

**AGENDA
CITY COUNCIL MEETING
August 2, 2011**

5:30 Call to Order

1. Approval of Minutes – July 19, 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. Six-Month LB 840 Update/Report — Wes Blecke, Executive Director - WAED

Background: This is a regular update to the Mayor and Council of how the sales tax funds are being used. This report is a requirement of the LB840 Economic Development Plan approved by the voters.

4. Recess

a. Convene as Community Development Agency

b. Approve Minutes – June 7, 2011

c. Consideration and Adoption of CDA Res. 2011-3 Recommending Approval of Redevelopment Plan/Contract for Bomgaars, Inc.

Background: This Tax Increment Financing Redevelopment Plan proposes a \$200,000 TIF loan at 6% interest to the Bomgaars construction project on Lot 1 of Western Ridge Third Addition to be used for any of the following: purchase, site grading and storm water management of Lot 1, and extension of water and sewer lines and street paving.

Attached is the Redevelopment Contract approved by the Planning Commission. There will need to be an amendment at the CDA meeting to change the name of the (Redeveloper) property owner from the “Bomgaars” retail company to the Bomgaars real estate holding company called “Fourth Generation Family Limited Partnership.”

Recommendation: The recommendation of WAED Executive Director and City Administrator is to approve the TIF agreement as proposed.

d. Adjourn CDA and Reconvene as Council

5. Public Hearing: Redevelopment Plan/Contract for Bomgaars, Inc. (Advertised Time: 5:30 p.m.)

6. Resolution 2011-55: Approving Redevelopment Plan/Contract for Bomgaars, Inc.

Background: This Tax Increment Financing Redevelopment Plan proposes a \$200,000 TIF loan at 6% interest to the Bomgaars construction project on Lot 1 of Western Ridge Third Addition to be used for any of the following: purchase, site grading and storm water management of Lot 1, and extension of water and sewer lines and street paving.

Attached is the Redevelopment Contract approved by the Planning Commission. There will need to be an amendment at the Council meeting to change the name of the (Redeveloper) property owner from the “Bomgaars” retail company to the Bomgaars real estate holding company called “Fourth Generation Family Limited Partnership.”

Recommendation: The recommendation of WAED Executive Director and City Administrator is to approve the TIF agreement as proposed.

7. Ordinance 2011-6: Annexing Property known as “Western Ridge Third Addition and Western Ridge First Addition” (Third and Final Reading)
8. Resolution 2011-56: Confirming the Hiring of Advanced Consulting Engineering Services and Approval of the Plans, Specifications and Cost Estimate for Sewer Extension District No. 2011-1
9. Resolution 2011-57: Confirming the Hiring of Advanced Consulting Engineering Services and Approval of the Plans, Specifications and Cost Estimate for Water Extension District No. 2011-1
10. Ordinance 2011-12: Creating Street Improvement District No. 2011-1 (Western Ridge Third Addition)
11. Ordinance 2011-13: Creating Sewer Extension District No. 2011-1 (Western Ridge Third Addition)
12. Ordinance 2011-14: Creating Water Extension District No. 2011-1 (Western Ridge Third Addition)
13. Resolution 2011-58: Approving Memorandum of Understanding with Fourth Generation Family Limited Partnership

Background: This Resolution was passed at the last Council Meeting using the name of Bomgaars, Inc.; however, the name that the company wants to use is “Fourth Generation Family Limited Partnership.” Therefore, the MOU and Resolution have been amended to reflect the name change.

14. [Ordinance 2011-7: Amending Wayne Municipal Code, Section 90-836 Expiration of Exception Use Permits \(Second Reading\)](#)
15. [Ordinance 2011-8: Amending Chapter 18, Article VI Unsafe Buildings \(Second Reading\)](#)
16. [Resolution 2011-59: Establishing One-Way and Two-Way Traffic in the City of Wayne](#)

Background: When the Board of Education selected the option to expand the Middle School and High School, they were aware that they would need to focus on parking and traffic flow. This proposal would change Douglas Street to one-way traffic south bound between 3rd and 4th Streets and Sherman Street to one-way traffic north bound between 3rd and 4th Streets. Their request is to put this in place before the start of this school year. The first day of school is August 18th.

