

**AGENDA
CITY COUNCIL MEETING
May 17, 2011**

5:30 Call to Order

1. Approval of Minutes – May 3, 2011

2. Approval of Claims

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

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

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

3. Action on \$167,000 Claim Filed by Kate Lassila Against the City of Wayne for Discrimination, Retaliation and Hostile Work Environment

Background: This is a claim filed by a former police dispatcher against the City of Wayne under the Nebraska Tort Claims Act.

Recommendation: The recommendation of legal counsel is to table action on this claim and forward the claim to our insurance carrier.

4. Appointment of Tom Sievers as Fire Chief of Wayne Volunteer Fire Department

Background: The Fire Chief must be recommended annually by a vote of the Fire Department and confirmed by the City Council. Tom has been reelected by the department for another one-year term as Fire Chief.

5. Report on the Wayne Fire Department Practice House Burn (Former Scotty Thompson Property) on May 1st

Background: Because people get trapped in fires, regular firefighter training includes the use of air tanks inside confined spaces in live smoke and intense heat and searching for objects while advancing uncharged and charged fire hoses. Controlled burns of condemned buildings provide area departments realistic opportunities to train for high risk rescues. On May 1st, the Wayne Fire Department hosted a practice burn in cooperation with area departments, and Chief Tom Sievers will share some of the photos taken of that event at this meeting.

6. Resolution 2011-33: Approving the Recreational Trails Program Project Agreement between the City of Wayne and the Nebraska

[Game and Parks Commission Regarding Signage for the Trail](#)

Background: At the April 19th Council meeting, the Council approved \$4,099 in local matching funds in an application for a \$16,395 Nebraska Game and Parks grant to install educational signage along the Phase I Trail. The application was approved, and this Resolution is required by the Nebraska Game and Parks Commission to commit their funding to the project.

Recommendation: The recommendation of the Finance Director and City Administrator is to approve the agreement and complete the project.

7. [Resolution 2011-34: Approving Interlocal Cooperation Agreement and Special Operation and Maintenance Agreement between the City of Wayne and the Lower Elkhorn Natural Resources District for the “Wayne Trail Logan Creek Overlook Bank Stabilization Project”](#)

Background: High water flows in South Logan Creek in recent years has caused serious damage to the creek banks at the old city dump site by the airport, the Phase I Trail Overlook by the Highway 15 bridge, and our primary storm drain system outlet at Boy Scout Park at the south end of Nebraska Street. The former dump site reconstruction cost was about \$200,000 and has been completed. The engineer’s estimate of cost for the storm drain outlet is about \$250,000 and the engineer’s estimate for the trail overlook bank stabilization is about \$88,000. This Resolution approves an agreement with the Natural Resources District for a \$25,000 grant to do that work. Anthony Lawrence is also preparing a grant application to the Nebraska Environmental Trust for this “Trail Overlook Bank Stabilization Project.”

8. [Resolution 2011-35: Accepting 2010 Wayne Sidewalk Replacement Project and Authorizing Final Payment](#)

Background: This project has been determined “substantially complete” by the project engineer, and a request for final payment to M. E. Collins, the sidewalk replacement contractor, has been submitted. The sidewalk project included tear-out and replacement of 3,600 lf of downtown sidewalk, construction of eight ADA building entrance ramps and eleven ADA sidewalk intersection ramps, and the replacement of some water main. The total project also included the renovation of fourteen downtown historic building facades. The total project cost, including the property owners’ costs, is \$884,322. \$280,000 in CDBG funds were used to complete the Downtown Revitalization Plan and to construct the project.

Recommendation: The recommendation of the project engineer and city staff is to accept the project and approve the final payment to M. E. Collins, contractor, contingent upon final payment of a small damage claim to a building owner and the railing being completed at Geno’s.

9. [Action on Application for Payment No. 9 in the Amount of \\$328,561.00 to Eriksen Construction Co. for the 2009-2010 Wastewater Treatment Facility Improvements, Phase I Project](#)

Background: The total construction contract for this project is about \$5.1 million.

Recommendation: The recommendation of the project engineer is to pay the claim for work completed and approved according to the contract.

10. [Action on Pay Application No. 10 in the Amount of \\$29,452.27 to Layne Christensen Co. for the Well House and Municipal Well 2009-1 Project](#)

Recommendation: The recommendation of the project engineer is to pay the claim for work completed and approved according to the contract.

11. [Action to Write-Off the Wayne Revolving Loan Fund Loan of Felix Industries in the Amount of \\$41,200.29](#)

Background: In 2005, Felix Industries was approved for a \$75,000 business relocation/start-up loan from the Wayne Revolving Loan Fund. The Felix loan used Revolving Loan Fund “program income” money that was paid back from previous CDBG Economic Development loans. The Felix loan was for “gap financing” to supplement a local bank loan to build a new building in the Wayne Industrial Park and was secured with a second mortgage on the Felix property. The business ultimately failed, and the bank sold the property. The sale of the property covered the bank loan and part of the Revolving Loan Fund loan. We have been unable to collect the remainder of the loan, and this action acknowledges and closes out the loss of CDBG economic development funds.

Recommendation: The recommendation of the Finance Director and City Administrator is to write off the loss and end further attempts to collect.

12. [Action to Amend Policy on the Age Limit for Unattended Children at the Community Activity Center](#)

Background: Since the Community Activity Center was opened in 2002, our policy has been to require a person 10 years of age or younger to be accompanied by a parent or someone 18 years of age or older. Over time, we have eased up on that requirement and have had no serious issues other than the size of the crowd after school. This spring, we were reminded by our insurance carrier that we need strict enforcement of our age admittance policy or we put the city at risk for liability, and put our CAC staff at risk for personal liability in the event an underage person is injured, assaulted or lost.

Finding someone 18 years or older to accompany an underage person is difficult, so we have proposed the following policy change to our insurance carrier:

“To use the Community Activity Center, children of the age 8 and below must be accompanied with supervision of a person age 18 or older or a person 12 or older that holds a current Red Cross Babysitter Certification.”

Our insurance carrier will cover us if we adopt it as policy.

Recommendation: This proposal is brought forward for your consideration with no staff recommendation yet.

13. [Discussion of Annual Review of City Administrator](#)

14. Appointments:
Sandy Brown to the Recreation-Leisure Services Commission

15. Adjourn

APPROVED AS TO FORM AND CONTENT:

Mayor

City Administrator

May 3, 2011

The Wayne City Council met in regular session at City Hall on Tuesday, May 3, 2011, at 5:30 o'clock P.M. Mayor Ken Chamberlain called the meeting to order with the following in attendance: Councilmembers Brian Frevert, Jim Van Delden, Jon Haase, Dale Alexander, Doug Sturm, Kathy Berry and Jill Brodersen; City Attorney Mike Pieper; City Administrator Lowell Johnson; and City Clerk Betty McGuire. Absent: Councilmember Kaki Ley.

Notice of the convening meeting was given in advance by advertising in the Wayne Herald on April 21, 2011, 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 Sturm made a motion and seconded by Councilmember Frevert, whereas the Clerk has prepared copies of the Minutes of the meeting of April 19, 2011, and that each Councilmember has had an opportunity to read and study the same, and that the reading of the Minutes be waived and declared approved.

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

The following claims were presented to Council for their approval:

VARIOUS FUNDS: AMERICAN BROADBAND, SE, 1594.87; AMERITAS, SE, 2244.77; APPEARA, SE, 148.18; BANK FIRST, FE, 195.00; BLACK HILLS ENERGY, SE, 656.51; CARROT-TOP INDUSTRIES, SU, 65.85; CITY OF WAYNE, PY, 59611.05; CITY OF WAYNE, RE, 875.97; COMMUNITY HEALTH, RE, 3.00; COPPLE & ROCKEY P.C., SE, 48.10; CUSTOM FILTRATION EQUIP., SU, 888.00; DAKOTA BUSINESS SYSTEMS, SE, 101.50; CITY EMPLOYEE, RE, 328.70; DRJ LLC/INET LIBRARY, RE, 43019.00; ECHO GROUP, SU, 33.18; ELLIS PLUMBING & HEATING, SE, 125.67; ERIKSEN CONSTRUCTION, SE, 310069.97; FIRST CONCORD GROUP, SE, 3954.70; FLOOR MAINTENANCE, SU, 393.44; FORT DEARBORN LIFE, SE, 92.88; GALE GROUP, SU, 148.53; GEMPLER'S, SU, 162.00;

GERHOLD CONCRETE, SU, 20.46; HAUFF MID-AMERICAN SPORTS, SU, 301.95; HAUGE ASSOCIATES, RE, 167.75; ICMA, SE, 5576.29; IRS, TX, 18995.53; JACK'S UNIFORM, SU, 55.90; JEO CONSULTING GROUP, SE, 32169.33; KELLY SUPPLY, SU, 535.10; KRIZ-DAVIS, SU, 216.24; MATT PARROTT AND SONS, SU, 828.95; MICROFILM IMAGING SYSTEMS, SE, 987.05; MIKE TOWNE, SE, 500.00; CITY OF WAYNE, SE, 75.00; MORLOK, JEFF, RE, 75.00; NATIONAL McGRUFF HOUSE, SU, 70.80; NE DEPT OF REVENUE, TX, 2953.51; NE EXPRESSWAYS, SE, 581.04; N.E. NE AMERICAN RED CROSS, RE, 59.24; NNPPD, SE, 3114.17; NWOD, FE, 20.00; OLSSON ASSOCIATES, SE, 8530.84; PETERSON INDUSTRIAL ENGINE, SE, 11380.25; CITY EMPLOYEE, RE, 80.95; QUILL, SU, 456.41; QWEST, SE, 310.18; SKARSHAUG TESTING LAB, SU, 123.20; STADIUM SPORTING GOODS, SU, 149.75; STATE NATIONAL BANK, RE, 40130.29; SUPERCIRCUITS, SU, 316.24; TENNANT SALES & SERVICE, SU, 289.68; UNITED STATES PLASTIC, SU, 23.00; UNITED WAY, RE, 10.00; VERIZON, SE, 161.28; VIAERO, SE, 137.85; WAYNE COMMUNITY HOUSING, RE, 200.00; WAYNE STATER, SE, 12.00; WESCO, SU, 1935.74; AS CENTRAL SERVICES, SE, 448.00; CARROLL LAWN SERVICE, SE, 105.00; CITY OF WAYNE, RE, 150.00; CITY OF WAYNE, RE, 100.00; CITY EMPLOYEE, RE, 4617.14; CITY EMPLOYEE, RE, 93.29; COPY WRITE PUBLISHING, SU, 767.04; DE LAGE LANDEN FINANCIAL, SE, 77.00; DEMCO, SU, 213.80; DUTTON-LAINSON, SU, 218.07; EASYPERMIT POSTAGE, SU, 1672.14; ECHO GROUP, SU, 87.32; CITY EMPLOYEE, RE, 1016.63; ELLIS PLUMBING, SE, 115.00; FLOOR MAINTENANCE, SU, 109.11; GEMPLER'S, SU, 101.10; GEOCOMM, SE, 1800.00; CITY EMPLOYEE, RE, 874.61; CITY EMPLOYEE, RE, 238.17; INGRAM BOOK COMPANY, SU, 757.30; JOHN'S WELDING AND TOOL, SU, 68.42; CITY EMPLOYEE, RE, 611.62; KIRKHAM MICHAEL, SE, 3419.27; MATT FRIEND TRUCKING, SU, 60.00; MATTHEWS CO, SU, 373.40; MICROFILM IMAGING SYSTEMS, SE, 508.25; NORFOLK WINNELSON, SU, 589.51; NORTHEAST EQUIPMENT, SU, 1112.09; CITY EMPLOYEE, RE, 772.41; PIEPER, MILLER & DAHL, SE, 2783.00; PING TREE SERVICE, SE, 665.00; PLUNKETT'S PEST CONTROL, SE, 185.12; CITY EMPLOYEE, RE, 97.45; QUILL, SU, 222.68; RAD, INC., SU, 43.54; CITY EMPLOYEE, RE, 646.39; STATE NATIONAL BANK, RE, 338.78; STEVE RASMUSSEN, RE, 26.72; UNITED RENTALS, SU, 804.25; UNITED STATES PLASTIC, SU, 117.08; WAED, RE, 6383.33; WAYNE COUNTY, SE, 48.19; WAYNE COUNTY CLERK, SE, 61.50; CITY EMPLOYEE, RE, 5269.54; WESCO, SU, 781.71; ZACH OIL, SU, 5006.12; ZACH PROPANE, SU, 113.57

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

Mayor Chamberlain advised the public that a copy of the Open Meetings Act was located on the south wall of the Council Chambers and was available for public

inspection. In addition, he advised the public that the Council may go into closed session to discuss certain agenda items to protect the public interest or to prevent the needless injury to the reputation of an individual and if such individual has not requested a public hearing.

