3.35	\$ 475,700.00
Annual Revenue			\$ 774,668.60

NEBRASKA RURAL WATER ASSOCIATION

SEWER RATE STUDY FOR CITY OF WAYNE Jan. 2010

Commodity Only Rate: \$5.45 per 1000 gals.
(w/\$250,000.00 transfer)

Units	Cost per unit		Annual Revenue
142,000	\$5.45	\$	773,900.00
Annual Revenue		\$	773,900.00

NEBRASKA RURAL WATER ASSOCIATION

SEWER RATE STUDY FOR CITY OF WAYNE Jan. 2010

EXPENSES (2009)

ADMINISTRATION

Personnel Services	\$	52,987.51
Contractual Services	\$	3,213.70
Commodities	\$	46,877.88
TOTAL ADMINISTRATION	\$	103,079.09

SEWER

Personnel Services	\$	88,544.65
Contractual Services	\$	85,474.18
Commodities	\$	142,764.97
TOTAL SEWER	\$	316,783.80
12% O&M RESERVE	\$	50,383.50
TOTAL O&M COSTS	\$	470,246.39
Debt (7mil. At 3% for 20yrs.)	\$	471,000.00
DEPRECIATION	\$	75,000.00
TOTAL REVENUE REQUIRED	\$	1,016,246.39

NEBRASKA RURAL WATER ASSOCIATION

SEWER RATE STUDY FOR CITY OF WAYNE Jan. 2010

Suggested Rate: (without transfers)
\$26.75 per month + \$3.35 per 1000 gals.
based on winter ave. usage

Units	Cost per unit		Annual Revenue
1704	\$26.75	\$	546,984.00
142,000	\$3.35	\$	475,700.00
Annual Revenue		\$	1,022,684.00

NEBRASKA RURAL WATER ASSOCIATION

SEWER RATE STUDY FOR CITY OF WAYNE Jan. 2010

Suggested Rate: (w/\$250,000.00 transfers)
\$13.00 per month res. + \$3.35 per 1000 gals.
based on winter ave. usage & comm. meter size

	Units	Cost per unit	Annual Revenue
Res. & 3/4" comm	1634	\$13.00	\$ 254,904.00
1" Comm	39	\$18.90	\$ 8,845.20
1.25" Comm	2	\$26.50	\$ 636.00
1.5" Comm	9	\$35.90	\$ 3,877.20
2" Comm	18	\$59.75	\$ 12,906.00
3" Comm	6	\$127.65	\$ 9,190.80
4" Comm	1	\$222.80	\$ 2,673.60
6" Comm	1	\$494.65	\$ 5,935.80
1,000 gals. Units sold	142,000	\$3.35	\$ 475,700.00
Annual Revenue			\$ 774,668.60

NEBRASKA RURAL WATER ASSOCIATION

SEWER RATE STUDY FOR CITY OF WAYNE Jan. 2010

EXPENSES (2009)

ADMINISTRATION

Personnel Services	\$	52,987.51
Contractual Services	\$	3,213.70
Commodities	\$	46,877.88
TOTAL ADMINISTRATION	\$	103,079.09

SEWER

Personnel Services	\$	88,544.65
Contractual Services	\$	85,474.18
Commodities	\$	142,764.97
TOTAL SEWER	\$	316,783.80

12% O&M RESERVE	\$	50,383.50
TOTAL O&M COSTS	\$	470,246.39

Debt (7mil. At 3% for 20yrs.)	\$	471,000.00
-------------------------------	----	------------

TRANSFERS (\$150,000.00)

TOTAL DEBT COSTS	\$	321,000.00
-------------------------	-----------	-------------------

DEPRECIATION	\$	75,000.00
---------------------	-----------	------------------

TOTAL REVENUE REQUIRED	\$	866,246.39
-------------------------------	-----------	-------------------

NEBRASKA RURAL WATER ASSOCIATION

SEWER RATE STUDY FOR CITY OF WAYNE Jan. 2010

Suggested Rate: (w/\$150,000.00 transfers)
\$19.25 per month + \$3.35 per 1000 gals.
based on winter ave. usage

Units	Cost per unit		Annual Revenue
1704	\$19.25	\$	393,624.00
142,000	\$3.35	\$	475,700.00
Annual Revenue		\$	869,324.00

NEBRASKA RURAL WATER ASSOCIATION

SEWER RATE STUDY FOR CITY OF WAYNE Jan. 2010

Suggested Rate: (w/\$150,000.00 transfers)
 \$17.00 per month res. + \$3.35 per 1000 gals.
 based on winter ave. usage & comm. meter size

	Units	Cost per unit	Annual Revenue
Res. & 3/4" comm	1634	\$17.00	\$ 333,336.00
			\$ -
1" Comm	39	\$24.72	\$ 11,568.96
			\$ -
1.25" Comm	2	\$34.65	\$ 831.60
			\$ -
1.5" Comm	9	\$46.95	\$ 5,070.60
			\$ -
2" Comm	18	\$78.13	\$ 16,876.08
			\$ -
3" Comm	6	\$166.93	\$ 12,018.96
			\$ -
4" Comm	1	\$291.35	\$ 3,496.20
			\$ -
6" Comm	1	\$646.85	\$ 7,762.20
1,000 gals. Units sold	142,000	\$3.35	\$ 475,700.00
Annual Revenue			\$ 866,660.60

NEBRASKA RURAL WATER ASSOCIATION

SEWER RATE STUDY FOR CITY OF WAYNE Jan. 2010

Systems With Recent Sewer Improvements

PILGER	\$26.68	\$3.21
ROSALIE	\$25.00	\$2.75
CAMBRIDGE	\$30.00	\$1.75
EAGLE	\$23.91	\$3.38
LOUISVILLE	\$25.25	\$2.35
NELIGH	\$22.25	\$3.40
PONCA	\$24.50	\$2.45
RAVENNA	\$23.00	\$1.00
SPRINGFIELD	\$24.00	\$1.00
VALLEY	\$26.26	\$3.99
ASHLAND	\$35.00	\$4.50
DESHLER	\$20.00	\$1.50
HOOPER	\$21.00	\$3.05
AUBURN	\$21.00	\$3.30
GENEVA	\$16.20	\$3.34
WAHOO	\$18.65	\$2.96
AVERAGE	\$23.92	\$2.75

ORDINANCE NO. 2010-2

AN ORDINANCE AUTHORIZING THE ISSUANCE OF A COMBINED UTILITIES REVENUE BOND, SERIES 2010, OF THE CITY OF WAYNE, NEBRASKA, IN THE PRINCIPAL AMOUNT OF ONE MILLION FIFTY THOUSAND DOLLARS (\$1,050,000), IN THE FORM OF A PROMISSORY NOTE ISSUED TO EVIDENCE INDEBTEDNESS TO THE NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY; APPROVING THE FORM OF SAID BOND (ISSUED AS A SINGLE PROMISSORY NOTE) AND RELATED LOAN AGREEMENT; PLEDGING AND HYPOTHECATING THE REVENUES AND EARNINGS OF THE WATERWORKS PLANT AND WATER SYSTEM AND THE SEWAGE DISPOSAL PLANT AND SANITARY SEWER SYSTEM OWNED BY THE CITY FOR THE PAYMENT OF SAID BOND; PROVIDING FOR THE ISSUANCE AND SALE OF SAID BOND; AUTHORIZING THE DELIVERY OF SAID BOND TO THE NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY; DETERMINING THAT INTEREST ON SAID BOND SHALL NOT BE EXCLUDABLE FROM GROSS INCOME FOR PURPOSES OF FEDERAL INCOME TAXATION; PROVIDING FOR THE DISPOSITION OF THE PROCEEDS OF SAID BOND; DETERMINING THIS ORDINANCE TO BE A MEASURE NECESSARY TO CARRY OUT THE CITY'S CONTRACTUAL OBLIGATIONS; DECLARING AN EMERGENCY AND ORDERING THE ORDINANCE PUBLISHED IN PAMPHLET FORM AND TO TAKE EFFECT IMMEDIATELY UPON PROCLAMATION BY THE MAYOR AND POSTING OF SUCH PAMPHLET.