Recommendation: The recommendation of the City Administrator, Street Superintendent, and Police Sergeant is to approve this change for the safety of the kids and to improve traffic flow for at least a one-year trial.

17. [Ordinance 2011-9: Amending Chapter 78, Article III Parking, Sec. 78-132 Prohibited Parking; Southwest Quadrant of the City](#)

Background: This would shift the “no-parking” from the east side of Sherman Street across from the Middle School to the west side.

Recommendation: The recommendation of the City Administrator, Street Superintendent and Police Sergeant is to approve this change for the safety of the kids and to improve traffic flow for at least a one-year trial.

18. [Ordinance 2011-10: Amending Chapter 78, Article III Parking, Sec. 78-133 Restricted Parking 12:00 Midnight to 5:00 a.m.; Southwest Quadrant of the City of Wayne](#)

Background: This would shift the day time parking from the west side of Sherman Street across from the Middle School to the east side, except for bus loading and unloading times before and after school times.

Recommendation: The recommendation of the City Administrator, Street Superintendent and Police Sergeant is to approve this change for the safety of the kids and to improve traffic flow for at least a one-year trial.

19. [Ordinance 2011-11: Amending Chapter 78, Article III Parking, Sec. 78-142 Restricted Parking from 7:00 a.m. to 9:00 a.m. and from 3:00 p.m. to 5:00 p.m. Monday through Friday](#)

Background: This would establish student loading and unloading zones on the east side of Sherman Street and the west side of Douglas Street along the Middle School property.

Recommendation: The recommendation of the City Administrator, Street Superintendent and Police Sergeant is to approve this change for the safety of the kids and to improve traffic flow for at least a one-year trial.

20. [Resolution 2011-60: Approving Federal Funds Purchase Program Agreement between the City of Wayne and the Nebraska Department of Roads](#)

Background: This proposal will join Wayne with the other Nebraska cities of the First Class in a group agreement with the Nebraska Department of Roads to substitute state funding for direct federal funding when allocating Surface Transportation Program funds to cities for local street projects. The benefit to cities is that this replacement state funding will have much less environmental and procurement requirements attached. The downside for cities is that NDOR will retain 20% of the funding level in-house to be used at the state level, and the funding will not be prorated out to cities as in the past. Instead, each city will submit street projects for state STP funding on a competitive basis.

In the past, Wayne has received a direct allocation of about \$150,000 for street projects. That direct allocation has now ended regardless of whether we approve this new agreement or not. Since Windom Street, 10th Street, the Phase II Trail and the underpass have been approved, we will be guaranteed funding to complete those projects.

Recommendation: In the past, Joel and I have been reluctant to support this change. However, the decision to move forward with these new statewide funding agreements has now been made and our side lost. We can either compete for NDOR STP street project funding at large with all large and small cities and counties in Nebraska or we can approve this agreement and compete for funding with only Cities of the First Class and have a larger set aside pool of funding per capita. Our recommendation is to approve the agreement and join the set-aside pool of funding for Nebraska Cities of the First Class.

21. [Resolution 2011-61: Amending Wage and Salary Schedule \(Move Recreation-Leisure Services Exempt Position to Labor Grade 16\)](#)

Background: Our review of the job description of this position concluded that after dividing out and transferring the CAC operation duties to the CAC Director position, the Recreation and Leisure Services position then becomes a part-time position in relation to the demands and duties of the other full-time positions of the City.

Recommendation: The recommendation of the City Administrator is to change this to a part-time position. At the end of the first budget workshop, a request was made to continue the budget discussion and the positions of CAC and Recreation and Leisure Services Directors before completing the discussion of the proposed budget. Any Council action on this can be delayed until after discussion of the proposed FY 2011-2012 budget is complete and a date for the public hearing is set for final approval.

22. [Resolution 2011-62: Approving Engineering Services Agreement with Olsson Associates to Design, Bid Out and Monitor Installation of](#)

Replacement Silencers and Catalytic Converters for Seven Power Plant Engines to Comply with New EPA Reciprocating Internal Combustion Engine Air Quality Standards

Background: The EPA has approved new regulations requiring catalytic converters to be installed on all piston type power plant engines by May of 2013 if the power plant is to be used for anything other than emergency operations. The compliance cost for the Wayne power plant is estimated to be \$750,000.