Mayor Chamberlain recognized Wayne as being honored as “Tree City USA” for the 20th year. He commended Joel Hansen, Building Inspector/Planner, for all the work he has done with this program. Mr. Hansen explained to the Council the criteria for becoming a “Tree City USA.”

Discussion took place on an option to purchase Federal STP Funds for projects at a discounted amount in order to get more local control of the project

Joel Hansen, Building Inspector/Planner, advised the Council that in the past, the City has used STP funds to help with the costs of paving streets (e.g. Claycomb Road, East 21st Street, and Grainland Road). STP funds currently pass through the Department of Roads directly to the First Class cities. These funds never show up on the State’s ledger and are not part of their budget process. The State is proposing or offering to buy those dollars back from the First Class cities at \$.80 on the \$1.00. Right now, all of the First Class cities collectively receive about \$12 million dollars per year in STP funds. This option would reduce that amount to roughly \$9.5 to \$10 million dollars. The State would take those federal dollars and use them on State projects.

There are pros and cons to this proposal. One benefit is that we would not be under the Federal requirements that we are now which would have some significant time savings on our projects. The process would be much more streamlined or similar to what we used to do with these projects, where we would start a project, design it and bid it out

and construct it, all over a two-year period, where now it is more like a four or five year process to build a project. However, we would still be required to follow Federal Laws as far as any right-of-way acquisitions, etc.

The downside of this proposal is that we would lose about \$2 to \$2.5 million dollars collectively amongst the 25 First Class cities. The other downside is that now these funds will show up on the State's budget, which means it could be subjected to the chopping block when times get tough. In addition, Hansen understood that if the First Class cities take this route and accept the buy-out, there would be no going back.

Hansen noted there is a meeting tomorrow night in Norfolk which he will attend to find out more information on this process. Either all or none of the First Class cities have to participate in this buy-out. When this option first came out, the consensus was that this was a great idea because it would speed along the process of the projects. However, when they brought up the fact that now these funds could be on the chopping block, he thought everybody took a step back to give more consideration to the matter. There are things to consider both ways — what is good and what is bad. At this time, STP funds have to be used strictly on streets that we designate or classify as collector or arterial streets. What's being proposed is that we would be able to use the buy-out funds on any street we would deem fit, which gives us more flexibility. However, we need to remember that those clearly funded streets are so chosen because they are important streets through the community and are heavily used.

He will learn more at tomorrow night's meeting and will relay that information back to the City Administrator.

Administrator Johnson stated the following Resolution would approve the Council goals that were established at their retreat in January. He is working on the spreadsheet of tasks which will be brought to the Council for approval at the May 17th meeting.

Councilmember Sturm introduced Resolution No. 2011-32 and moved for its approval; Councilmember Brodersen seconded.

RESOLUTION NO. 2011-32

A RESOLUTION IDENTIFYING CITY OF WAYNE GOALS.

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

Administrator Johnson stated a pay request has been received from Mark Albenesious, Inc., for the Kardell Subdivision Sanitary Sewer Improvements – 2010 Project in the amount of \$19,443.15. The engineer on the project has approved the same.

Councilmember Sturm made a motion, which was seconded by Councilmember Alexander approving Certificate of Payment No. 2 for the Kardell Subdivision Sanitary Sewer Improvements – 2010 Project in the amount of \$19,443.15 to Mark Albenesious, Inc. Mayor Chamberlain stated the motion, and the result of roll call being all Yeas, the Mayor declared the motion carried.

Administrator Johnson advised the Council that Councilmember Ley asked if the agenda item to appoint Sandy Brown to the Recreation-Leisure Services Commission could be tabled until the next meeting.

Councilmember Sturm made a motion, which was seconded by Councilmember Alexander to table action on appointing Sandy Brown to the Recreation-Leisure Services

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

Councilmember Frevert made a motion and seconded by Councilmember Haase to adjourn the meeting. Mayor Chamberlain stated the motion, and the result of roll call being all Yeas, the Mayor declared the motion carried and the meeting adjourned at 5:46 p.m.

CLAIMS LISTING MAY 17, 2011

ABCREATIVE, INC	PARK SWINGS	945.00
AMERITAS LIFE INSURANCE	POLICE RETIREMENT	3,736.20
CITY EMPLOYEE	CHIPS PAYMENT/HEALTH REIMBURSEMENT	630.20
APPEARA	LINEN & MAT SERVICE	97.39
BAKER & TAYLOR BOOKS	BOOKS	752.71
BANK FIRST	FRATERNAL ORDER OF POLICE DUES	195.00
BARONE SECURITY SYSTEMS	CAC/CH/LIB/SR CENTER FIRE INSPECTIONS	716.04
BOMGAARS	BATTERIES/VALVE/RAKES/FASTENERS ETC	1,200.74
CARHART LUMBER COMPANY	SOFTENER SALT/WASHER/CORD/SCREWS ETC	543.52
CITY EMPLOYEE	HEALTH REIMBURSEMENT	5.29
CHARTWELLS	SENIOR CENTER MEALS	5,437.60
CITY EMPLOYEE	VISION REIMBURSEMENT	81.62
CITY OF PONCA	MFO FUNDS	16,279.60
CITY OF WAYNE	AUDITORIUM REFUND	475.00
CITY OF WAYNE	PAYROLL	65,985.35
CITY OF WAYNE	TREE REIMBURSEMENT	155.40
CITY OF WAYNE	UTILITY REFUNDS	4,037.59
CITY OF WISNER	MFO FUNDS	2,446.50
COMMUNITY HEALTH	HEALTH CHARITIES	3.00
COPY WRITE PUBLISHING	TONER/PAPER	145.17
CUSTOM FILTRATION EQUIP.	FILTER ELEMENTS	135.00
DAKOTA BUSINESS SYSTEMS	LIBRARY COPIER EQUIPMENT LEASE	102.50
DAVE'S DRY CLEANING	POLICE UNIFORM CLEANING	102.00
ENDURANCE POWER PRODUCTS	REPAIR MOTOR GRADER	1,889.24
FIREMAN	TRAUMA CONF. REIMBURSEMENT	85.50
FUOSS FARMS INC	CROP DAMAGE	2,112.00
GERHOLD CONCRETE CO INC.	CONCRETE	899.25
GILL HAULING, INC	SANITATION SERVICE	133.00
GREAT PLAINS ONE-CALL	DIGGERS HOTLINE	54.54
HARDING & SHULTZ P.C.	ATTORNEY FEES	9,687.19
HAUFF MID-AMERICAN SPORTS	BASKETBALLS/MARKING PAINT	720.40
HAUGE ASSOCIATES, INC.	PAYROLL DEDUCTION	167.75
HAWKINS, INC	FLUORIDE FOR WELLS	387.56
HD SUPPLY WATERWORKS, LTD	WATER METERS	2,141.46
CITY EMPLOYEE	HEALTH REIMBURSEMENT	10.33
HILLYARD/SIOUX FALLS	VACUUM & BAGS	401.50
HOBART SALES AND SERVICE	DISHWASHER REPAIR	211.00
ICMA RETIREMENT TRUST-457	ICMA RETIREMENT	5,603.85
IMLA	MEMBERSHIP RENEWAL	480.00
IRS	FEDERAL WITHHOLDING	23,275.19
JEO CONSULTING GROUP	WELLHEAD PROTECTION	1,121.50
KRIZ-DAVIS COMPANY	POWER OUTLETS/JUNCTION BOXES	1,579.62
KTCH AM/FM RADIO	RADIO ADS	805.00
KUSTOM SIGNALS	VIDEO CAMERA-STOP FUNDS	424.00
LEAGUE OF NEBRASKA	REG- A LAWRENCE/L JOHNSON	270.00

LIBERAL GASKET MFG CO INC	GASKET	106.37
MARK ALBENESIUS, INC.	KARDELL SEWER IMPROVEMENTS	19,443.15
CITY EMPLOYEE	HEALTH REIMBURSEMENT	183.16
MICROFILM IMAGING SYSTEMS	DIGITIZE WAYNE HERALD	506.73
MID-STATE ENGINEERING	WELL HOUSE/W RIDGE/DTR TESTING	3,059.00
MIDWEST LABORATORIES, INC	BOD TESTING	122.75
MIDWEST OFFICE AUTOMATION	CITY HALL COPY CHARGES	1,273.08
MIDWEST TAPE LLC	AUDIO BOOKS	149.96
N.E. NEB ECONOMIC DEV DIS	COOLING TOWER	287.50
NE DEPT OF REVENUE	STATE WITHHOLDING	3,730.82
NE STATE PATROL	CRIMINAL HISTORY RECORDS	285.00
NEBR PUBLIC POWER DIST	ELECTRICITY	202,485.72
NORTHEAST NE PUBLIC POWER	WHEELING CHARGES	11,634.98
OTTE CONSTRUCTION COMPANY	CAC CABINET HINGES	16.77
PAC N SAVE	ICE/CAC/LIBRARY SUPPLIES	156.55
PALOS SPORTS, INC.	ACTIVITY INSERT MEDAL	105.00
PAMIDA STORE # 165	COFFEE/CUPS/KLEENEX/GLUE/BALLOONS	168.30
PONCA RURAL FIRE BOARD	MFO FUNDS	3,912.43
PRESTO X COMPANY	PEST CONTROL	119.15
QUALITY FOODS	ICE	1.98
QUILL CORPORATION	OFFICE SUPPLIES	546.67
RANDOM HOUSE	BOOKS	260.96
ROBERTSON IMPLEMENT CO	SPRING/SEAL/SLEEVE KIT	241.77
SD MEYERS	ADD INHIBITOR TO OIL IN TRANSFORMER	7,950.00
SPARKLING KLEAN	JANITORIAL SERVICES	2,255.52
STADIUM SPORTING GOODS	BAG/BALLS/TEES/GEAR/BASES	903.75
STATE NATIONAL BANK	ACH FEES	48.51
STATE NATIONAL BANK	LIBRARY PETTY CASH	122.35
TOM'S BODY & PAINT SHOP	POLICE BUMPER REPAIR	176.70
TORCO	STARTER/BUSHINGS/CORE	128.05
US BANK	LODGING/AIRFARE/TOWELS/BAR BELLS ETC	6,148.23
VILLAGE OF WINSIDE	MFO FUNDS	5,184.62
WAYNE AREA ECONOMIC DEVEL	CHICKEN SHOW DONATION	1,000.00
WAYNE AUTO PARTS	SPARK PLUGS/FILTERS/GASKET/SEALANT	219.66
WAYNE HERALD	ADS AND NOTICES	2,103.07
WAYNE JAYCEES	FIREWORKS DONATION	2,000.00
WAYNE VETERINARY CLINIC	DOG IMPOUNDS	168.00
WESCO DISTRIBUTION INC	PEDESTAL/SPLICE CLEANER	683.01
WESTERN AREA POWER ADMIN	ELECTRICITY	30,900.88



April 21, 2011

Betty McGuire
City Clerk
City of Wayne
306 Pearl Street
Wayne, NE 68787

RE: Katherine Lassila v. City of Wayne, Nebraska

Dear Ms. McGuire:

We represent Katherine Lassila ("Claimant"). This correspondence should be treated as a Claim as set forth in the Political Subdivisions Tort Claim Act of Neb. Rev. Stat. § 13-901 et seq. and Neb. Rev. Stat. § 16-726. Please file the original, sign where indicated below on the original and the copy, and return a signed copy to me in the enclosed self-addressed stamped envelope.

Claimant was employed as a dispatcher with the City of Wayne Police Department (the "City") from September 12, 2007 to October 19, 2009, when she was terminated for filing a Complaint of Discrimination. During her employment, Claimant was subject to discriminatory treatment on the basis of her sex and disability. Additionally, Claimant was subject to discrimination based upon a perceived mental disability.