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF WAYNE, NEBRASKA, AS FOLLOWS:

Section 1. The Mayor and Council of the City of Wayne, Nebraska (the "City") hereby find and determine as follows:

- A. The City owns and operates its own waterworks plant and water system, which represents a "revenue-producing facility" of the City under the provisions of Sections 18-1803 to 18-1805, R.R.S. Neb. 2007; said plant and system as now existing together with all additional and improvements thereto hereafter acquired or constructed is herein referred to as the "Water System".
- B. The City owns and operates its own sewage disposal plant and sanitary sewer system, which represents a "revenue-producing facility" of the City under the provisions of Sections 18-1803 to 18-1805, R.R.S. Neb. 2007; said plant and system as now existing together with all additions and improvements thereto hereafter acquired or constructed are herein referred to as the "Sewer System".
- C. The Water System and the Sewer System, as combined (the "Combined Utilities") further represent a revenue-producing undertaking and facility of the City under the provisions of Sections 18-1803 to 18-1805, R.R.S. Neb. 2007, for which the City is authorized to issue revenue bonds with a combined pledging of revenues.

- D. The City currently has outstanding no revenue bonds for which the revenues of the Combined Utilities have been pledged.
- E. The City currently has outstanding its Combined Utility Revenue Bond Anticipation Notes, Series 2009, Dated February 15, 2009, in the principal amount of \$1,070,000, maturing February 15, 2012 and callable for prepayment at the option of the City anytime on or after February 15, 2010 (the "Series 2009 Notes") for which the revenues of the Combined Utilities have been pledged as set forth in Ordinance No. 2009-3 of the City, passed and approved on February 17, 2009 authorizing the Series 2009 Notes (the "Series 2009 Note Ordinance"). In the Series 2009 Note Ordinance, the City has pledged the revenues of the Combined Utilities (referred to in such ordinance as the "Combined Utility System") for the payment of the Series 2009 Notes, both principal and interest as the same fall due and provided that the holders of the Series 2009 Notes shall have a lien upon the revenues of the City's Combined Utilities. It is necessary to provide for the payment of the Series 2009 Notes in order to determine the lien status of the obligations herein confirmed and authorized and such provision is hereby made as set forth in Section 20 of this Ordinance.
- F. The Nebraska Department of Environmental Quality ("NDEQ") has approved a project of the City for its Water System designated as DWSRF Project No. D311519 consisting of construction of a new municipal water well and certain water line replacements and distribution system improvements (the "2010 Project").
- G. The Mayor and Council have by resolution passed and approved on December 1, 2009 (the "2009 Resolution") authorized the execution and delivery of an agreement with NDEQ entitled "Nebraska Drinking Water Facilities Loan Fund Loan Agreement American Recovery and Reinvestment Act" dated as of December 1, 2009 (the "NDEQ Contract") providing for a loan to the City in the maximum amount of \$1,050,000 to pay costs of the 2010 Project. The NDEQ Contract provides for the borrowings under the NDEQ Contract to be evidenced by a promissory note which is intended by the City and by NDEQ to constitute a revenue bond of the City which is authorized under the terms of Sections 18-1803 to 18-1805, R.R.S. Neb. 2007, (the "Act") and which in this Ordinance is referred to as the "NDEQ Note" or the "Series 2010 Bond".
- H. This Ordinance is being passed and approved in order to confirm the status of the NDEQ Contract and the NDEQ Note under the terms of the Act, to provide for payment and redemption of the Series 2009 Notes and to provide for terms under which subsequent revenue bonds of the City of equal lien and standing with the NDEQ Note may be issued in the future to pay costs of improvements to the Combined Utilities.

Section 2. Unless the context shall clearly indicate otherwise, the following terms (in addition to any terms herein defined by parentheses) shall have the following meanings when used in this Ordinance:

“Additional Bonds” shall mean any and all bonds hereafter issued by the City pursuant to the terms of this Ordinance which are equal in lien to the Series 2010 Bond, including any such bonds issued pursuant to Section 6 hereof and refunding bonds issued pursuant to Section 7 hereof, as and when such bonds become equal in lien to the Series 2010 Bond, according to their terms and the terms of said Sections 6 and 7.

“Average Annual Debt Service Requirements” shall mean that number computed by adding all the principal and interest which will become due when computed to the absolute maturity of the Series 2010 Bond, as then outstanding and of the Additional Bonds, if any, then outstanding and all of the principal and interest of any Additional Bonds to be issued and dividing such sum total by the number of years remaining that the longest bond of any issue of bonds (including the Additional Bonds to be issued) has to run to maturity. For such purposes any bonds issued as term bonds with scheduled mandatory redemptions shall be treated as maturing in accordance with such schedule of mandatory redemptions. Any amounts due and owing to NDEQ for fees, rather than principal and interest, shall not be included in any such computation as being a part of debt service.

“Deposit Securities” shall mean direct obligations of or obligations the principal and interest of which are unconditionally guaranteed by the United States of America.

“Net Revenues” shall mean the gross revenues derived by the City from the ownership or operation of the Combined Utilities, including investment income, but not including any income from sale or disposition of any property belonging to or forming a part of the Combined Utilities, less the ordinary expenses to the City of operating and maintaining the Combined Utilities payable from the Operation and Maintenance Account described in Section 4 of this Ordinance. Operation and maintenance expenses for purposes of determining “Net Revenues” shall not include depreciation, amortization or interest on any bonds or other indebtedness. Net Revenues for all purposes of this Ordinance shall be shown by an audit for the fiscal year in question as conducted by independent certified public accountants.

Section 3. To provide for the payment of the costs of the 2010 Project, there shall be and there is hereby ordered issued the City’s Combined Utilities Revenue Bond, Series 2010, (being one and the same as the NDEQ Note), in the form of and evidenced by a single promissory note

in the principal amount (maximum drawable amount) of One Million Fifty Thousand Dollars (\$1,050,000), with such NDEQ Note (having been previously delivered to NDEQ along with the NDEQ Contract pursuant to the 2009 Resolution) to be in such form and to have such payment terms as are set forth in Exhibit A to this Ordinance, which exhibit is by such reference incorporated herein as if fully set forth. In connection with the issuance of the NDEQ Note, the City has also executed and delivered the NDEQ Contract, being in the form set forth in Exhibit B to this Ordinance, which exhibit is by such reference incorporated herein as if fully set forth. In order to harmonize the provisions of the NDEQ Contract with the terms of this Ordinance, it is necessary and advisable for the NDEQ Contract to be amended and there has been prepared for approval by the Mayor and Council an amendment to the NDEQ Contract entitled: "Amendment Number One to Loan Agreement between Nebraska Department of Environmental Quality and City of Wayne, Nebraska, Project No. D311519" (the "Amendment"). The terms and conditions and the execution and delivery of the NDEQ Note and the NDEQ Contract are hereby ratified and confirmed, subject to the changes provided for in the Amendment, and the Mayor is hereby authorized to execute and deliver the Amendment for and on behalf of the City in substantially the form presented as Exhibit C to this Ordinance but with such changes from the form presented as such officer shall deem appropriate for and on behalf of the City.