Besides generation of emergency power, the Wayne plant is also 10 years into a 20-year lease agreement with NPPD to provide auxiliary power and voltage support. That lease pays Wayne \$650,000 per year. We will not be able to fulfill the conditions of that lease after May 2013 without the installation of this project.

Recommendation: Because of the large lease revenues we receive, the payback time in this required investment is less than 18 months. The recommendation of the Power Plant Electric Superintendent and the City Administrator is to approve the agreement and install the catalytic converters.

23. Action on Application for Payment No. 12 in the Amount of \$577,509.44 to Eriksen Construction Co. for the 2009-2010 Wastewater Treatment Facility Improvements, Phase I Project

Background: This is for work completed according to plan and approved for payment by the Project Engineer.

24. Action on Request of Kelby Herman to Defer his Sewer Hook-up Requirements after Property is Annexed

Background: The Western Ridge Addition Subdivision Agreement for this property calls for the septic system to be abandoned and the existing residential sewer to be connected to the city sewer upon annexation of this property. Since annexation will take place in August and contractors may be booked until winter, it may take six months to have the reconnection completed. The Hermans are requesting that they be allowed to continue use of the existing septic system that is still operating and defer the cost of reconnecting until the existing system is not worth repairing or until a future date of at least 3-5 years.

The sewer hook-up fee for the Herman property will be \$250, and the cost of abandoning the septic system and rerouting the two sewer service lines will be the owners' cost. When we constructed Western Ridge II, we provided a sewer service line connection Wye into the Haase Avenue sewer main for the Herman property to connect when it was annexed.

Recommendation: All cities install sanitary sewer systems to eliminate septic systems within the city limits for health and safety purposes. The timing of annexation of existing properties seldom coincides with the failure of existing septic systems, so deadlines are established in city codes and subdivision agreements. The recommendation of the City Administrator is to allow more time than just this fall to get reasonable quotes to reconnect to the city sewer system, but limit it to the 2012 construction season.

25. **Ordinance 2011-12: Amending Chapter 58, Article V. Offenses Against Public Health and Safety, Section 58-131 of Wayne Municipal Code Relating to Discharge of Firearms**
26. **Action on Recommendation from LB840 Sales Tax Advisory Committee to Approve a \$26,000 Performance-Based Loan to the City of Wayne to be used for the Sewer Highway Boring Costs to Western Ridge Third Addition**
27. Additional Discussion of Budget Proposals:
 - a. Fogging Streets/Alleys to Control Bugs/Mosquitoes
 - b. Community Activity Center Director Position
28. Action to Approve Budget Proposal and Set Public Hearing Date
29. Adjourn

APPROVED AS TO FORM AND CONTENT:

Mayor

City Administrator

[Wayne Municipal Airport Authority Minutes – June 13, 2011](#)

[Wayne Planning Commission Meeting Minutes – June 6, 2011](#)

July 19, 2011

The Wayne City Council met in regular session at City Hall on Tuesday, July 19, 2011, at 5:30 o'clock P.M. Mayor Ken Chamberlain called the meeting to order with the following in attendance: Councilmembers 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: Councilmembers Brian Frevert, Jim Van Delden and Kaki Ley.

Notice of the convening meeting was given in advance by advertising in the Wayne Herald on July 7, 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 Alexander, whereas the Clerk has prepared copies of the Minutes of the meeting of July 5, 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:

ADDITIONS AND/OR CORRECTIONS TO CLAIMS LIST OF 7/5/11: CHANGE AMERICAN BROADBAND FROM 1173.00 to 1143.00 AND DELETE ICMA, 594.00 AND THE DIAMOND CENTER, 80.10