The City of Wayne Police Department was a hostile working environment riddled with discriminatory treatment toward women. Within the Police Department, all of the police officers were men, with one exception, and all of the dispatchers were women, with the exception of the supervisor. When the officers on the night shift had "down time", they frequently watched pornography on Cinemax, which was clearly visible by Claimant from her work station. Because the City was aware that Cinemax service was provided to the police station, Claimant believed that the City condoned the conduct and had no choice but to endure the hostile work environment. Moreover, Claimant feared for her job if she complained, a fear that was well-founded because she was ultimately terminated for making a Complaint of discriminatory treatment.

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Betty McGuire
City Clerk
April 21, 2011
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On July 6, 2009, Claimant filed a formal Complaint with her supervisor, Brian Swanson, concerning an incident with Lee Wrede. A copy of the Complaint is attached as Exhibit "A". Claimant alleged that the dispatchers were treated "like second class citizens." In response, Wrede informed Claimant that she was a second class citizen and that she was going to have to "deal with it." Chief of Police Lance Webster held a meeting and encouraged Claimant to bring her complaints to his attention or her working conditions would be "on [her]." Moreover, Chief Webster told Claimant at this meeting that she was performing well and that any past performance issues had been resolved.

During the summer of 2009, Claimant missed work to obtain diagnosis and treatment of fibromyalgia, a disability protected by the Americans with Disabilities Act Amendments Act. Claimant's supervisors were well-aware of the reasons for Claimant's leave, which should have been designated as leave under the Family and Medical Leave Act ("FMLA"). Regardless of whether the leave was formally designated as FMLA leave, such leave is protected by the FMLA.

On October 11, 2009, Claimant filed a Complaint with Wrede, her supervisor, concerning an incident with Lieutenant Phil Shear. A copy of the Complaint, dated October 13, 2009, is attached as Exhibit "B." The basis for Claimant's Complaint was that Lt. Shear told Claimant that she needed a psychological evaluation and that she was "empty up here", meaning her head. In response, Claimant told the Lieutenant that she felt his comment "wasn't nice" and Lt. Shear stated that although perhaps it was not nice, he felt it was true. When Claimant discussed this incident with Wrede, Wrede stated that Lt. Shear felt that Claimant was depressed and needed medication. These statements by Lt. Shear clearly demonstrate that Lt. Shear perceived Claimant as having a mental health disability.

Claimant specifically discussed the procedure for filing a complaint with her supervisor. Nonetheless, Claimant was terminated on October 19, 2009 for filing her complaint and for alleged "excessive use of sick leave." A copy of the letter of termination is attached as Exhibit "C". A review of Exhibit "C" clearly demonstrates that Claimant was terminated for filing a Complaint under the Americans with Disabilities Act Amendments Act ("ADAAA"). Moreover, the letter states that Claimant was terminated for "excessive use of sick leave." Absences due to diagnosis for fibromyalgia are clearly protected by the FMLA and the ADAAA, particularly when considering the fact that Claimant had not even exceeded her allotted paid sick leave.

Claimant appealed her termination by way of letter dated October 21, 2009, a copy of which is attached as Exhibit "D". Additionally, Claimant sent a memo addressing each one of the purported grounds for termination, which is attached as Exhibit "E". In the appeal, Claimant clearly put the City on notice of the hostile work environment in the Police Department and clearly put the City on notice of her various claims against the City. Rather than investigating Claimant's claims, the City upheld the

termination by way of letter dated November 6, 2009, a copy of which is attached as Exhibit "F". The City's determination to uphold the termination demonstrates the City's willful violation of the law and Claimant will be pursuing liquidated and punitive damages.

Claimant's termination was in violation of the Americans with Disabilities Act Amendments Act 42 U.S.C. §12101, et seq. ("ADAAA"); Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, et. seq. ("Title VII"), the Family and Medical Leave Act, 29 U.S.C. § 2106, et. seq. ("FMLA"); and the Nebraska Fair Employment Practices Act, Neb. Rev. Stat. §§ 48-1104 and 48-1114(1) ("FEPA").

As a result of Claimant's unlawful termination, she has been seriously damaged. First, Claimant was forced to move herself and her son out of the City because of abusive police practices, such as the surreptitious monitoring of the citizens of Wayne in their homes by the Police Department. Despite diligent efforts, Claimant has been unable to secure comparable employment and is currently employed 20 hours per week at minimum wage of \$7.25/hour. Claimant has no benefits with her current position such as health insurance or retirement benefits. Although Complaint continues to diligently seek full-time employment, such efforts have been unsuccessful.

DAMAGES

Claimant's lost wages to date are as calculated follows:

Difference in hours (20 hours per week \$12.81 x 20 hours)	\$ 256.20
Difference in hourly rate (\$12.81-\$7.25= \$5.56 x 20 hours)	111.20
Lost overtime (Ave. 6 hours per week \$19.21 x 6 hours week)	<u>115.26</u>
	\$ 482.69
Total Lost Wages (\$482.69 per week for 77 weeks)	\$ 37,167.13

Each week that passes increases Claimant's claim for lost wages.

In addition, Claimant has suffered compensatory damages as a result of her job loss and the sexual harassment she endured, which entitles her to an amount at least equal to her lost wages under Title VII of the Civil Rights Act and the Nebraska Fair Employment Practices Act. Moreover, the actions of the City of Wayne were so egregious that Claimant will likely be able to recover punitive damages in the amount of at least \$50,000.00.

Because the City of Wayne was well aware of the violation of the FMLA, the violations of the FMLA were willful, which entitles Claimant not only to the amount of lost wages, but to an amount equal to the lost wages, plus a reasonable attorney's fee and

Betty McGuire
City Clerk
April 21, 2011
Page 4

the costs of the action. To date, attorney's fees in this case are \$6,000.00; however, they continue to accrue. In total, Claimant is entitled to at least \$167,501.39, and her damages also continue to accrue.

If you need additional information to process the claims, please do not hesitate to contact me.

Very truly yours,



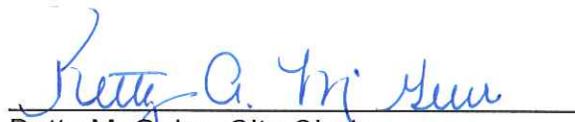
Jennifer R. Petersen

JRP:hw
Attachments
cc: Kate Lassila
Robert A. Mooney
11336-1/714739

ACKNOWLEDGEMENT

The undersigned hereby acknowledges receipt of the foregoing Notice of Claim Pursuant to Political Subdivisions Tort Claims Act and Neb. Rev. Stat. § 23-135 and further acknowledges that she is either a member of the designated law department of the political subdivision (City of Wayne, Nebraska) or the Clerk, Secretary, or other official whose duty it is to maintain the official records of the political subdivision (City of Wayne, Nebraska).

4-25-11
Date


Betty McGuire, City Clerk
City of Wayne, Nebraska

WAYNE POLICE DEPARTMENT

MEMORANDUM

TO: 608 Brian Swanson

FROM: D3 Kate Lassila

SUBJECT: Incident on Sunday, July 5th, 2009

DATE: 07/06/09

On Sunday, July 5th, 2009, I was working the 3-11 shift. Lee came in and sat down at the computer and told me to log him in. He was at the computer for awhile, and then went into the kitchen. He came back out, and stood at the counter that separates dispatch 1 from the copier area. He told me to take all the half empty reams of paper and fill up the machines. I told him that I had already done this the night before and went on to explain that 607 had been having problems with the printer, so I fixed the issue by filling up the paper tray that wasn't empty (there were no empty reams beneath the printer at that time) and used the remainder of the ream to fill up the rest of the machines. Lee snapped No, listen... I want you to take the half reams of paper and fill up the other machines. I said, again, it's already done Lee. Then he raised his voice and started saying something about being sick and tired of seeing all the half used reams of paper laying around and he was going to start throwing them away. I then raised my voice and said I was tired of him ranting about other peoples mistakes to me and having me fix them, and said again, that I had already filled up the machines and he yelled Shut Up. I started yelling You can't tell me to shut up! And he said Yes he could.

At this point, I had had enough of this kind of treatment (after several parallel incidents in the past), I yelled That's it! I'm leaving, and started to gather my belongings. He started raising his hands up and started to apologize and asked me to sit down and talk about it. Like I said I was upset, and having spoken in with him in the past about this kind of behavior, to no avail, I knew that it would resolve nothing. He kept on badgering me to stay and I was cursing and yelling and telling him I didn't have to put up with this s*** anymore, that I was leaving and calling Lieutenant or Chief to tell them what happened. He followed me into the kitchen as I tried to gather my things from the refrigerator and wouldn't leave me alone until I stated that I was leaving and I may very well quit. At that point he left me alone, I went outside and called LT and told him what had happened.

I feel that there is only so much mistreatment a human being can take before they've had enough and this was the straw that broke the camel's back. Following are a few incidents I recall that show he treats me differently than others and that he uses a double standard.

EXHIBIT "A"

During one instance, he had not been filling out the parking ticket data sheet for some time, I had been filling it in for him. But, since it happened so often, I finally told him what he was doing and he told me to do it for him. He said he could do that because he is the boss. But, when we enter a parking citation in RIMS we were trained to enter them into this data base at the same time. Then two people have different jobs to make sure they were entered.

Another day, he was telling me to make sure the intercom button wasn't pressed in so the buzzer could be heard. He kept reminding me of this but I had only done it once. There have been several times that he's left it pushed in and only laughed when I told him about it.

Same thing with the radio, he was on to me about making sure that the volume on the stations we use is turned up so we can hear anyone calling. Many times I have come in to find the volume turned all the way down. (I have never turned the volume all the way down).

Lee tries to make me do things his way and his way only, even though the way I do it is satisfactory and other dispatcher's do it the same way.

He even wants me to write on a certain type of paper, even though he refuses to do so.

Lee also had gotten on to me about not knowing how to do certain things on the new teletype. He feels I was there when they installed it and I should know how. When they installed it, I was on the other side of the room carrying on with normal dispatch duties and only heard a little of the training.

Lee badgers me about others mistakes as well, and either makes me fix them or speak to them about it to tell them how to fix it. This is his job as a supervisor. I have no authority to tell another dispatcher that.

Also, I feel that I can't go to him with other issues because I rarely get an answer.

I had some issues with the kitchen, someone was leaving dishes and a mess behind for over a week, when all the other dispatchers were doing what we were supposed to. I told Lee about it and he advised me to call him right away when I noticed the problem so he could take care of it. So I called him the next day, he told me to leave him a RIMS message and he would deal with later. I never heard anything more about it.

Once an officer was very disrespectful to me in a non joking way, telling me to be a good little dispatcher and do his dishes, and telling me to do his work, which most dispatcher's do happily and normally I would but I felt that dispatcher's shouldn't be talked down to in such a manner. I talked to Lee about the fact that while we are not as important as officers, we certainly aren't second class citizens. He told me that yes dispatchers are and we just have to deal with it.

I've advised Lee of requests I have for training, after not hearing back on the subject, I've even printed the paperwork for him and reminded him, still no response.

A recent incident involved Lee leaving some past due parking tickets for letters to be written to the ROs and telling me that this was not mine, but another dispatcher's responsibility. So I left them. Another dispatcher even asked about them and I told her that Lee said not to do them. A few days later, he came in and saw them and raised his voice to me saying I should have known they needed doing. I explained to him what he had told me about it not being my responsibility, he wouldn't hear it. I simply left that day and called Lieutenant about it.

Another time, another dispatcher had told him about a mistake she thought I had made. Lee did not check on it, he simply advised me to correct the mistake. I tried to explain to him that things were not the way she thought and he refused to listen to what I had to say and kept telling me to fix it. I told him to look at it again... I left that day but called him back to tell him how unfair he was being.

I know these incidents seem small and redundant or mundane, but these are the kinds of things that I have to deal with on a regular basis (I don't know about the other dispatchers).

Like I said, these incidents have been going on between Lee and me since I started, and sometimes he advises me not to go any further when we speak about them. That makes me feel like, if I step up and complain, I'm going to lose my job. That creates a feeling of helplessness, and frustration and I will be the first to admit that I acted inappropriately on Sunday. But I am not sorry for voicing my opinion.