Section 4. The City hereby pledges and hypothecates the entire revenue and earnings of the Combined Utilities (subject only to the payment of reasonable operating expenses of said Combined Utilities) to the payment of the Series 2010 Bond and any Additional Bonds and interest on such Series 2010 Bond and any Additional Bonds as the same fall due. The pledge and hypothecation provided for the Series 2010 Bond and any Additional Bonds hereafter issued as provided for in this Ordinance are intended to and shall provide for a first and prior pledge or lien upon and security interest in the revenues of the Combined Utilities superior to any pledge,

lien or security interest made or given with respect to any other indebtedness of the City as to its Combined Utilities and are intended as a full exercise of the powers of the City provided for in the Act, as now or hereafter amended, with respect to the City's Combined Utilities and the revenues and earnings thereof. In connection with such pledge, the City does hereby agree with the holders of said Series 2010 Bond and Additional Bonds that there shall be and there is hereby established a separate fund to be held by the City Treasurer, designated as the "Wayne Combined Utilities Fund" (herein referred to as the "Combined Utilities Fund"), into which all of the revenues of the Combined Utilities are required to be deposited as and when received, provided that the City may in its discretion maintain within the Combined Utilities Fund such separate deposits, credits and accounting for the separate components of the Combined Utilities as the Mayor and Council and the officers of the City, including the Treasurer, shall deem appropriate so long as the funds, investments and accounts related to the Combined Utilities are kept separate and apart from the general funds and accounts of the City. Said Combined Utilities Fund shall be maintained so long as the Series 2010 Bond or any Additional Bonds remain outstanding. Within the Combined Utilities Fund, in accordance with the requirements of this Ordinance, the accounts and sub-accounts shall be maintained as follows:

(a) OPERATION AND MAINTENANCE ACCOUNT - Out of the Combined Utilities Fund there shall be monthly credited into the Operation and Maintenance Account such amounts as the City shall from time to time determine to be necessary to pay the reasonable and necessary expenses of operating and maintaining the Combined Utilities and the City may withdraw funds credited to the Operation and Maintenance Account as necessary from time to time to pay such expenses.

(b) BOND PAYMENT ACCOUNT - Out of the Combined Utilities Fund there shall be credited monthly on or before the first day of each month to the Bond Payment Account, starting with the month of March 2010, the following amounts:

- (1) during the period from and including March 1, 2010, until and including that December 1 or June 1 which immediately follows the "Initiation of Operation" (as defined in the NDEQ Contract; in this Ordinance hereafter referred to as the "Initiation of Operation") of the 2010 Project, an amount such that if the same amount were credited on the first day of each calendar month from such date of

credit until the next payment date upon which any amount falls due on the NDEQ Note, whether for principal or interest, the amount accumulated by such monthly credits shall equal the amount falling due on such payment date on the NDEQ Note;

- (2) during the period from and including that January 1 or that July 1 which immediately follows the Initiation of Operation until the NDEQ Note has been paid in full an amount equal to one-sixth of the installment amount (principal and interest) due on the next installment payment date for the NDEQ Note;
- (3) During such periods and in such amounts, all such payments are as required under the terms of any ordinance authorizing the issuance of Additional Bonds with respect to the principal and interest on such Additional Bonds.

The City Treasurer is hereby authorized and directed, without further authorization, to withdraw monies credited to the Bond Payment Account, or if the monies in such Account are insufficient, then from the Bond Reserve Account (as and to the extent that amounts are available in a sub-account therein designated in the authorizing ordinance) and next from the Surplus Account, an amount sufficient to pay, when due, the principal of and interest on the Series 2010 Bond or any Additional Bonds and to transfer the appropriate amounts due to the direct payee for the Series 2010 Bond and the respective paying agents or direct payees (as may be applicable) for any Additional Bonds, on or before each principal and interest payment date. Upon the issuance of any Additional Bonds pursuant to this Ordinance, appropriate additional credits to the Bond Payment Account shall be provided for sufficient to pay principal and interest on said Additional Bonds.

(c) **BOND RESERVE ACCOUNT:** The Bond Reserve Account is established as an account in the Combined Utilities Fund for purposes of assuring the timely payment of principal and interest in the event that there are insufficient monies on hand for such purposes in the Bond Payment Account. A separate sub-account within the Bond Reserve Account shall be established for any series of bonds for which any such reserve is determined to be necessary by the Mayor and Council at the time of issuance. The Mayor and Council hereby determine that no such amount is required for the Series 2010 Bond, in view of the provisions of the NDEQ Contract. In the event of the issuance of any Additional Bonds, a separate sub-account for each such issue of Additional Bonds may be established within the Bond Reserve Account, as and to the extent determined appropriate by the Mayor and Council. Monies credited to the Bond Reserve Account may be withdrawn, but only from the designated sub-account for a specific issue, as needed, to provide funds to pay, when due, the principal of and interest on any Additional Bonds issued pursuant to this Ordinance for which a reserve sub-account has been established, if the Bond Payment Account contains insufficient funds for that purpose, and the City Treasurer is hereby authorized and directed to make such withdrawal if and when needed. In the event of a withdrawal from the Bond Reserve Account, there shall be credited to the Bond Reserve Account in the month following such withdrawal all monies in the Combined Utilities Fund remaining after making the payments required to

be made in such month to the Operation and Maintenance Account and Bond Payment Account and each month thereafter all such remaining monies shall be credited to the Bond Reserve Account until such account has been restored to the required balance for each sub-account. Upon the issuance of any Additional Bonds, the amount required to be accumulated and maintained in the Bond Reserve Account, in a separate sub-account for such Additional Bonds, shall be set at an amount determined appropriate by the Mayor and Council in connection with any such issue of Additional Bonds (which may be \$-0-). Any such required accumulation shall be provided for either by credit made from bond proceeds or current funds of the Combined Utilities then available or by equal monthly credits from the Combined Utilities Fund made in such amounts so that the required amount shall be accumulated in a period of not more than thirty-six months. Each sub-account in the Bond Reserve Account shall be held solely for the specific issue for which it is established. In the event of withdrawal from any such sub-account which results in the amount in such sub-account being deficient to meet the required balance, available amounts for restoring sub-account balances shall be credited to each deficient sub-account on a pro rata basis in accordance with the respective outstanding principal amounts for those issues for which the respective sub-accounts are then deficient. When any issue of Additional Bonds for which a sub-account has been established is no longer outstanding, the particular sub-account for such issue shall no longer be required to be maintained. Anything in this subsection 4(c) to the contrary notwithstanding, the amount required to be maintained in the Bond Reserve Account with respect to any issue of Additional Bonds shall not at any time exceed the maximum amount permitted to be invested without yield restriction under Sections 103(b) and 148 of the Internal Revenue Code of 1986, as amended, (the "Code") and applicable regulations of the United States Treasury Department.

(d) SURPLUS ACCOUNT: After providing for the Operation and Maintenance Account and after making the payments as hereinabove required to be made into the Bond Payment Account and the Bond Reserve Account, all remaining funds in the Combined Utilities Fund shall be deposited into the Surplus Account to be used as follows:

- 1) to fill any deficiency in the foregoing accounts;
- 2) for the purpose of calling under their option provisions the Series 2010 Bond or any Additional Bonds or for purchasing on the open market Additional Bonds;
- 3) for improvements, replacements, extensions and enlargements to the Combined Utilities; or
- 4) for any other legal municipal purpose of the City.

Any ordinance authorizing Additional Bonds may provide for the creation of additional accounts and sub-accounts not having priority over the Operation and Maintenance Account, the Bond Payment Account or the Bond Reserve Account, including sub-accounts in the Surplus Account or other accounts as may be established for such reserve or other purposes as the Mayor and Council shall deem appropriate. In the event that

there is a deficiency in any of the accounts described in this Section 4, all moneys in the Surplus Account shall be applied for the purpose described in (1) above prior to any application to the purposes described in (2), (3) or (4) above.

Moneys on deposit in the Combined Utilities Fund shall be invested in such obligations as are permitted by law for cities of the class to which the City belongs, maturing at such times not later than ten years from the date of such investment and in such amounts as shall be determined by the Mayor and Council. Earnings from the investment of such moneys shall not be credited to the particular fund, account or sub-account from which the investment was made, but shall be treated as earnings of the Combined Utilities and shall be treated as any other revenues of such Combined Utilities. All investments held for the credit of any Fund or Account or sub-account may be sold when required to make the payment to be made from such Fund or Account or sub-account. Any moneys credited to the Combined Utilities Fund or any Account or sub-account therein which are not invested shall be secured in the manner provided by law for the security of funds of cities of the class to which the City of Wayne belongs.