WAYNE POLICE DEPARTMENT

MEMORANDUM

TO: Lee Wrede

FROM: Katherine Lassila

SUBJECT: 10/11/2009

*Complaint sent to Lee Wrede on 10/13/09
w/ incident on 10/11/09*

DATE: 10/13/2009

On 10/11/2009 at around 1800 as we discussed on that evening at 2300, Lieutenant Shear advised me that he believed I needed a psychological evaluation. I inquired as to why he thought that and he stated that he thought I needed medication. I informed him, that due to my medical condition, I was already on so much medication, that my ears were usually ringing and that I really didn't think I needed any more. He gestured to my head and said that my ears rang because it was empty up there. I told him that that wasn't very nice (as I believed he had not said this in a joking manner) and he stated that no, it wasn't. I thought the conversation was getting out of hand, so I went out the back door to smoke a cigarette. A few moments later, he was leaving for home, and knocked on the glass door. I wanted to make sure that he wasn't joking and I asked him: Were you serious that you think I need a psychological evaluation? And he stated that yes, he was serious. I then advised him that he should set that up on the department's time and money. Lieutenant then said that he already knew what they would say. I interrupted him and said that they would say I was fucking nuts to keep working here. He walked off saying I was lucky to have a job here and that I used to know that but he didn't think I knew that anymore. I stated that I believed it was all how an employee was treated as to how lucky they thought they were.

When I spoke with you about this incident, you stated that you thought Lieutenant Shear was referring to the fact that maybe I was depressed and needed medication. This could have been stated in a more professional manner. You also stated that you would tell Lieutenant that this hurt my feelings. I think that his comment is a little more than hurt feelings. Lieutenant is not a psychologist, nor a medical doctor. Therefore, he does not have the right to make judgments on someone's psychological state of mind, nor their medical conditions.

Currently, I am under a doctor's care and therefore he is aware of anything that may be going on as far as my medical or psychological condition. I also think that the comment about me being lucky to still work here could have been taken as a threat. These kinds of conditions could be considered a hostile work environment. And I'm sure that the City of Wayne wants its employees to feel comfortable coming to work everyday. I don't know what kinds of steps should be taken to stop this kind of behavior but I think it needs to be addressed.

EXHIBIT "B"

WAYNE POLICE DEPARTMENT



Lance W. Webster
Chief of Police

306 Pearl Street
Wayne, NE 68787

Telephone (402) 375-2626
Fax (402) 375-1122

October 19, 2009

Ms. Katherine Lassila
Dispatcher
Wayne Police Department

Ref: Termination of Employment

Dear Ms. Lassila,

It is with profound sadness that I must notify you that your employment with the City of Wayne, Wayne Police Department is hereby terminated immediately.

Your comments in your October 11, 2009 memo to Dispatch Supervisor Lee Wrede were both disrespectful of Lt. Shear and insubordinate. You, in effect, made allegations about Lt. Shear to one of his subordinate employees. The tone of your memo is contemptuous and inappropriate. This memorandum demonstrates that you have a very poor attitude towards the Wayne Police Department as evidenced by the statement that you have to be "fucking nuts to keep working here."

In your memo you state, "I also think that the comment about me being lucky to still work here could have been taken as a threat". Lt. Shear told me he did say you were lucky to have a job here but he clearly was not making the statement as a threat. He explained that the context of his statement was there are a lot of people who don't have a job that pays as good as yours, with the benefits, and an employer who is very willing to make the accommodations you have been given in the past year. Lt. Shear's statement was intended to remind you, when you complain of a hostile work environment, that few employers would allow you to bring your child to work with you, as you have been allowed to do multiple times this year. When you were working extra hours your supervisor allowed you to bring you son to work for short periods of time such as after school. Last Saturday you were allowed to have him here all day long, even though you clearly should have made day care arrangements for him ahead of time. You have also been given time off when it negatively impacts the schedule. In the context in which the statement by Lt. Shear was made anyone would be lucky to be employed here.

EXHIBIT "C"

I find your memorandum about Lt. Shear to be completely without merit and find it was made in clear violation of both City and Department policy.

There were several things that Dispatch Supervisor Wrede was going to discuss with you during your evaluation. I will include them in this notice as grounds for your dismissal. These include violation of:

Sec. 10.10 of the City of Wayne Personnel Manual

- (B) Unsatisfactory performance of duties in terms of quality or quantity
Your data entry has been rife with errors and you have complained about being overworked. You recently placed a parking citation in Dispatcher Alonzo's box that came in at shift change. For some reason you believed this was left for you to do. Your attitude of being unwilling to work with your co-workers to make sure the job gets done is inappropriate.

- (F) Abuse of Sick Leave: Year to date you have earned 76 hours of sick leave and have used 61.75, or 81.25%

- (I) Use of offensive language toward or abusive, improper, or discourteous treatment of any person or another City Employee: Your recent treatment of Dispatcher Alonzo, including the sending of inappropriate text messages pertaining to the kitchen are inappropriate. You state one text message, "I am not trying to start anything.." when that appears to be exactly what you are trying to do. You have engaged in a pattern of sniping behavior that is disruptive to the overall function of the communications center.

- (CC) Insubordination...acts of disrespect towards supervisors, superiors, management... The sending of a memo complaining about Lt. Shear to another subordinate employee clearly shows disrespect for Lt. Shear.

- (MM) Unauthorized use of City Equipment for personal purposes: Specifically violation of the Wayne City Network Policy, Sec. 30-20 Unacceptable Uses (g) Use of the network for recreational games is unacceptable. On Saturday, October 10, 2009 Lt. Shear caught you playing a Facebook game on one of the Department computers, in violation of this policy. This is the same Facebook game you told me you were addicted to, to the point of going without proper sleep to play. Dispatcher Kathy Prince has shared with your supervisor's that you often don't get your work done because you spend too much time the internet. This led your performance being audited earlier in the year. After Dispatcher Prince brought your poor performance to your attention it improved. She attributed your job performance with your playing games on duty and things involving your personal life.

In addition to the listed violations of City of Wayne Policy you are deemed to be in violation of the following Wayne Police Department Policies:

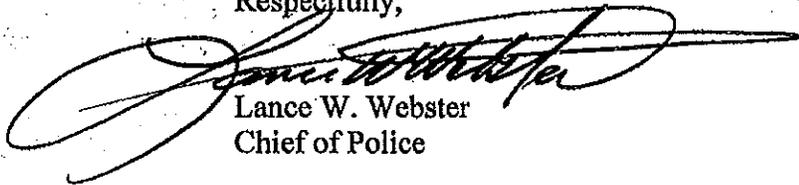
Wayne Police Department Standard Operating Policy:
Section 4.11 Respect for Supervisor's and Co-workers

Section 9.4 Causes Itemized:
A – Rules and Regulations (j) Insubordination or disrespect towards a supervisor.

You are hereby relieved of duty immediately and are directed to turn in any Department property, e.g. uniform shirts, personnel manual, S.O.P. Manual, keys, etc. with five (5) days. You have a vacation balance of 12.46 hours that will be paid on your last paycheck. To maintain your insurance you will need to contact City Clerk Betty McGuire.

You have the right to appeal my decision and may do so in accordance with Chapter Eleven, Appeals and Grievances, Section 11.10 Appeal Rights. You have ten (10) days from today's date to file an appeal of my decision with the City Administrator.

Respectfully,

A handwritten signature in black ink, appearing to read "Lance W. Webster", with a long horizontal flourish extending to the right.

Lance W. Webster
Chief of Police

cc/ Lt. Phil Shear
Dispatch Supervisor Wrede
City Administrator Lowell Johnson

To The City of Wayne,

10/21/09

I, Katherine Lassila, am filing an appeal due to my termination. I would also like to meet in person to discuss the grounds of my dismissal, as I was not given proper opportunity for such upon the date of firing. Could I also set up an appointment to pick up my personal belongings? I am returning my uniforms and key to the workroom, my SOP manual and employee hand book are at the office, therefore are not being returned. Please let me know a schedule arrangement for both at your earliest convenience and thank you for your time and attention to this matter.

Kate Lassila
578-8198

October 23, 2009

To The City of Wayne,

In regard to your request to my filing a more specific appeal as to the grounds of my dismissal; as stated in the letter of my termination, I am appealing the following:

1. The comments in the October 11, 2009 memo as being disrespectful and insubordinate. In a July meeting with my supervisors, Chief Webster, Officer Swanson, and Lee Wrede, I was directed not to let grievances build up, but to open up the lines of communication. I viewed the comments made by Lt. Shear as inappropriate, and as I had already tried to speak with him about the matter, decided to follow the procedure in the employee handbook. It was not meant as an act of insubordination. The statement "I have to be fucking nuts to keep working here" has been used more than once in the department by a higher ranking officer and it did not occur to me that it was contemptuous or inappropriate as the use of cursing in the department is often and has never been frowned upon before.
2. The statement made by Lt. Shear about being lucky to work for the department could have been taken as a threat in the context of the conversation that he had initiated about his concerns that I need a psychological evaluation and medication. These statements could have been threatening, and were correctly taken that way in the light of events that occurred later.
3. The statements referencing bringing my son to work should not even be an issue regarding my termination as every time he was brought, it had been pre-approved by my supervisor, as were any time off requests. Since the specific Saturday was brought into the termination letter, two dispatchers were given time off that negatively impacted the schedule, that day, leaving only two to run a 24 hour shift, my son was ill, and though I should have stayed home to care for him, I advised my supervisor and he and I agreed, that I should bring him into work instead of the other two dispatchers missing their vacation/holiday time.
4. Again the memo/grievance being insubordinate was brought up so I am appealing it again, if the grievance is completely without merit, why is there a grievance procedure in place? If the statements were not said, then how could the threat have been explained and how could I have been contemptuous in a reply?

5. My evaluation: My evaluation was due on September 12, 2009. I have asked my supervisor, Lee Wrede, on three separate occasions as to why we have not met to discuss it, the most recent being Sunday, October 18, 2009 at 7:00am, with the response that he has not had time to get to it. Yet, in my termination letter on October 19, 2009, I am being terminated for a list of things that were not brought to my attention.

6. Unsatisfactory work performance: In the past, I have had unsatisfactory work performance and was given a chance and improved my work. In a July meeting Chief Webster inquired as to my performance and was told that my work was satisfactory.

7. Abuse of sick leave: I have not gone over my allotted sick leave.

8. Use of offensive language abusive discourteous treatment: There was an incident between another dispatcher and I that I brought to Kathy Prince's and Lee Wrede's attention and was trying to rectify and change things in the department. I have documentation that shows that dispatchers are not treated equally and I was attempting to rectify this. I tried to go through the proper channels to no avail, got frustrated, and did it the wrong way, advised my supervisor and then started going through the proper channels again, still getting no feedback. My only purpose has been to try and implement change for the better in my department and was never told to stop. Any behavior that was discourteous was discontinued of my own accord, as I knew it was not the correct way to implement that change.

9. Insubordination ref the memo/grievance again was referenced in the letter of termination. How can following the grievance procedure be considered insubordinate? I even went to my supervisor twice after filing it to see if I was doing this the correct way and got no feedback.

10. Use of the network for recreational games: I was informed by my training officer, Kathy Prince, on many occasions, including a few days prior to my termination, that the department has a lax attitude toward this policy and that she and other dispatchers, supervisors, and officers often play recreational games on the Internet. Therefore, I feel that this is pretense.

I also feel I was not given proper warning or knowledge that there was any cause for my termination or grounds for dismissal, such as verbal warnings, written warnings, probations or suspensions. Other dispatchers, who have had similar or other problems in the past, were offered many solutions to problems even including counseling before they were given the opportunity to either resign or be terminated. Chief Webster advised me during our meeting on October 19,

2009 that in July, he would have liked to fire me then, but during that meeting, my recollection was him saying that he thought I had just gone about things the wrong way, and needed to not let things build up, and if he had his way, Lee Wrede would be gone. Whether or not I am afforded my appeal, or another position in the City of Wayne, I strongly urge the City of Wayne to address the issue of the high turnover rate of dispatchers at the Wayne Police Department. Again, my only purpose was to implement change for what I thought was the better in my department and was never advised to stop or given any warnings to the contrary.

I respectfully submit the above for your consideration,

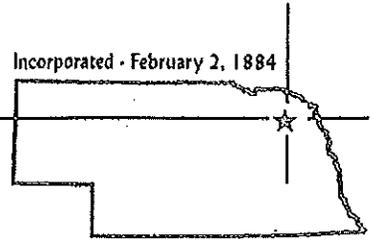
Kate Lassila

City of Wayne

Incorporated - February 2, 1884

306 Pearl • P.O. Box 8
Wayne, Nebraska 68787

(402) 375-1733
Fax (402) 375-1619



November 6, 2009

Kate Lassila
301 South Main
Wayne, NE 68787

Hand Delivered to 301 South Main

Dear Kate,

I have reviewed your letter of appeal received by certified mail at our office on October 27, 2009. This letter is my official response to that appeal.

After a review of the complete list of items in Lance's October 19, 2009 Termination Letter to you and your complete list of items being appealed in your letter of appeal received on October 27, 2009, I find that Lance's termination decision is upheld and your appeal of his decision is denied.

Sincerely,

A handwritten signature in black ink, appearing to read "Lowell D. Johnson", is written over the word "Sincerely,".

Lowell D. Johnson
City Administrator
City of Wayne

cc Lance Webster, Chief of Police
Mike Pieper, City Attorney



Home of Wayne State College

EXHIBIT "F"



Equal Housing Opportunity

RESOLUTION NO. 2011-33

A RESOLUTION APPROVING THE RECREATIONAL TRAILS PROGRAM PROJECT AGREEMENT BETWEEN THE CITY OF WAYNE AND THE NEBRASKA GAME AND PARKS COMMISSION FOR THE "RECREATIONAL TRAIL SIGNAGE PROJECT."

WHEREAS, the City of Wayne, Nebraska, has been informed that its application for funding through the Nebraska Game and Parks Commission for the "Recreational Trail Signage Project" has been approved; and

WHEREAS, the City of Wayne wishes to enter into an Agreement with the Nebraska Game and Parks Commission for the "Recreational Trail Signage Project."

NOW, THEREFORE BE IT RESOLVED, by the Mayor and City Council of the City of Wayne, Nebraska, that the Recreational Trails Program Project Agreement, a copy of which is attached hereto, be and the same is hereby approved as written, and that the City Administrator and/or Mayor are authorized and directed to execute said Agreement on behalf of the City.

PASSED AND APPROVED this 17th day of May, 2011.

THE CITY OF WAYNE, NEBRASKA,

By _____
Mayor

ATTEST:

City Clerk

**STATE OF NEBRASKA
GAME AND PARKS COMMISSION**

RECREATIONAL TRAILS PROGRAM (RTP) PROJECT AGREEMENT

THIS AGREEMENT, made and entered into, by and between the City of Wayne, sponsor, hereinafter referred to as the "RECIPIENT," and the Nebraska Game and Parks Commission, a duly organized and acting agency of the State of Nebraska, hereinafter referred to as "NGPC" for the purpose of completing the Wayne Interpretive Signage, hereinafter referred to as the "PROJECT."

WITNESSETH:

WHEREAS, the RECIPIENT desires to acquire, construct, develop, or maintain a public recreation trail signage project, which project is more particularly described hereafter; and

WHEREAS, NGPC has the authority to enter into this Agreement and is required to secure from the RECIPIENT necessary assurance that said RECIPIENT has available sufficient funds to meet its share of the cost of the acquisition, construction, development, and maintenance of the trail signage and that said trail signage will be maintained at the expense of the RECIPIENT for public outdoor recreation use; and

WHEREAS, no work shall begin on the PROJECT until a fully executed agreement is returned to the RECIPIENT and notification of approval has been received from NGPC.

NOW, THEREFORE, the Parties, in consideration of the mutual and reciprocal covenants contained herein, the sufficiency of which is hereby acknowledge, agree, and covenant with each other as follows:

1. The RECIPIENT agrees and warrants that it owns in fee simple, the property upon which the PROJECT, hereinafter described on page 4, is to be located; or the RECIPIENT possesses a legally binding document ensuring public access to the property, for the time period specified in Item 6. RECIPIENT agrees and warrants that the property was acquired in accord with The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and procedures contained in 49CFR Part 24.
2. The RECIPIENT by this Agreement does hereby dedicate the PROJECT and the real estate upon which the PROJECT is located to the use and benefit of the public for purposes of outdoor recreation for the minimum period of time as specified in Item 6.
3. The RECIPIENT agrees and warrants that prior approval in writing will be obtained from NGPC with respect to alteration in part or total of the trail signage for the period of time specified in Item 6.
4. The RECIPIENT agrees and warrants that applicable Federal Laws with respect to barrier free access have been compiled within the design and function of this project.
5. The RECIPIENT agrees to cover at least twenty percent (20%) of the total cost of the acquisitions, construction, development, or maintenance of the PROJECT, said percentage determined by NGPC, depending on the amount of federal funds made available to NGPC,

paying in full all of the costs of said acquisition, construction, development, or maintenance of said PROJECT and be reimbursed not more than eighty percent (80%) of said total cost or up to \$16,395 by the Federal Highway Administration.

6. The RECIPIENT agrees and warrants that it shall maintain and operate said PROJECT for a duration of not less than 25 years following the completion date of the PROJECT.
7. The PARTIES agree the element(s) of cost budget of the PROJECT is/are shown on the attached Budget Summary.
8. The PARTIES agree that the PROJECT shall begin as soon as possible and shall be completed by December 31, 2011.
9. **ARCHAEOLOGICAL CONCERNS.** The PARTIES agree if any cultural materials are discovered during the course of this project, work in the area must halt immediately and the State Historic Preservation Office must be contacted. Work shall not resume until the materials have been evaluated and adequate measures for their protection or collection have been taken and recipient has received written notice to resume work.
10. The RECIPIENT agrees to construct, develop, maintain, and operate said PROJECT in conformity with laws of the United States and the State of Nebraska. All rules and regulations of the various federal departments and commissions which have or obtain jurisdiction over the PROJECT or its operation, all rules and regulations of the various State of Nebraska departments, agencies, and commissions which have or obtain jurisdiction over the PROJECT or its operation, and all appropriate city and county laws, rules, and regulations.
11. The RECIPIENT agrees to conform with Title VI of the Civil Rights Act of 1964; Architectural Barriers Act of 1968 (Public Law 90-480; Section 504); Rehabilitation Act of 1973 (Public Law 93-112); Americans with Disabilities Act of 1990 (Public Law 101-336); Age Discrimination Act of 1975, and the Disadvantaged Business Enterprise program 49CFR 26.
12. The RECIPIENT shall establish and maintain separate accounts for the PROJECT, either independently or within its existing accounting system, identifiable as the Project Account. All charges to the Project Account shall be supported by properly executed invoices, contracts or vouchers evidencing in proper detail the nature and propriety of the charges, in accordance with the rules and regulations of NGPC. All checks, invoices, contracts, vouchers, orders or other accounting documents pertaining in whole or in part to the PROJECT shall be clearly identified and readily accessible.
13. The RECIPIENT shall advise NGPC of the progress of the PROJECT at such times and in such manner as NGPC may require.
14. NGPC shall conduct program compliance and project inspections, which shall include, but not limited to items listed on the reimbursement form.
15. The RECIPIENT shall retain for a period of three years after the final closeout date, all programs and financial records of the PROJECT.

16. As set forth in paragraph 17, NGPC agrees to secure from the Federal Highway Administration funds as provided in the Recreational Trails Program Act and as are made available by the federal government, for said PROJECT and make payment to the order of the RECIPIENT at project completion and upon receipt of a completed request for reimbursement report from the RECIPIENT.
17. Payments to the RECIPIENT by NGPC shall be on the following conditions:
 - a. That said funds have been made available to NGPC for such payment by the Federal Highway Administration.
 - b. A Request for Reimbursement report with supporting documentation has been presented by the RECIPIENT to NGPC as evidence that the PROJECT is completed.
 - c. That Items for which reimbursement is sought must have actually been received and the work accomplished.
18. NGPC agrees to coordinate the activities of the RECIPIENT with the activities of the Federal Highway Administration and NGPC shall furnish to the RECIPIENT information relative to the PROJECT and its operation and maintenance reasonably pertinent and available to NGPC, and shall supply the RECIPIENT with advice and counsel relative to the PROJECT whenever requested to do so and whenever practical and feasible to do so.
19. The Parties mutually agree that this Agreement is to be binding upon and inure to the benefit of their respective successors and assigns.
20. NGPC does not waive its sovereign immunity by entering into this Agreement and fully retains all immunities and defenses provided by state law.
21. The RECIPIENT certifies and warrants that no gratuities, kickbacks, or contingency fees were paid in connection with this Agreement, nor were any fees, commissions, gifts or other considerations made contingent upon the award of this Agreement.
22. The RECIPIENT agrees to credit Federal Funding of the Recreational Trail Program administered by the NGPC on the interpretive signage of said PROJECT.
23. The RECIPIENT agrees to defend and hold harmless NGPC and the State of Nebraska from any and all claims, lawsuits, losses and liability arising out of the Recipient's failure to perform any of the recipient's duties or obligations hereunder or in connection with the negligent performance of the recipient's duties or obligations.
24. This agreement cannot be amended or modified except by written instrument executed by all of the parties hereto.

Political Subdivision	Project Number
-----------------------	----------------

City of Wayne	RTP 2011 (006)
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Project Title

Wayne Interpretive Signage

Project Scope (Description of the Project)

Project consists of the development of 11 educational, interpretive signs that are 20" x 36" along the City of Wayne trail. The signs will include information on different things users will see along the trail.

Project Cost Data

Total Project Cost: \$20,494

Federal Percent: 80%

Federal Share: \$16,395

The following are hereby incorporated into this agreement:

1. General Provisions
2. Project Application and supporting documents.

By virtue of the authority contained in Neb. Rev. Stat. §§37-910 and 37-911 inclusive, the State of Nebraska, represented by the NGPC, does on this day hereby enter into an agreement with RECIPIENT City of Wayne, as the project sponsor, for the purpose of executing and administering the provisions of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) of 2005, P.L. 109-59, as amended, hereinafter referred to as the Act, as applicable to agreements of this nature.

In consideration of the covenants of the RECIPIENT as hereinafter set forth, including such project plans, specifications, and supporting documents as may be attached hereto and made a part of this agreement, the State hereby agrees herein, and when funds are available, to reimburse the RECIPIENT all appropriate federal funds received for eligible project expenditures.

The RECIPIENT agrees to execute this project as set forth herein and any subsequent amendments in a timely and businesslike manner for the purposes intended and in accordance with the terms, conditions and covenants of this Agreement.

SPECIAL PROVISIONS

The following special project terms and conditions were added to this Agreement before it was signed by the parties hereto:

Project and costs incurred must be consistent with grant application cost estimates. Inspection will occur when RECIPIENT receives final bill from contractor. Final reimbursement request from RECIPIENT will occur no later than 30 days after inspection has occurred. First project status report will be due on August 2, 2011 and can be emailed to NGPC. The second project status report will be due on November 2, 2011 and the final report will be due December 2, 2011.

In witness whereof, the parties hereto have executed this agreement as of the date entered below, and the covenants herein shall extend to and be binding upon the successors of the parties to this agreement.

RECIPIENT:

Date: _____

By: _____

Title: _____

Address: _____

NEBRASKA GAME AND PARKS COMMISSION:

By: Michelle Stryker
Recreational Trails Program Administrator

Address: 2200 North 33rd Street
PO Box 30370
Lincoln, NE 68503-0370

RESOLUTION NO. 2011-34

A RESOLUTION APPROVING INTERLOCAL COOPERATION AGREEMENT AND SPECIAL OPERATION AND MAINTENANCE AGREEMENT BETWEEN THE CITY OF WAYNE AND THE LOWER ELKHORN NATURAL RESOURCE DISTRICT FOR THE "WAYNE TRAIL LOGAN CREEK OVERLOOK BANK STABILIZATION PROJECT."

WHEREAS, the City of Wayne, Nebraska, has been informed that its application for funding through the Lower Elkhorn NRD's Urban Conservation Assistance Program for the "Wayne Trail Logan Creek Overlook Bank Stabilization Project" has been approved; and

WHEREAS, the City of Wayne wishes to enter into an Interlocal Cooperation Agreement and Special Operation and Maintenance Agreement with the Lower Elkhorn Natural Resource District for the "Wayne Trail Logan Creek Overlook Bank Stabilization Project."

NOW, THEREFORE BE IT RESOLVED, by the Mayor and City Council of the City of Wayne, Nebraska, that the Interlocal Cooperation Agreement and Special Operation and Maintenance Agreement with the Lower Elkhorn Natural Resource District for the "Wayne Trail Logan Creek Overlook Bank Stabilization Project", copies of which are attached hereto, be and the same are hereby approved as written, and that the City Administrator and/or Mayor are authorized and directed to execute said Agreements on behalf of the City.