It is understood that the revenues of the Combined Utilities are to be credited to the various accounts and sub-accounts hereinabove described and as set out in this Ordinance in the order in which said accounts and sub-accounts have been listed in this Ordinance, and, if within any period the revenues are insufficient to credit the required amounts in any of the said accounts or sub-accounts, the deficiencies shall be made up the following period or periods after payment into all accounts enjoying a prior claim on the revenues have been made in full.

The provisions of this Section 4 shall require the City to maintain a set of books and records in accordance with such accounting methods and procedures as are generally applicable to municipal utility enterprises, which books and records shall show credits to and expenditures from the several accounts and sub-accounts required by this Section. Monies credited to the Combined Utilities Fund or any of the accounts or sub-accounts therein as established by this

Ordinance shall be deposited or invested separate and apart from other City funds. Except as specified below for the Bond Reserve Account, the City shall not be required to establish separate bank or investment accounts for the accounts or sub-accounts described in Subsections 4(a), 4(b), 4(c) and 4(d). Monies credited to the Bond Reserve Account (or any sub-account therein) shall, if maintained in a demand or time deposit account, be kept in a separate account and not commingled with other Combined Utilities funds or accounts. If invested, monies credited to the Bond Reserve Account (or any sub-account therein) may be commingled with other Combined Utilities funds or accounts so long as the City maintains books and records clearly identifying the specific investments, or portions thereof, which belong to the Bond Reserve Account (or any sub-account therein).

Section 5. The City agrees that it will maintain and collect rates and charges for all services furnished by the Combined Utilities adequate to produce revenue and earnings sufficient at all times:

- (a) to provide for the payment of interest on and principal of Series 2010 Bond and any Additional Bonds as such interest and principal become due;
- (b) to pay all reasonable costs of operation and maintenance of the Combined Utilities, including adequate insurance as provided by this Ordinance and to pay for the necessary and reasonable repairs, replacements and extensions of said Combined Utilities; and
- (c) to establish and maintain the Bond Reserve Account as provided for in this Ordinance.

Section 6. To provide funds for any purpose related to the Combined Utilities, the City may issue Additional Bonds (other than Additional Bonds issued for refunding purposes which are governed by Section 7 of this Ordinance) payable from the revenues of the Combined Utilities having equal priority and on a parity with the Series 2010 Bond and any Additional Bonds previously issued and then outstanding only upon compliance with the following conditions:

(a) Such Additional Bonds shall be issued only pursuant to an ordinance which shall provide for an increase in the monthly credits into the Bond Payment Account in amounts sufficient to pay, when due, the principal of and interest on the Series 2010 Bond and any Additional Bonds then outstanding and the proposed Additional Bonds and for such monthly credits (if any) to the Bond Reserve Account (including any appropriate sub-account determined upon by the Mayor and Council) as may be required under Subsection 4(c).

(b) The City shall have complied with one or the other of the two following requirements:

(1) The Net Revenues derived by the City from its Combined Utilities for the fiscal year next preceding the issuance of the Additional Bonds shall have been at least equal to 1.10 times the Average Annual Debt Service Requirements of the Series 2010 Bond and any Additional Bonds, all as then outstanding, and of the proposed Additional Bonds; or

2) The City shall have received a projection made by a consulting engineer or firm of consulting engineers or certified public accountant or firm of certified public accountants, either of which is recognized as having experience and expertise in municipal utility systems, projecting that the Net Revenues of the Combined Utilities in each of the three full fiscal years after the issuance of such Additional Bonds will be at least equal to 1.25 times the Average Annual Debt Service Requirements of the Series 2010 Bond and any Additional Bonds, all as then outstanding, and of the proposed Additional Bonds. In making such projection, the consulting engineer or certified public accountant shall use as a basis the Net Revenues of the Combined Utilities during the last fiscal year for which an independent audit has been prepared and shall adjust such Net Revenues as follows: (A) to reflect changes in rates which have gone into effect since the beginning of the year for which the audit was made, (B) to reflect such engineer's or accountant's estimate of the net increase over or net decrease under the Net Revenues of the Combined Utilities for the year for which the audit was made by reason of: (i) changes of amounts payable under existing contracts for services; (ii) additional general income from sales to customers under existing rate schedules for various classes of customers or as such schedules may be revised under a program of changes which has been adopted by the Mayor and Council of the City; (iii) projected revisions in costs for labor, wages, salaries, machinery, equipment, supplies and other operational items; (iv) revisions in the amount of service to be supplied and any related administrative or other costs associated with such increases due to increased supply from the acquisition of any new facility; and (v) such other factors affecting the projections of revenues and expenses as the consulting engineer or accountant deems reasonable and proper. Annual debt service on any proposed Additional Bonds to be issued may be estimated by the consulting engineer or accountant in projecting Average Annual Debt Service Requirements, but no Additional Bonds shall be issued requiring any annual

debt service payment in excess of the amount so estimated in a final projection furnished by the consulting engineer or accountant.

If the City shall find it desirable, it shall also have the right when issuing Additional Bonds to combine with the Water System and the Sewer System any other utilities of the City authorized to be combined under Sections 18-1803 through 18-1805, R.R.S. Neb. 2007, as may constitute a revenue producing facility or undertaking, and to cause all of the revenues of such combined utilities systems to be paid into the Combined Utilities Fund and to provide that the Series 2010 Bond and any Additional Bonds previously issued, all as then outstanding, and the proposed issue of Additional Bonds shall be payable from the revenues of such combined utilities systems and shall stand on a parity and in equality as to security and payment, provided, however, no such additional utility shall be combined with the Water System and the Sewer System as contemplated in this paragraph unless the City is current with all the payments required to be made into the accounts set out in this Ordinance and the revenues of the Combined Utilities (as proposed to be then newly combined) shall satisfy one or the other of the requirements for Additional Bonds provided above in this Section 6. For purposes of meeting such requirement, the definition of revenues shall be altered to include the gross revenues of the additional utility or utilities and there shall be deducted from such revenues the ordinary expenses of operating and maintaining the additional utility or utilities (not including any deduction for depreciation or interest) and for such purposes any engineer or accountant furnishing projections may take into consideration the factors similar to those described above with respect to such additional utility or utilities. Revenues of the additional utility or utilities shall be based upon the report or reports of independent certified public accountants in the same manner as is required above.

The City hereby covenants and agrees that so long as any of the Series 2010 Bond and any Additional Bonds are outstanding, it will not issue any bonds or notes payable from the revenues of the Combined Utilities except in accordance with the provisions this Ordinance.

Section 7. The City may issue refunding bonds, which shall qualify as Additional Bonds of equal lien, to refund the Series 2010 Bond or Additional Bonds then outstanding provided that, if the Series 2010 Bond or any Additional Bonds are to remain outstanding after the issuance of such refunding bonds, the aggregate principal payments due in any calendar year in which those bonds which are to remain outstanding mature, or in any calendar year prior thereto, shall not be increased over the aggregate amount of such principal payments due in each such calendar year immediately prior to such refunding. Refunding Bonds issued in accordance with this paragraph of this Section 7 may be issued as Additional Bonds of equal lien without compliance with the conditions set forth in Subsection 6(b) of this Ordinance.