PASSED AND APPROVED this 17th day of May, 2011.

THE CITY OF WAYNE, NEBRASKA,

By _____
Mayor

ATTEST:

City Clerk

INTERLOCAL COOPERATION AGREEMENT

Comes now the Lower Elkhorn Natural Resources District, hereinafter referred to as the "LENRD", and the local governmental unit or public agency described on Exhibit "A" attached hereto and made a part hereof, hereinafter described as the "Public Agency", and pursuant to the Nebraska Interlocal Cooperation Act, hereby agree as follows:

1. It is in the best interests of the LENRD and such Public Agency to enter into this agreement to provide certain services and other benefits to the parties to this agreement, for the duration and purposes set forth on such Exhibit "A".
2. The manner of financing this undertaking and a budget for the same is as set forth on Exhibit "A", as agreed to by the parties herein.
3. In the event no separate legal entity to conduct the joint or cooperative undertaking contemplated by this agreement is created herein, then the administrator or joint board responsible for administering such undertaking is as set forth on Exhibit "A".
4. In the event real and personal property is used in such undertaking, the manner of acquiring, holding and disposing of the same is as set forth on Exhibit "A" attached hereto.
5. Time is of the essence of this agreement.
6. This agreement shall be binding upon the parties hereto and interpreted under Nebraska Law.

Dated this _____ day of _____, 2011.

LOWER ELKHORN NATURAL RESOURCES DISTRICT

BY _____
Chairman of the Lower Elkhorn NRD Board

Authorized Representative of Public Agency on behalf
of such Public Agency

EXHIBIT "A"

1. Public Agency: City of Wayne
2. Duration of this Agreement: is for two years (Expires June 30, 2014)
3. This agreement forms no separate entity.
 - A. Lower Elkhorn NRD administers the Urban Conservation Assistance Program.
 - B. City of Wayne is responsible for acquisition of any necessary property by deed or easement from landowners and will terminate such easements when no longer needed.
4. This agreement sets forth the terms under which Lower Elkhorn NRD and City of Wayne will cooperate on:
 - A. Acquisition, planning, and development of public recreation areas which are agreed to by both parties.
5. Financing and budget: Lower Elkhorn NRD and City of Wayne each agree:
 - A. Lower Elkhorn NRD will reimburse City of Wayne 50% of their eligible costs up to a limit of \$25,000.00 on approved projects.
6. Termination: Either party to this agreement may terminate the same upon completion of the same or a violation of the agreement by the other party.

Upon any termination, any property that is a part of the joint or cooperative undertaking shall be disposed of as follows:

All easements shall terminate as provided by law.

LOWER ELKHORN NATURAL RESOURCE DISTRICT
Urban Conservation Assistance Program

Special Operation and Maintenance Agreement

This agreement is made between the LOWER ELKHORN NATURAL RESOURCES DISTRICT (hereinafter "the District"), acting under authority of Section 2-3235 R.R.S., 1943 and City of Wayne (hereinafter "the Sponsor") which sponsor intends to carry out the following described project: Wayne Trail Logan Creek Overlook Bank Stabilization (hereinafter "the Project") located in Wayne County, Nebraska.

It is agreed that, if the District furnishes financial aid to the Sponsor for the Project, in consideration thereof: \$25,000.00:

1. The Sponsor warrants that it now has, or can obtain the resources, ability, and authority, and will obtain the additional funds, permits, services, materials, and land rights necessary to complete the Project, without additional cost to the District.
2. The Sponsor shall operate, maintain, and repair the Project after completion in accordance with accepted engineering standards and practices, without additional cost to the District. If the Project is either removed or improperly maintained within a period of ten (10) years following completion, the Sponsor will upon request of the District refund all, or a portion, of the District's cost share funds.
3. The Sponsor shall indemnify and hold the District harmless from and against all liability and damages resulting from the design, construction, operation, or maintenance of the Project, and against all demands, causes of action, and claims arising therefrom, except as may be caused by negligence of the District, its agents, representatives, or employees.

The effective date of this Agreement shall be April 28, 2011.

SPONSOR:

_____ Attest: _____

By: _____

Date: _____

LOWER ELKHORN NATURAL RESOURCES DISTRICT

By: _____ Attest: _____

Date: _____

Letter of Transmittal

Date: May 2, 2011

Attention: Betty McGuire

From: Terry J. Mead, P.E.

To: City of Wayne

PO Box 8

Re: 2010 Sidewalk Replacement

Wayne, NE 68787

Wayne, NE

Project No.: 090836

Your Information

Approval

Investigation

Per Conversation

Review & Comment

Signature

As Requested

Necessary Action

For Your Files

Remarks:

Enclosed are three (3) copies of Application for Payment No. 5 (Final) and Recommendation of Acceptance. Please Note, I'm not expecting the City to approve the final until the railings are placed at Geno's on 1st Street.

Please sign, retain one copy for your file, send one copy to the Contractor and return one copy to JEO Consulting Group, Inc.



cc: hswell
Gary Joel

APPLICATION FOR PAYMENT NO. 5

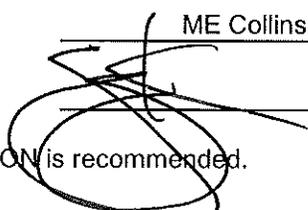
To: City of Wayne, Nebraska
From: ME Collins Contracting Co., Inc.
Contract For: 2010 Wayne Sidewalk Replacment
ENGINEER's Project No. 090836
For Work accomplished through the date of: April 12, 2011

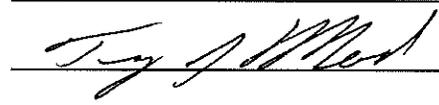
1. Original Contract Price:	\$ 624,616.70
2. Net change by Change Orders and Written Amendments (+ or -):	\$ 4,579.00
3. Current Contract Price (1 plus 2):	\$ 629,195.70
4. Total completed and stored to date:	\$645,061.00
5. Percent of Project Completed <u>103%</u>	
6. Retainage (per agreement):	
<u>0%</u> of completed Work and Stored Materials:	\$ -
(10% of the first 50% of work completed & stored)	
Total Retainage:	\$ -
7. Total completed and stored to date less retainage (4 minus 6):	\$ 645,061.00
8. Less previous Application for Payments:	\$ 574,354.08
9. DUE THIS APPLICATION (7 MINUS 8):	\$ 70,706.92

Accompanying Documentation:

CONTRACTOR'S Certification:

The undersigned CONTRACTOR certifies that (1) all previous progress payments received from OWNER on account of Work done under the Contract referred to above have been applied on account to discharge CONTRACTOR's legitimate obligations incurred in connection with Work covered by prior Applications for Payment numbered 1 through 5 inclusive; (2) title of all Work, materials and equipment incorporated in said Work or otherwise listed in or covered by this Application for Payment will pass to OWNER at time of payment free and clear of all Liens, security interests and encumbrances (except such as are covered by a Bond acceptable to OWNER indemnifying OWNER against any such Lien, security interest or encumbrance); and (3) all Work covered by this Application for Payment is in accordance with the Contract Documents and not defective.

Dated: 4/26/11
By:  ME Collins Contracting Co., Inc.

Payment of the above AMOUNT DUE THIS APPLICATION is recommended.
Dated: 5-2-11
By:  JEO CONSULTING GROUP, INC.

APPLICATION APPROVED BY: City of Wayne, Nebraska
By: _____
Title: _____ Date: _____

ATTEST:
By: _____ Title: _____

CONTRACTOR'S PROGRESS ESTIMATE

Owner: City of Wayne, Nebraska

Date: 04/12/11

Project: 2010 Wayne Sidewalk Replacement

Estimate No.: 5

Contractor: ME Collins Contracting Co., Inc.

JEO Project No.: 090836

ITEM NO.	CONTRACT QTY	UNIT	DESCRIPTION	QTY TO DATE	UNIT PRICE	TOTAL
GROUP "A" - REMOVALS						
1	1	LS	Mobilization	1	\$24,700.00	\$24,700.00
2	27,281	SF	Remove Sidewalk	28,244	\$2.20	\$62,136.80
3	388	SY	Remove Driveway Paving	458	\$10.00	\$4,580.00
4	124	SY	Remove Pavement	174	\$10.00	\$1,740.00
5	931	SY	Remove Pavement & Salvage Brick	931	\$16.00	\$14,896.00
6	473	LF	Remove Concrete Curb and Gutter	500	\$6.00	\$3,000.00
7	204	SY	Remove Alley Paving	224	\$14.00	\$3,136.00
8	8	EA	Remove & Reset Sign and Post	9	\$100.00	\$900.00
9	1	LS	Remove Step & Planters	1	\$700.00	\$700.00
10	118	SF	Remove & Salvage Brick	199	\$4.00	\$796.00
11	15	LF	Remove Trench Drain	15	\$10.00	\$150.00
12	12	EA	Remove Tree	13	\$300.00	\$3,900.00
13	4	EA	Remove Inlet	4	\$400.00	\$1,600.00
14	1	EA	Remove Junction Box	0	\$500.00	\$0.00
15	1	EA	Remove Existing Concrete Ramp Structure	1	\$3,000.00	\$3,000.00
16	8	LF	Remove Steps	0	\$50.00	\$0.00
17	1	EA	Remove Existing Concrete Stoop Structure	1	\$600.00	\$600.00
18	1	EA	Remove Existing Wood Ramp Structure	1	\$300.00	\$300.00
19	1	EA	Remove Manhole Ring and Cover	1	\$200.00	\$200.00
20	3	CY	Place Flowable Fill	3	\$165.00	\$495.00
TOTAL GROUP "A" - REMOVALS						\$126,829.80
GROUP "B" - SIDEWALK/PAVING IMPROVEMENTS						
1	25,382	SF	Build 5" Concrete Sidewalk	27,159	\$4.80	\$130,363.20
2	1,094	SY	Build 8" PCC Pavement w/Integral Curb & Gutter	1086	\$47.00	\$51,042.00
3	389	SY	Build 8" PC Concrete Driveway Pavement	496	\$47.00	\$23,312.00
4	208	SY	Build 8" PC Concrete Alley Pavement	236	\$50.00	\$11,800.00
5	510	LF	Remove and Replace Concrete Curb and Gutter	580	\$30.00	\$17,400.00

6	143	SY	Build Brick Paving w/Salvaged Brick	169	\$80.00	\$13,520.00
7	1	EA	Ramp/Wall/Handrail Structures – "A" 3/D1.1	1	\$4,955.00	\$4,955.00
8	1	EA	Ramp/Wall/Handrail Structures – "B" 4/D1.1	1	\$4,480.00	\$4,480.00
9	1	EA	Ramp/Wall/Handrail Structures – "C" 6/D1.1	1	\$5,789.00	\$5,789.00
10	1	EA	Ramp/Wall/Handrail Structures – "D" 7/D1.1	1	\$8,799.00	\$8,799.00
11	1	EA	Ramp/Wall/Handrail Structures – "E" 8/D1.1	1	\$1,785.00	\$1,785.00
12	1	EA	Ramp/Wall/Handrail Structures – "F" 9/D1.1	1	\$10,810.00	\$10,810.00
13	1	EA	Ramp/Wall/Handrail Structures – "G" 10/D1.1	1	\$6,050.00	\$6,050.00
14	1	EA	Ramp/Wall/Handrail Structures – "H" 11/D1.1	1	\$17,899.00	\$17,899.00
15	1	EA	Ramp/Wall/Handrail Structures – "I" 1/D1.2	1	\$2,618.00	\$2,618.00
16	1	EA	Ramp/Wall/Handrail Structures – "J" 2/D1.2	1	\$4,182.00	\$4,182.00
17	1	EA	Ramp/Wall/Handrail Structures – "K" 3/D1.2	1	\$4,481.00	\$4,481.00
18	1	EA	Ramp/Wall/Handrail Structures – "L" 4/D1.2	1	\$1,505.00	\$1,505.00
19	1	EA	Ramp/Wall/Handrail Structures – "M" 5/D1.2	1	\$4,252.00	\$4,252.00
20	2	EA	Adjust Manholes to Grade	2	\$270.00	\$540.00
21	3	EA	Adjust Gas Valve Box to Grade	2	\$180.00	\$360.00
22	13	EA	Adjust Curb Stop to Grade	11	\$180.00	\$1,980.00
23	2	EA	Adjust Electrical Box to Grade	2	\$687.00	\$1,374.00
24	1,379	SY	Subgrade Preparation (12")	1086	\$2.10	\$2,280.60
25	3,704	SY	Subgrade Modification (12" Depth)	3,787	\$20.00	\$75,740.00
26	227	LF	Build Barrier Curb	216	\$31.00	\$6,696.00
27	24	EA	Build Curb Ramp with Truncated Dome Panels	24	\$718.00	\$17,232.00
28	201	EA	Drill and Grout Tie Bars	353	\$8.00	\$2,824.00
29	8	EA	Structural Stoop	4	\$802.00	\$3,208.00
30	16	LF	Build Trench Drain	26	\$63.00	\$1,638.00
31	1	EA	Remove and Rebuild Curb Inlet Box Lid	1	\$1,583.00	\$1,583.00
32	1	EA	Build Drop Curb Grate Inlet (reuse existing grate)	1	\$2,518.00	\$2,518.00
33	1	EA	Build Curb Inlet Y=4', A=4'-0"	1	\$2,684.00	\$2,684.00
34	1	EA	Build Curb Inlet Y=12', A=4'-0"	1	\$3,448.00	\$3,448.00
35	1	EA	Build Curb Inlet Y=6', A=2'-8"	1	\$3,066.00	\$3,066.00
36	494	LF	Build 12" RCP Storm Sewer	458	\$30.00	\$13,740.00
37	4	VF	Build 48" Storm Sewer Manhole	4	\$515.00	\$2,060.00
38	1	EA	Manhole Ring and Cover	1	\$662.00	\$662.00
39	5	EA	Plug and Abandon Existing Storm Sewer	5	\$352.00	\$1,760.00
TOTAL GROUP "B" - SIDEWALK/PAVING IMPROVEMENTS						\$470,435.80