The City may also issue refunding bonds which shall qualify as Additional Bonds of equal lien to refund the Series 2010 Bond or Additional Bonds, then outstanding, provided that, if the Series 2010 Bond or any Additional Bonds then outstanding are to remain outstanding after the application of the proceeds of the refunding bonds to the payment of the bonds which are to be refunded, such issuance must comply with the Net Revenues test set forth in Subsection 6(b)(1) of this Ordinance and, if the proceeds of such refunding bonds are not to be applied immediately to the satisfaction of the bonds which are to be refunded, then such refunding bonds must provide by their terms that they shall be junior in lien to the Series 2010 Bond and any Additional Bonds outstanding at the time of issuance of such refunding bonds until the time of application of their proceeds to the satisfaction of the bonds which are to be refunded. In computing Average Annual Debt Service Requirements to show compliance with said Net Revenues test for such refunding bonds, all payments of principal and interest due on such

refunding bonds from time of their issuance to the time of application of the proceeds of such refunding bonds to the satisfaction of the bonds which are to be refunded shall be excluded from such computation to the extent that such principal and interest are payable from sources other than the revenues of the Combined Utilities, such as bond proceeds or investment earnings on bond proceeds, or from monies in the Surplus Account, and all payments of principal and interest due on the bonds which are to be refunded from and after the time of such application shall also be excluded. For purposes of this paragraph of this Section 7, the time of application of the proceeds of the refunding bonds to the satisfaction of the bonds which are to be refunded shall be the time of deposit with the paying agent for such bonds which are to be refunded pursuant to Section 10-126, R.R.S. Neb, 2007 (or any successor statutory provision thereof) or the time when such bonds which are to be refunded under the terms of their authorizing ordinance or ordinances are no longer deemed to be outstanding, whichever occurs sooner. In the event that refunding bonds are proposed to be issued at a time when the audited financial statements of the City for its Combined Utilities for the most recently completed fiscal year are not yet available, compliance with the test based upon Net Revenues as set forth in Section 6(b)(1) may be determined with reference to the Net Revenues for the most recent fiscal year for which financial statements have been issued and unaudited financial statements for the most recently completed fiscal year as certified by the City Treasurer, provided that compliance shall be determined to be shown for each such fiscal year.

Section 8. Nothing in this Ordinance shall prevent the City from issuing bonds, revenue notes, or other forms of indebtedness, the payment of principal and interest of which is a charge upon all or a portion of the revenues of the Combined Utilities, junior or inferior to the Series 2010 Bond and any Additional Bonds and to the payments to be made into the Operation and Maintenance Account, the Bond Payment Account and the Bond Reserve Account described in

Section 4 of this Ordinance and the City shall have the right to pay interest thereon and the principal thereof, as long as no deficiency exists in the payments into such Accounts, from funds available in the Surplus Account.

Section 9. The City of Wayne shall keep proper books of record and account, separate and apart from all other records and accounts, showing complete and correct entries of all transactions relating to the Combined Utilities and the holder of the Series 2010 Bond and holder or holders of any Additional Bonds or any duly authorized agent or agents of such holders shall have the right at all reasonable times to inspect all records, accounts and data relating thereto and to inspect said Combined Utilities and all properties comprising the same. Within ninety days following the close of each fiscal year the City shall cause an audit of such books and accounts to be made by an independent firm of certified public accountants, showing the receipts and disbursements for account of the Combined Utilities and such audit will be available for inspection by the holders of any of the aforesaid bonds. All expenses incurred in the making of the audits required by this section shall be regarded and paid as a maintenance and operation expense. The City of Wayne shall furnish a copy of each such audit: (i) to the holder of the Series 2010 Bond, (ii) to the initial purchaser of any series of Additional Bonds and (iii) to the holder of at least twenty-five percent (25%) of any issue of bonds outstanding, upon request, after the close of each fiscal year.

Section 10. The City Treasurer and the City Clerk shall be bonded, in addition to their official bond, by an insurance company licensed to do business in Nebraska, in such amounts as shall be determined by the Mayor and Council to be sufficient to cover at all times all the revenues and earnings of the Combined Utilities placed in their hands. Any other person employed by the City in the collection or handling of monies derived from the operation of the Combined Utilities shall also be bonded in an amount determined by the Mayor and Council

sufficient to cover all monies which may at any time be placed in such person's hands. The amount of such bonds shall be fixed by the Mayor and Council and the cost thereof shall be paid from the earnings of said Combined Utilities, and they shall secure the faithful accounting of all monies.

Section 11. The City will carry adequate insurance on the Combined Utilities in such amounts as are normally carried by private companies engaged in similar operations, including, without limiting the generality of the foregoing, fire and windstorm insurance, public liability insurance any insurance covering such risks as shall be recommended by a consulting engineer. The cost of all such insurance shall be regarded and paid as an operation and maintenance expense. All such insurance proceeds except from public liability insurance shall be used in making good the loss or damage in respect of which they were paid either by repairing the property damaged or replacing the property destroyed. The proceeds of any and all policies for public liability shall be used in paying the claims on account of which they are paid.

Section 12. The City will maintain the Combined Utilities in good condition and operate the same in an efficient manner and at a reasonable cost. The City agrees with the holder from time to time of the Series 2010 Bond and the holders of any Additional Bonds that the City will continue to own, free from all liens and encumbrances, except the liens and pledges provided for in this Ordinance and will adequately maintain and efficiently operate the Combined Utilities; provided, however, the City may dispose of property which is recommended for disposal by the manager or superintendent of the utilities, or an independent consulting engineer and which is determined as a matter of record by the Mayor and Council to have become obsolete, non-productive or otherwise unusable to the advantage of the City.

Section 13. The City will not hereafter grant any franchise or right to any person, firm or corporation to own or operate a water or sewer plant or system in competition with the Water System and the Sewer System.

Section 14. While the Series 2010 Bond or any Additional Bonds are outstanding, the City will render bills to all customers for services of the Combined Utilities. If bills are not paid within sixty days after due, the portion of service of the Combined Utilities, for which payment is delinquent, shall be discontinued, subject to state and federal laws governing the termination of utility service. The City agrees that it will make appropriate charge for use of all properties of the City connected to the Combined Utilities.

Section 15. Except for amendments which are required for the correction of language to cure any ambiguity or defective or inconsistent provisions, omission or mistake or manifest error contained herein, no changes additions or alterations of any kind shall be made by the City in the provisions of this Ordinance in any manner; provided, however, that from time to time the holder of the Series 2010 Bond by an instrument in writing signed by such holder and filed with the City Clerk shall have power to assent to and authorize any modification of the rights and obligations of the City and of the holder of the Series 2010 Bond and the provisions of this Ordinance that shall be proposed by the City, and any action authorized to be taken with the assent and authority given as aforesaid of the holder of the Series 2010 Bond shall be binding upon such holder and upon the City as fully as though such action were specifically and expressly authorized by the terms of this Ordinance. Any modification of the provisions of this Ordinance shall be set forth in a supplemental ordinance to be adopted by the Mayor and Council of said City.

Section 16. So long as the Series 2010 Bond or any Additional Bonds are outstanding, each of the obligations, duties, limitations and restraints imposed upon the City by this

Ordinance shall be deemed to be a covenant between the City and the holders of said bonds, and this Ordinance and every provision and covenant hereof shall constitute a contract of the City with every holder from time to time of said bonds. The holder of the Series 2010 Bond or of any Additional Bond may by mandamus or other appropriate action or proceeding at law or in equity in any court of competent jurisdiction enforce and compel performance of this Ordinance and every provision and covenant thereof including, without limiting the generality of the foregoing, the enforcement of the performance of all duties required of the City by this Ordinance and the applicable laws of the State of Nebraska, including in such duties the making and collecting of sufficient rates, rentals, fees or charges for the use and service of the Combined Utilities, the segregation of the revenues of the Combined Utilities and the application thereof to the respective Fund, Accounts and sub-accounts referred to and described in Section 4 of this Ordinance. Any holder of the Series 2010 Bond or any Additional Bonds shall, after default in payment, have the right to request the appointment of a receiver for the Combined Utilities.

Section 17. The City's obligations under this Ordinance and the liens, pledges, covenants and agreements of the City herein made or provided for with respect to the Series 2010 Bond or any Additional Bonds shall be fully discharged and satisfied and any such bond shall no longer be deemed outstanding hereunder if such bond shall have been purchased and cancelled by the City or when payment of the principal of and interest thereon to the respective date of maturity or redemption (a) shall have been made or caused to be made in accordance with the terms thereof, or (b) shall have been provided for by depositing with a national or state bank having trust powers or trust company, in trust solely for such payment, (i) sufficient money to make such payment and/or (ii) Deposit Securities in such amount and bearing interest payable and maturing or redeemable at stated fixed prices at the option of the holder as to principal, at such time or times, as will ensure the availability of sufficient money to make such payment;

provided, however, that, with respect to the Series 2010 Bond or any Additional Bond, if it is to be paid prior to maturity, the City shall have duly given notice of redemption of such bond as provided by law or made irrevocable provisions for the giving of such notice. Any such money so deposited with a bank or trust company may be invested and reinvested in Deposit Securities and all interest and income from such Deposit Securities in the hands of such bank or trust company, in excess of the amount required to pay principal of and interest on the bond for which such monies were deposited, shall be paid over to the City as and when collected. With respect to any deposit made for purposes of satisfying the Series 2010 Bond under this Section 17, there shall be furnished to NDEQ and the Nebraska Investment Finance Authority (“NIFA”) an opinion of nationally recognized bond counsel that such deposit for payment of the Series 2010 Bond will not adversely affect the exclusion for interest from gross income for federal tax purposes on any bonds issued by NIFA to provide funds for deposit into the Nebraska Drinking Water Facilities Loan Fund and the furnishing of such opinion shall be a condition required to be satisfied prior to the making of any such deposit in trust for payment and satisfaction with respect to the Series 2010 Bond unless the Series 2010 Bond is to be prepaid and redeemed within 60 days from the time of such deposit.

Section 18. If any section, paragraph, clause or provision of this Ordinance shall be held invalid, the invalidity of such section, paragraph, clause or provision shall not affect any of the other provisions of this Ordinance.

Section 19. The Mayor and Council hereby expressly declare the intent and understanding that interest on the Series 2010 Bond shall not be excludable from gross income under the terms of Section 103 of the Code and the City as issuer shall not file any information report with respect to the issuance of the Series 2010 Bond pursuant to Section 149(e) of the Code.

Section 20. The Series 2009 Notes are hereby called for redemption on February 19, 2010 and the City Clerk and City Treasurer (as Paying Agent and Registrar for the Series 2009 Notes) are each hereby authorized and instructed to take all actions necessary or appropriate to effect the calling and redemption of the Series 2009 Notes on such redemption date. Redemption amounts for the Series 2009 Notes may be drawn under the terms of the NDEQ Contract to pay or reimburse amounts required for redemption of the Series 2009 Notes allocable to improvements to the Water System and constituting a part of the 2010 Project. Funds of the City, including but not limited to funds derived from the Sewer System and any unexpended proceeds of the Series 2009 Notes, shall be applied to redemption of the Series 2009 Notes to the extent necessary to effect the redemption in full of the Series 2009 Notes.

Section 21. All ordinances, resolutions or orders or parts thereof in conflict with the provisions of this Ordinance are to the extent of such conflict hereby repealed.

Section 22. This Ordinance is hereby determined to be a measure necessary to carry out the contractual obligations of the City with respect to the Series 2009 Notes. The Mayor and Council hereby determine that an emergency exists based upon the risk of loss of federal funding related to the NDEQ Note and the NDEQ Contract if certain deadlines are not met and this Ordinance shall be published in pamphlet form, including distribution by posting of such pamphlet in three public places, and take effect immediately upon proclamation by the Mayor as provided for in Section 16-405, R.R.S. Neb. 2007.

PASSED AND APPROVED this 19th day of January, 2009.

Mayor

ATTEST:

City Clerk

[SEAL]

Exhibit "A"

NDEQ Note

Exhibit B
NDEQ Contract

Ehibit C

Amendment Number One

DOCS/951595.3

**PROCLAMATION OF EMERGENCY
AND
EFFECTIVENESS OF ORDINANCE**

The undersigned, Mayor of the City of Wayne, Nebraska, hereby proclaims, based upon determination by the Mayor and Council at a meeting held on January 19, 2010, that an emergency exists and is hereby declared to exist due to risk of loss of federal funding and related deadlines and that in order for the City to avoid risk of loss and undue expense relating to financing to be provided by the Nebraska Department of Environmental Quality, Ordinance No. _____ shall take effect upon this Proclamation immediately as of the time of first publication in pamphlet form.

The title of such ordinance is as follows:

AN ORDINANCE AUTHORIZING THE ISSUANCE OF A COMBINED UTILITIES REVENUE BOND, SERIES 2010, OF THE CITY OF WAYNE, NEBRASKA, IN THE PRINCIPAL AMOUNT OF ONE MILLION FIFTY THOUSAND DOLLARS (\$1,050,000), IN THE FORM OF A PROMISSORY NOTE ISSUED TO EVIDENCE INDEBTEDNESS TO THE NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY; APPROVING THE FORM OF SAID BOND (ISSUED AS A SINGLE PROMISSORY NOTE) AND RELATED LOAN AGREEMENT; PLEDGING AND HYPOTHECATING THE REVENUES AND EARNINGS OF THE WATERWORKS PLANT AND WATER SYSTEM AND THE SEWAGE DISPOSAL PLANT AND SANITARY SEWER SYSTEM OWNED BY THE CITY FOR THE PAYMENT OF SAID BOND; PROVIDING FOR THE ISSUANCE AND SALE OF SAID BOND; AUTHORIZING THE DELIVERY OF SAID BOND TO THE NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY; DETERMINING THAT INTEREST ON SAID BOND SHALL NOT BE EXCLUDABLE FROM GROSS INCOME FOR PURPOSES OF FEDERAL INCOME TAXATION; PROVIDING FOR THE DISPOSITION OF THE PROCEEDS OF SAID BOND; DETERMINING THIS ORDINANCE TO BE A MEASURE NECESSARY TO CARRY OUT THE CITY'S CONTRACTUAL OBLIGATIONS; DECLARING AN EMERGENCY AND ORDERING THE ORDINANCE PUBLISHED IN PAMPHLET FORM AND TO TAKE EFFECT IMMEDIATELY UPON PROCLAMATION BY THE MAYOR AND POSTING OF SUCH PAMPHLET.

Dated this _____ day of January, 2010.

Mayor

AMENDMENT NUMBER ONE
TO LOAN AGREEMENT BETWEEN
NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY
AND
CITY OF WAYNE, NEBRASKA
Project No. D311519

This Amendment Number One (the "Amendment") dated as of the ____ day of January, 2010 to that Loan Agreement dated December 1, 2009 is entered into by and between the State of Nebraska, acting by and through the Nebraska Department of Environmental Quality (hereinafter "NDEQ") and the City of Wayne, Nebraska (hereinafter "Borrower").

1. The Loan Agreement American Recovery and Reinvestment Act (Project No. D311519) (hereinafter "Original Loan Agreement") between NDEQ and the Borrower dated December 1, 2009 signed by Michael J. Lindner, Director of NDEQ, and Lois M. Shelton, Mayor of the Borrower, is hereby acknowledged and incorporated by this reference as if fully set forth herein and is hereby confirmed in all respects, except as expressly modified by this Amendment.

2. Pursuant to Section 6.03 of the Original Loan Agreement, the parties hereby amend the Original Loan agreement as follows:

A. Article I of the Original Loan Agreement is hereby amended by adding to the definitions therein set forth definitions of the following terms:

"Combined Utilities" means the revenue producing facilities owned and operated by the Borrower consisting of the Borrower's Public Water Supply System and the Borrower's Wastewater Treatment Plant and System, together with any additions, extensions and improvements to the Public Water Supply System and/or the Waste Water Treatment Plant and System hereafter constructed.