GROUP "C" - ELECTRICAL CONDUIT						
1	1,920	LF	Install 1-1/4" PVC Conduit Schedule 40 (Trenched)	1750	\$2.60	\$4,550.00
2	525	LF	Install 1-1/4" PVC Conduit Schedule 80 (Trenched)	628	\$2.80	\$1,758.40
3	108	LF	Install 1-1/4" PVC Conduit Schedule 80 (Bored)	0	\$9.00	\$0.00
4	11	EA	1-1/4" PVC Cap	9	\$14.00	\$126.00
5	2	EA	Connect to Existing Pull Box	5	\$40.00	\$200.00
6	3	EA	Connect to Existing Conduit	3	\$40.00	\$120.00
TOTAL GROUP "C" - ELECTRICAL CONDUIT						\$6,754.40
GROUP "D" - WATER MAIN						
1	424	LF	Install 8" PVC C900 Water Main	424	\$29.00	\$12,296.00
2	2	EA	Cap and Abandon Existing 8" Water Main	2	\$700.00	\$1,400.00
3	24	LF	Install 6" PVC C900 Water Main	24	\$30.00	\$720.00
4	1	EA	Cap and Abandon Existing 6" Water Main	1	\$700.00	\$700.00
5	28	LF	Install 4" PVC C900 Water Main	28	\$30.00	\$840.00
6	1	EA	Cap and Abandon Existing 4" Water Main	1	\$697.00	\$697.00
7	2	EA	Install 8" 45 Degree Bend	2	\$328.00	\$656.00
8	2	EA	Install 8" 90 Degree Bend	2	\$338.00	\$676.00
9	1	EA	Install 8"x4" Tee	1	\$378.00	\$378.00
10	3	EA	Install 8"x6" Tee	3	\$414.00	\$1,242.00
11	2	EA	Install 6" 45 Degree Bend	2	\$216.00	\$432.00
12	2	EA	Install 4" 90 Degree Bend	2	\$198.00	\$396.00
13	1	EA	Install 8" Gate Valve & Box	1	\$1,351.00	\$1,351.00
14	1	EA	Install 6" Gate Valve & Box	1	\$967.00	\$967.00
15	1	EA	Install 4" Gate Valve & Box	1	\$888.00	\$888.00
16	1	EA	Install 8" Bolted Flex Coupling	1	\$359.00	\$359.00
17	1	EA	Install 6" Bolted Flex Coupling	1	\$315.00	\$315.00
18	1	EA	Install 4" Bolted Flex Coupling	1	\$207.00	\$207.00
19	5	EA	Install 1" Corp Stop w/ Saddle	5	\$327.00	\$1,635.00
20	5	EA	Install 1" Curb Stop & Box	5	\$273.00	\$1,365.00
21	169	LF	Install 1" PE Service Line	251	\$20.00	\$5,020.00
22	5	EA	Connect to existing service line	6	\$80.00	\$480.00
23	2	EA	Install 3-Way Fire Hydrant w/Auxiliary Valve	2	\$3,817.00	\$7,634.00
24	2	EA	Remove & Salvage Existing Hydrant	2	\$349.00	\$698.00
SUBTOTAL GROUP "D" - WATER MAIN						\$41,352.00
				TOTAL BASE BID		\$645,372.00

CHANGE ORDER 1						
C1.1	1	EA	Changes to Ramp "A"	1	-\$1,455.00	(\$1,455.00)
C1.2	1	EA	Eliminate Ramp "B"	1	-\$4,480.00	(\$4,480.00)
C1.3	1	EA	New Step at 302+25 Rt	1	\$3,078.00	\$3,078.00
C1.4	1	EA	Eliminate Ramp "J"	1	-\$4,182.00	(\$4,182.00)
C1.5	1	EA	Eliminate Ramp "L"	1	-\$1,505.00	(\$1,505.00)
C1.6	1	EA	Eliminate Ramp "M"	1	-\$4,252.00	(\$4,252.00)
C1.7	1	EA	Ramp and Improvements at Godfathers	1	\$23,425.00	\$23,425.00
C1.8	1	EA	Eliminate Ramp "G"	1	-\$6,050.00	(\$6,050.00)
SUBTOTAL GROUP "D" - WATER MAIN						\$4,579.00
LIQUIDATED DAMAGES						
L1	1	DAY	Liquidated Damages	6	-\$815.00	(\$4,890.00)
TOTAL						\$645,061.00



Engineering
Architecture
Surveying
Planning

May 5, 2011

Lowell D. Johnson
City Administrator
City of Wayne
PO Box 8
Wayne, NE 68787



RE: Wayne, NE
2009-2010 Wastewater Treatment Facility Improvements, Phase I
JEO Project No. 090621 / 617S7

Dear Lowell:

Enclosed for the Council's consideration are five (5) copies of Application for Payment No. 9 for the above referenced project. Work completed this month includes backfill, concrete, masonry, yard piping, process piping, mechanical and a large amount of electrical equipment delivered. Electrical invoices are enclosed and equipment is being stored offsite. The Contractor is seeking payment on \$3,139,721.75 less retainage and previous payments. JEO recommends payment in the amount of \$328,561.00 to Eriksen Construction Co. Inc.

Also enclosed is an invoice from Terracon for soils testing. The soils testing results are satisfactory and the enclosed invoice represents the agreed terms and conditions. We recommend payment of the invoice.

A progress meeting was held on April 28, 2011 and meeting minutes will be forwarded. Also enclosed with the pay application are copies of the daily field reports with a copy also being forwarded to staff for review. Materials testing results enclosed also show work is meeting specifications.

The Aquarius structure is more than 90% complete and the Contractor is working on piping and backfilling the lift station and Aquarius tank areas. Progress is being made on the headworks building too. The Contractor reports improving the schedule by 20 days due to better weather and more laborers. We expect the project to press in the coming weeks as weather continues to improve.

Upon approval of the pay application, please forward one copy with payment to the Contractor, and return one copy to JEO. You can provide photocopies to NDEQ or USEPA for reimbursement through the funding agencies.

Sincerely,

Roger S. Protzman, P.E.
Project Manager

RSP:skw
Enclosures

Pc: Gary Poutre w/Field Reports (via email)

Application and Certificate for Payment, containing Contractor's signed certification is attached. In tabulations below, amounts are stated to the nearest Dollar.

Application Number: 9
Application Date: 04/26/11
Period From: 03/26/11
Period To: 04/23/11
Eng. Project No.: 617S7

Use Column 1 on Contracts where variable retainage for line items may apply.

Retainage: 10%

A No.	B Description of Work	C Scheduled Value	D Work Completed			G Total Completed and Stored to Date D+E+F	H % G/C	I C-G	Retainage 10% (On first 50%)
			Previous Applications	Work In Place	Stored Materials				
1	Bonds and Insurance	75,000.00	75,000.00	0.00	0.00	75000.00	100%	0.00	0.00
2	Mobilization	68,680.00	68,680.00	0.00	0.00	68680.00	100%	0.00	0.00
3	Site Clearing	85,360.00	85,360.00	0.00	0.00	85360.00	100%	0.00	0.00
4	Grading	25,660.00	5,000.00	0.00	0.00	5000.00	19%	20660.00	0.00
5	Excavation	50,724.00	50,000.00	0.00	0.00	50000.00	99%	724.00	0.00
6	Aquarius Tank Rock Base & Sub	39,780.00	39,780.00	0.00	0.00	39780.00	100%	0.00	0.00
7	Fill	9,780.00	9,780.00	0.00	0.00	9780.00	100%	0.00	0.00
8	Backfill	80,126.00	15,000.00	20,000.00	0.00	35000.00	44%	45126.00	0.00
9	Surcharge	19,375.00	19,375.00	0.00	0.00	19375.00	100%	0.00	0.00
10	Staging Area	34,607.00	34,607.00	0.00	0.00	34607.00	100%	0.00	0.00
11	Demolition	2,120.00	0.00	0.00	0.00	0.00	0%	2120.00	0.00
12	Rock Around Lift Station	2,163.00	0.00	0.00	0.00	0.00	0%	2163.00	0.00
13	Erosion Control	15,000.00	12,000.00	0.00	0.00	12000.00	80%	3000.00	0.00
14	Fence	40,783.00	21,000.00	0.00	0.00	21000.00	51%	19783.00	0.00
15	Seeding	5,000.00	0.00	0.00	0.00	0.00	0%	5000.00	0.00
16	Pavement	32,000.00	0.00	0.00	0.00	0.00	0%	32000.00	0.00
17	Concrete	294,000.00	264,600.00	17,640.00	0.00	282240.00	96%	11760.00	0.00
18	Rebar	196,100.00	191,550.00	0.00	0.00	191550.00	98%	4550.00	0.00
19	Hollow Core	2,500.00	0.00	2,500.00	0.00	2500.00	100%	0.00	0.00
20	Masonry	151,450.00	69,978.50	32,500.00	0.00	102478.50	68%	48971.50	0.00
21	Misc. Metals	65,000.00	3,550.00	0.00	0.00	3550.00	5%	61450.00	0.00
22	Handrails/Stairs/Grating	21,000.00	0.00	0.00	0.00	0.00	0%	21000.00	0.00
23	Final Clarifier Demo	4,400.00	0.00	0.00	0.00	0.00	0%	4400.00	0.00
24	Flat Covers	250,000.00	0.00	10,000.00	0.00	10000.00	4%	240000.00	0.00
25	Carpentry	28,500.00	7,125.00	0.00	0.00	7125.00	25%	21375.00	0.00
26	Trusses	10,500.00	5,250.00	0.00	0.00	5250.00	50%	5250.00	0.00
27	Water Repellants	3,500.00	0.00	0.00	0.00	0.00	0%	3500.00	0.00
28	Insulation	1,000.00	0.00	0.00	0.00	0.00	0%	1000.00	0.00
29	Gutters	3,000.00	0.00	0.00	0.00	0.00	0%	3000.00	0.00
30	Joint Sealants	8,000.00	0.00	0.00	0.00	0.00	0%	8000.00	0.00
31	Doors & Hardware	7,800.00	1,300.00	0.00	0.00	1300.00	17%	6500.00	0.00
32	Overhead Doors	12,000.00	0.00	0.00	0.00	0.00	0%	12000.00	0.00
33	Drywall	1,000.00	0.00	0.00	0.00	0.00	0%	1000.00	0.00
34	Painting	45,000.00	0.00	0.00	0.00	0.00	0%	45000.00	0.00
35	Toilet Accessories	4,700.00	0.00	0.00	0.00	0.00	0%	4700.00	0.00
36	Grit and Screw Classifier System	200,000.00	0.00	0.00	0.00	0.00	0%	200000.00	0.00
37	Submersible Lift Station Pumps	33,000.00	28,000.00	3,000.00	0.00	31000.00	94%	2000.00	0.00
38	Rotary Lobe Pumps	4,800.00	0.00	0.00	0.00	0.00	0%	4800.00	0.00
39	Scraper Clarifiers	165,000.00	500.00	0.00	0.00	500.00	0%	164500.00	0.00
40	Vertical Fine Screen	98,000.00	87,885.00	0.00	0.00	87885.00	90%	10115.00	0.00
41	Internally Fed Drum Screen & Comp	142,500.00	0.00	0.00	0.00	0.00	0%	142500.00	0.00
42	Gates	14,000.00	13,975.00	0.00	0.00	13975.00	100%	25.00	0.00
43	Aquarius MSABP	1,326,600.00	1,153,161.00	10,000.00	0.00	1163161.00	88%	163439.00	0.00
44	Positive Displacement Blower	64,050.00	57,400.00	3,200.00	0.00	60600.00	95%	3450.00	0.00
45	Casework/Counter Top	11,865.00	0.00	0.00	0.00	0.00	0%	11865.00	0.00

Continuation Sheet

Application and Certificate for Payment, containing Contractor's signed certification is attached. In tabulations below, amounts are stated to the nearest Dollar.