"Wastewater Treatment Plant and System" means the Borrower's sanitary sewer plant and system consisting of any and all properties and equipment, structures and processes required to collect, transport and treat domestic or industrial wastes and to dispose of the effluent and sludges.

In addition the following definition set forth in the Original Loan Agreement shall be amended to read as follows:

"System Revenues" means the revenues derived by the Borrower from the fees and charges for the use and services of the Borrower's Combined Utilities.

B. Section 2.09 of the Original Loan Agreement is hereby amended and restated to read as follows:

Section 2.09. Public Water Supply System Ordinances/User Charge Systems. The Borrower agrees to adopt and implement such changes to its

Public Water Supply System Ordinance/User Charge System as determined by NDEQ from time to time to be necessary to comply with the Regulations. The Borrower agrees that it shall not modify or amend or make additions to or deletions from its Public Water Supply System Ordinance/User Charge System without the consent of NDEQ during the term of this Loan Agreement, provided, however, that any increase in rates and charges necessary or deemed necessary by the governing body of the Borrower in order to comply with the provisions of any ordinance or any other agreement relating to any Existing Revenue Obligations for which the System Revenues have been pledged or any increase deemed necessary by the governing body of the Borrower in order to permit the issuance of or provide for the payment of Additional Revenue Obligations may be made without the consent of NDEQ.

C. Section 3.02(a) of the Original Loan Agreement is hereby amended and restated to read as follows:

(a) ***Dedicated Source of Revenue for Repayment of the Loan.*** The Borrower hereby pledges the System Revenues as the dedicated source of revenue for the repayment of the Loan. The Borrower shall fix, establish, maintain and collect such rates, fees and charges for the use and services furnished by or through the Borrower's Public Water Supply System, including all improvements and additions hereafter constructed or acquired by the Borrower, as will provide revenues sufficient to (i) pay the cost of the operation and maintenance, and replacement of the Public Water Supply System, (ii) pay at least 110% of the principal of and interest on the Loan as and when the same become due, and (iii) pay all other amounts due at any time under this Loan Agreement; provided, however, the lien of NDEQ on the revenues of the Borrower's Public Water Supply System shall be on a parity with the lien on such revenues of the Borrower's Existing Revenue Obligations and any Additional Revenue Obligations hereafter issued on parity with such outstanding revenue bonds or the Loan provided for in this Loan Agreement. These revenues shall be set aside as collected and deposited in a separate fund. Such fund shall be divided into at least two separate accounts, one for the operation and maintenance costs and the other for principal and interest payments on the Loan. The Borrower shall deposit monthly, in the Loan payment account, an amount equal to at least one-sixth of the anticipated amount due on the next Loan payment date. The Borrower agrees to develop the User Charge System based on actual or estimated use of public water supply services, providing that each user or user class pay its proportionate share of operation and maintenance (including replacement) costs within the Borrower's service area, based on the user's classification and proportionate water usage demand compared to total system water usage demand and to conduct at least a biennial review of user charge rates to review the adequacy of the user charge rates. The Borrower agrees the initial financial analysis performed by NDEQ in Attachment C is a reasonable estimate of the Project Costs, of the financial situation of the Borrower in relation to the Project, and of the user charges necessary at the time of Initiation of Operation of the Project, provided that the Borrower makes no representation with respect to funds available for State intercept as set forth in such Attachment C. NDEQ may review this information annually to insure the

Borrower's compliance with this condition and update Attachment C to reflect any changes.

C. Section 3.02(g) of the Original Loan Agreement is hereby amended and restated to read as follows:

(g) **Records and Accounts.**

(i) The Borrower shall keep accurate records and accounts for its Public Water Supply System (the "System Records"), which shall be separate and distinct from its other records and accounts (the "General Accounts"). The System Records and General Accounts shall be made available for inspection upon request by NDEQ at any reasonable time. The Borrower shall, upon written request by NDEQ during the term of the Loan, perform and provide NDEQ a written audit of its System Records and/or General Accounts, provided such audit shall not be due to NDEQ sooner than 210 days following the close of the fiscal year, or years, identified in the request for audit. In the event that during the period in which the Project financed by this agreement is under construction, and the Borrower expends, for any purpose, total federal funds in excess of \$500,000 during the Borrower's fiscal year, then the Borrower shall, irrespective of any request from NDEQ, provide NDEQ a copy of the single agency audit made on the Borrower's General Accounts performed by an independent registered municipal accountant required in such cases by the Federal Single Audit Act Amendments of 1996, OMB Circular No. A-133, Audits of States, Local Governments, and Non-Profit Organizations. In the sole discretion of NDEQ, any requirement herein to perform and/or provide an audit at the request of NDEQ may be waived by NDEQ on the basis of the Borrower's receipt of an audit waiver received from some other government agency and accurately acknowledging the Borrower's obligation to NDEQ under this Loan or for any other reason acceptable to NDEQ.

(ii) The Borrower shall maintain its accounts in accordance with generally accepted government accounting standards defined in the Government Accounting, Auditing, and Financial Reporting Manual (1994 Ed.), or any other more current edition thereafter, issued by the Government Finance Officers Association. The Borrower's Basic Financial Statements shall comply with the government-wide perspective model and, where applicable, the Statement of Infrastructure Assets prescribed by Government Accounting Standards Board Statement 34.

D. Section 3.02(m) of the Original Loan Agreement is hereby amended and restated to read as follows:

(m) **Additional Covenants and Requirements.** If necessary in connection with the making of the Loan, additional covenants and requirements are listed on Attachment I hereto. The Borrower agrees to observe and comply with each such additional covenant and requirement, if any.

E. Section 5.04 of the Original Loan Agreement is hereby amended and restated to read as follows:

Section 5.04. Application of Moneys. Any moneys collected by NDEQ pursuant to Section 5.02 or 5.03 hereof shall be applied (a) first, to pay interest on the Loan as the same becomes due and payable; (b) second, to pay principal due and payable on the Loan; (c) third, to pay expenses owed by the Borrower pursuant to Section 5.03 hereof; and (d) fourth, to pay any other amounts due and payable hereunder as such amounts become due and payable. To the extent that NDEQ's right to receive Loan Repayments is on a parity of lien basis with the lien of Existing Revenue Obligations or Additional Revenue Obligations on the Borrower's System Revenues, such moneys shall be applied pro rata to all such obligations in accordance with the respective outstanding principal amounts. Any acceleration of amounts owing to NDEQ under this Loan Agreement shall not increase NDEQ's pro rata share from such revenues but NDEQ may apply other amounts available to it, including amounts described in Subsection 5.02(b). NDEQ shall not have any right to receive application of amounts held in any debt service reserve account provided for the securing of any such Existing Revenue Obligations or Additional Revenue Obligations.

IN WITNESS THEREOF, the parties hereto have caused this Amendment Number One to be executed and delivered as of the date set forth below.

CITY OF WAYNE, NEBRASKA

NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

By _____

By _____

Title _____

Title Director

Date _____

Date _____

RESOLUTION NO. 2010-4

A RESOLUTION DIRECTING CITY CLERK TO CERTIFY UNPAID SNOW REMOVAL TO THE WAYNE COUNTY CLERK AND THE WAYNE COUNTY TREASURER TO BECOME A LIEN ON THE EAST 50' OF LOTS 21, 22, 23, 24, 25 AND 26, AND ALL OF LOTS 27 AND 28, BLOCK 22, COLLEGE HILL FIRST ADDITION TO WAYNE, WAYNE COUNTY, NEBRASKA, MORE COMMONLY DESCRIBED AS 204 W. 10TH STREET, WAYNE, NEBRASKA.