Application Number: 9
 Application Date: 04/28/11
 Period From: 03/28/11
 Period To: 04/23/11
 Eng. Project No.: 617S7

Use Column 1 on Contracts where variable retainage for line items may apply.

Retainage: 10%

A No.	B Description of Work	C Scheduled Value	D Work Completed			G Total Completed and Stored to Date D+E+F	H % G/C	I Retainage 10% (On first 50%)	
			Previous Applications	Work In Place	Stored Materials				C-G
46	Hoist/Trolley/Crane	13,650.00	13,650.00	0.00	0.00	13650.00	100%	0.00	0.00
47	Valves	117,600.00	91,648.00	11,760.00	0.00	103408.00	88%	14192.00	0.00
48	Yard Piping	238,975.00	137,806.73	24,000.00	0.00	161806.73	68%	77168.27	0.00
49	Manholes	174,900.00	106,959.27	32,961.00	0.00	139920.27	80%	34979.73	0.00
50	Process Piping	98,322.00	54,240.25	15,000.00	0.00	69240.25	70%	29081.75	0.00
51	Mechanical	86,000.00	42,000.00	15,000.00	0.00	57000.00	66%	29000.00	0.00
52	Electrical	613,900.00	46,000.00	130,000.00	0.00	176000.00	29%	437900.00	0.00
53		0.00	0.00	0.00	0.00	0.00	0%	0.00	0.00
		5,098,770.00	2812160.75	327,561.00	0.00	3139721.75	62%	1959048.25	254938.50

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APPLICATION FOR PAYMENT NO. 10

To: City of Wayne, Nebraska
From: Layne Christensen Co.
Contract For: Well House and Municipal Well 2009-1
ENGINEER's Project No. 617W6
For Work accomplished through the date of: February 7, 2011

1. Original Contract Price:	\$ 363,651.00
2. Net change by Change Orders and Written Amendments (+ or -):	\$ (5,088.00)
3. Current Contract Price (1 plus 2):	\$ 358,563.00
4. Total completed and stored to date:	\$ 357,309.00
5. Percent of Project Completed <u>100%</u>	
6. Retainage (per agreement):	
<u>10%</u> of completed Work and Stored Materials: <u>\$ 35,730.90</u>	
(10% of the first 50% of work completed & stored)	
Total Retainage:	\$ 35,730.90
7. Total completed and stored to date less retainage (4 minus 6):	\$ 321,578.10
8. Less previous Application for Payments:	\$ 292,125.83
9. DUE THIS APPLICATION (7 MINUS 8):	\$ 29,452.27

Accompanying Documentation:

CONTRACTOR'S Certification:

The undersigned CONTRACTOR certifies that (1) all previous progress payments received from OWNER on account of Work done under the Contract referred to above have been applied on account to discharge CONTRACTOR's legitimate obligations incurred in connection with Work covered by prior Applications for Payment numbered 1 through 9 inclusive; (2) title of all Work, materials and equipment incorporated in said Work or otherwise listed in or covered by this Application for Payment will pass to OWNER at time of payment free and clear of all Liens, security interests and encumbrances (except such as are covered by a Bond acceptable to OWNER indemnifying OWNER against any such Lien, security interest or encumbrance); and (3) all Work covered by this Application for Payment is in accordance with the Contract Documents and not defective.

Dated: February 7, 2011 _____
By: Terry Heil _____
Layne Christensen Co.

Payment of the above AMOUNT DUE THIS APPLICATION is recommended.

Dated: May 13, 2011 _____
By: Roger Protzman _____
JEO CONSULTING GROUP, INC.

APPLICATION APPROVED BY: City of Wayne, Nebraska

By: _____
Title: _____ Date: _____

ATTEST:

By: _____ Title: _____

CONTRACTOR'S PROGRESS ESTIMATE

Owner: Clty of Wayne, Nebraska

Date: 02/07/11

Project: Well House and Municipal Well 2009-1

Estimate No.: 10

Contractor: Layne Christensen Co.

JEO Project No.: 617W6

ITEM NO.	CONTRACT QTY	UNIT	DESCRIPTION	QTY TO DATE	UNIT PRICE	TOTAL
1	1	LS	Mobilization / Demobilization	1	\$18,385.00	\$18,385.00
2	259	VF	Drill Hole	259	\$61.00	\$15,799.00
3	46	VF	18" SS Screen (90 Slot) (16" SS Screen Change)	46	\$160.00	\$7,360.00
4	3	VF	18 SS Screen (0 Slot) (16" SS Screen Change)	3	\$427.00	\$1,281.00
5	216	VF	18" Steel Casing (16" PVC Certa-Lok change)	212	\$106.00	\$22,472.00
6	1	LS	Bentonite, Grout, & Gravel Pack	1	\$15,373.00	\$15,373.00
7	1	LS	Develop & Disinfect Well	1	\$6,267.00	\$6,267.00
8	30	HR	Step Drawdown & Constant Rate Pump Test	25	\$166.00	\$4,150.00
9	1	LS	Plumbness & Alignment Test	1	\$633.00	\$633.00
10	1	LS	Chemical Analysis	1	\$5,341.00	\$5,341.00
11	1	LS	Pump, Motor, & Column	1	\$42,584.00	\$42,584.00
12	1	LS	Fluoride Chemical Feed Equipment	1	\$14,813.00	\$14,813.00
13	1	LS	Discharge Piping	1	\$30,911.00	\$30,911.00
14	1	LS	Well Building & Site Work	1	\$53,105.00	\$53,105.00
15	1	LS	Electrical w/Generator & VFD	1	\$104,393.00	\$104,393.00
16	1	LS	Access Drive	1	\$6,632.00	\$6,632.00
17	2	EA	10" 90 Bend	2	\$316.00	\$632.00
18	110	LF	10" DIP Pipe	110	\$34.00	\$3,740.00
19	1	EA	10" Gate Valve & Box	1	\$1,947.00	\$1,947.00
20	1	EA	Connect to Existing 16' Main w/ 16" x 10" Tapping Sleeve	1	\$5,526.00	\$5,526.00
21	1	LS	Seeding	1	\$1,053.00	\$1,053.00
	1	LS	Change Order No. 1	1	(\$5,088.00)	(\$5,088.00)
SUBTOTAL GROUP "A"						\$357,309.00

Loan Calculator

Enter Values	
Loan Amount	\$ 75,000.00
Annual Interest Rate	4.25 %
Loan Period in Years	20
Number of Payments Per Year	12
Start Date of Loan	07/14/2005
Optional Extra Payments	

Lender Name:

Loan Summary	
Scheduled Payment	\$ 464.43
Scheduled Number of Payments	240
Actual Number of Payments	145
Total Early Payments	\$ 25,996.50
Total Interest	\$ 17,260.48

Pmt No.	Payment Date	Beginning Balance	Scheduled Payment	Extra Payment	Total Payment	Principal	Interest	Ending Balance	Payment Date
1	08/14/2005	\$ 75,000.00	\$ 464.43	\$ -	\$ 464.43	\$ 198.80	\$ 265.63	\$ 74,801.20	8/16/05
2	09/14/2005	74,801.20	464.43	-	464.43	199.50	264.92	74,601.69	6/15/05
3	10/14/2005	74,601.69	464.43	-	464.43	200.21	264.21	74,401.48	11/3/05
4	11/14/2005	74,401.48	464.43	-	464.43	200.92	263.51	74,200.56	11/3/05
5	12/14/2005	74,200.56	464.43	-	464.43	201.63	262.79	73,998.93	12/20/05
6	01/14/2006	73,998.93	464.43	-	464.43	202.35	262.08	73,796.58	12/20/05
7	02/14/2006	73,796.58	464.43	-	464.43	203.06	261.36	73,593.52	3/6/06
8	03/14/2006	73,593.52	464.43	-	464.43	203.78	260.64	73,389.74	3/6/06
9	04/14/2006	73,389.74	464.43	-	464.43	204.50	259.92	73,185.23	5/19/06
10	05/14/2006	73,185.23	464.43	-	464.43	205.23	259.20	72,980.01	5/19/06
11	06/14/2006	72,980.01	464.43	-	464.43	205.95	258.47	72,774.05	5/19/06
12	07/14/2006	72,774.05	464.43	-	464.43	206.68	257.74	72,567.37	8/23/06
13	08/14/2006	72,567.37	464.43	-	464.43	207.42	257.01	72,359.95	8/23/06
14	09/14/2006	72,359.95	464.43	-	464.43	208.15	256.27	72,151.80	9/13/06
15	10/14/2006	72,151.80	464.43	-	464.43	208.89	255.54	71,942.91	10/23/06
16	11/14/2006	71,942.91	464.43	-	464.43	209.63	254.80	71,733.28	12/28/06
17	12/14/2006	71,733.28	464.43	-	464.43	210.37	254.06	71,522.91	12/28/06
18	01/14/2007	71,522.91	464.43	-	464.43	211.12	253.31	71,311.80	12/28/06
19	02/14/2007	71,311.80	464.43	-	464.43	211.86	252.56	71,099.93	3/8/07
20	03/14/2007	71,099.93	464.43	-	464.43	212.61	251.81	70,887.32	3/28/07
21	04/14/2007	70,887.32	464.43	-	464.43	213.37	251.06	70,673.95	9/5/07
22	05/14/2007	70,673.95	464.43	-	464.43	214.12	250.30	70,459.83	9/5/07
23	06/14/2007	70,459.83	464.43	-	464.43	214.88	249.55	70,244.95	9/5/07
24	07/14/2007	70,244.95	464.43	-	464.43	215.64	248.78	70,029.31	9/5/07
25	08/14/2007	70,029.31	464.43	-	464.43	216.41	248.02	69,812.90	9/14/07
26	09/14/2007	69,812.90	464.43	-	464.43	217.17	247.25	69,595.73	10/12/07
27	10/14/2007	69,595.73	464.43	-	464.43	217.94	246.48	69,377.79	10/22/07
28	11/14/2007	69,377.79	464.43	-	464.43	218.71	245.71	69,159.08	10/22/07
29	12/14/2007	69,159.08	464.43	-	464.43	219.49	244.94	68,939.59	1/3/08
30	01/14/2008	68,939.59	464.43	-	464.43	220.26	244.16	68,719.33	1/3/08
31	02/14/2008	68,719.33	464.43	-	464.43	221.04	243.38	68,498.28	4/9/08
32	03/14/2008	68,498.28	464.43	-	464.43	221.83	242.60	68,276.45	4/9/08
33	04/14/2008	68,276.45	464.43	-	464.43	222.61	241.81	68,053.84	june 6/9/08
34	05/14/2008	68,053.84	464.43	-	464.43	223.40	241.02	67,830.44	june 6/9/08
35	06/14/2008	67,830.44	464.43	24,571.55	24,571.55	24,571.55	0.00	43,258.89	
36	07/14/2008	43,258.89	464.43	1,424.95	1,889.38	1,424.95		41,833.94	
37	08/14/2008	41,833.94	464.43	-	464.43	316.26	148.16	41,517.67	
38	09/14/2008	41,517.67	464.43	-	464.43	317.38	147.04	41,200.29	