WHEREAS, the City of Wayne has incurred costs associated with snow removal on the property located at 204 W. 10th Street, Wayne, Nebraska, and legally described as the East 50' of Lots 21, 22, 23, 24, 25 and 26, and all of Lots 27 and 28, Block 22, College Hill First Addition to Wayne, Wayne County, Nebraska; and

WHEREAS, Section 70-44 of the Wayne Municipal Code states that it shall be unlawful for any person, business, association, corporation, or organization of any kind, who owns, occupies, leases, or controls any property within the corporate city limits upon which a sidewalk has been constructed to allow an accumulation of snow or ice on said sidewalk at any time; and

WHEREAS, the City Clerk or her designee notified in writing the owner of the premises of the said charges; and

WHEREAS, Section 70-44 of the Wayne Municipal Code states that in addition to all other remedies, if a tenant or property owner who is billed for the costs incurred to remove said snow and ice and if said costs are not paid within two months, the City Clerk shall cause a lien to be placed upon the property in the form of a special assessment; and

WHEREAS, Section 18-241 of the Wayne Municipal Code further states that the Council may levy the cost as a special assessment against the lot or real estate upon which the building or structure is located; which special assessment shall be a lien on the real estate and shall be collected in the manner provided for special assessments; or collect the cost from the owner of the building or structure and enforce the collection by civil action in any court of competent jurisdiction.

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and the Council of the City of Wayne, Nebraska, that the Wayne City Clerk shall certify to the Wayne County Clerk and the Wayne County Treasurer the total amount of \$75.00 in expenses incurred by the City of Wayne in the snow removal on the property referenced herein, and upon certification to the Wayne County Clerk and the Wayne County Treasurer, such expense shall become a lien on the East 50' of Lots 21, 22, 23, 24, 25 and 26, and all of Lots 27 and 28, Block 22, College Hill First Addition to Wayne, Wayne County, Nebraska, as a special assessment tax levied on the date of such certification.

BE IT FURTHER RESOLVED that the Wayne County Treasurer shall add such expense to and it shall become and form a part of the taxes on such property described herein and shall bear interest at the same rate as taxes and to be collected as a special tax in the manner provided by law.

PASSED AND APPROVED this 19th day of January, 2010.

THE CITY OF WAYNE, NEBRASKA

BY _____
Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM AND CONTENT:

City Attorney

RESOLUTION NO. 2010-5

A RESOLUTION DIRECTING CITY CLERK TO CERTIFY UNPAID SNOW REMOVAL TO THE WAYNE COUNTY CLERK AND THE WAYNE COUNTY TREASURER TO BECOME A LIEN ON THE WEST 75' OF LOT 3, EXCEPT THE NORTH 10', BLOCK 7, BRITTON & BRESSLER'S ADDITION TO WAYNE, WAYNE COUNTY, NEBRASKA, MORE COMMONLY DESCRIBED AS 120 WEST 8TH STREET, WAYNE, NEBRASKA.

WHEREAS, the City of Wayne has incurred costs associated with snow removal on the property located at 120 West 8th Street, Wayne, Nebraska, and legally described as the West 75' of Lot 3, except the North 10', Block 7, Britton & Bressler's Addition to Wayne, Wayne County, Nebraska; and

WHEREAS, Section 70-44 of the Wayne Municipal Code states that it shall be unlawful for any person, business, association, corporation, or organization of any kind, who owns, occupies, leases, or controls any property within the corporate city limits upon which a sidewalk has been constructed to allow an accumulation of snow or ice on said sidewalk at any time; and

WHEREAS, the City Clerk or her designee notified in writing the owner of the premises of the said charges; and

WHEREAS, Section 70-44 of the Wayne Municipal Code states that in addition to all other remedies, if a tenant or property owner who is billed for the costs incurred to remove said snow and ice and if said costs are not paid within two months, the City Clerk shall cause a lien to be placed upon the property in the form of a special assessment; and

WHEREAS, Section 18-241 of the Wayne Municipal Code further states that the Council may levy the cost as a special assessment against the lot or real estate upon which the building or structure is located; which special assessment shall be a lien on the real estate and shall be collected in the manner provided for special assessments; or collect the cost from the owner of the building or structure and enforce the collection by civil action in any court of competent jurisdiction.

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and the Council of the City of Wayne, Nebraska, that the Wayne City Clerk shall certify to the Wayne County Clerk and the Wayne County Treasurer the total amount of \$75.00 in expenses incurred by the City of Wayne in the snow removal on the property referenced herein, and upon certification to the Wayne County Clerk and the Wayne County Treasurer, such expense shall become a lien on the West 75' of Lot 3, except the North 10', Block 7, Britton & Bressler's Addition to Wayne, Wayne County, Nebraska, as a special assessment tax levied on the date of such certification.

BE IT FURTHER RESOLVED that the Wayne County Treasurer shall add such expense to and it shall become and form a part of the taxes on such property described herein and shall bear interest at the same rate as taxes and to be collected as a special tax in the manner provided by law.

PASSED AND APPROVED this 19th day of January, 2010.

THE CITY OF WAYNE, NEBRASKA

BY _____
Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM AND CONTENT:

City Attorney

RESOLUTION NO. 2010-6

A RESOLUTION DIRECTING CITY CLERK TO CERTIFY UNPAID SNOW REMOVAL TO THE WAYNE COUNTY CLERK AND THE WAYNE COUNTY TREASURER TO BECOME A LIEN ON THE E 72 1/2' OF LOT 1 AND THE E 72 1/2' OF THE N1/2 OF LOT 2, BLOCK 11, ORIGINAL TOWN OF WAYNE, WAYNE COUNTY, NEBRASKA, MORE COMMONLY DESCRIBED AS 215 W. 3RD STREET, WAYNE, NEBRASKA.

WHEREAS, the City of Wayne has incurred costs associated with snow removal on the property located at 215 W. 3rd Street, Wayne, Nebraska, and legally described as the E 72 1/2' of lot 1 and the E 72 1/2' of N 1/2 of lot 2, Block 11, Original Town of Wayne, Wayne County, Nebraska; and

WHEREAS, Section 70-44 of the Wayne Municipal Code states that it shall be unlawful for any person, business, association, corporation, or organization of any kind, who owns, occupies, leases, or controls any property within the corporate city limits upon which a sidewalk has been constructed to allow an accumulation of snow or ice on said sidewalk at any time; and

WHEREAS, the City Clerk or her designee notified in writing the owner of the premises of the said charges; and

WHEREAS, Section 70-44 of the Wayne Municipal Code states that in addition to all other remedies, if a tenant or property owner who is billed for the costs incurred to remove said snow and ice and if said costs are not paid within two months, the City Clerk shall cause a lien to be placed upon the property in the form of a special assessment; and

WHEREAS, Section 18-241 of the Wayne Municipal Code further states that the Council may levy the cost as a special assessment against the lot or real estate upon which the building or structure is located; which special assessment shall be a lien on the real estate and shall be collected in the manner provided for special assessments; or collect the cost from the owner of the building or structure and enforce the collection by civil action in any court of competent jurisdiction.

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and the Council of the City of Wayne, Nebraska, that the Wayne City Clerk shall certify to the Wayne County Clerk and the Wayne County Treasurer the total amount of \$75.00 in expenses incurred by the City of Wayne in the snow removal on the property referenced herein, and upon certification to the Wayne County Clerk and the Wayne County Treasurer, such expense shall become a lien on the E 72 1/2' of lot 1 and the E 72 1/2' of N 1/2 of lot 2, Block 11, Original Town of Wayne, Wayne County, Nebraska, as a special assessment tax levied on the date of such certification.

BE IT FURTHER RESOLVED that the Wayne County Treasurer shall add such expense to and it shall become and form a part of the taxes on such property described herein and shall bear interest at the same rate as taxes and to be collected as a special tax in the manner provided by law.

PASSED AND APPROVED this 19th day of January, 2010.

THE CITY OF WAYNE, NEBRASKA

BY _____
Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM AND CONTENT:

City Attorney