VARIOUS FUNDS: ALIGNMENT TECHNOLOGIES, SE, 674.50; AMERICAN BROADBAND, SE, 1306.78; AMERITAS, SE, 1842.98; ANTIQUES ON MAIN, RE, 972.00; APPEARA, SE, 104.21; AQUA-CHEM, SU, 583.98; BAKER & TAYLOR, SU, 579.83; BANK FIRST, SE, 165.00; BARONE SECURITY SYSTEMS, SU, 222.00; BELSON OUTDOORS, SU, 780.02; BIG T ENTERPRISES, SU, 419.90; BINSWANGER GLASS, SE, 75.00; BOMGAARS, SU, 827.72; CARHART LUMBER, SU, 356.47; CITY EMPLOYEE, RE, 17.57; CITY EMPLOYEE, RE, 132.38; CITY OF

WAYNE, RE, 450.00; CITY OF WAYNE, RE, 100.00; CITY OF WAYNE, RE, 31.89; CITY OF WAYNE, PY, 65044.69; CITY OF WAYNE, RE, 1131.39; COMMUNITY HEALTH, RE, 3.00; COPY WRITE PUBLISHING, SE, 72.00; COUNTRY NURSERY, SU, 2412.00; DAKOTA BUSINESS SYSTEMS, SE, 102.50; DAVE'S UNIFORM CLEANING, SE, 69.00; EMPLOYERS MUTUAL CASUALTY, RE, 3000.00; ERIKSEN CONSTRUCTION, SE, 620853.79; FIVE STAR ENTERPRISES, SU, 7.72; FLETCHER FARM SERVICEM SU, 46.05; FLOOR MAINTENANCE, SU, 71.40; GILL HAULING, SE, 133.00; GODFATHER PIZZA, SU, 41.93; GRAHAM TIRE, SU, 183.94; GREAT PLAINS ONE-CALL, SE, 70.52; CITY EMPLOYEE, RE, 49.95; HARDING & SHULTZ, SE, 14930.09; HAUFF MID-AMERICAN SPORTS, SU, 79.60; HAUGE ASSOCIATES, RE, 167.75; HAWKINS, INC, SU, 1439.83; HAWKINS, INC, SU, 1018.50; CITY EMPLOYEE, RE, 100.78; HYTREK LAWN SERVICE, SE, 170.00; ICMA, SE, 5642.29; INGRAM BOOK COMPANY, SU, 128.17; IRS, TX, 20078.61; JEO CONSULTING GROUP, SE, 2924.99; JOHN'S WELDING, SE, 8149.92; CITY EMPLOYEE, RE, 1066.50; KRIZ-DAVIS, SU, 748.44; LANGEMEIER, WAYNE, SE, 700.00; LINDNER CONSTRUCTION, RE, 10000.00; MAJESTIC THEATER, RE, 743.89; MERIT MECHANICAL, SE, 18187.75; MIDWEST LABORATORIES, SE, 91.05; MIDWEST LAND, RE, 1708.00; MILO MEYER CONSTRUCTION, SE, 1385.00; NE DEPT OF REVENUE, TX, 2997.27; NE DEPT OF ROADS, SE, 3357.68; NMPP ENERGY, SU, 698.75; NORTHEAST EQUIPMENT, SE, 597.25; N.E.NE AMERICAN RED CROSS, RE, 59.24; NNPPD, SE, 11634.98; OLSSON ASSOCIATES, SE, 1438.06; PAC N SAVE, SU, 5.97; PAMIDA, SU, 164.20; PEPSI-COLA, SU, 115.45; POLLARD PUMPING, SE, 762.50; PRESTO X, SE, 82.15; CITY EMPLOYEE, RE, 101.83; PROVIDENCE MEDICAL CENTER, SE, 110.00; RANDOM HOUSE, SU, 161.25; RON'S RADIO, SU, 8.50; SPARKLING KLEAN, SE, 2089.30; SPARKLING INSTRUMENTS, SE, 519.25; STADIUM SPORTING GOODS, SU, 351.50; STALP GRAVEL, SU, 1066.89; STATE NATIONAL BANK, SE, 57.12; CITY EMPLOYEE, RE, 139.29; UNITED WAY, RE, 10.00; US BANK, SU, 5067.56; WATERLINK, SU, 1053.42; WAED, RE, 1829.00; WAYNE HERALD, SE, 656.31; WAYNE ROTARY, FE, 140.00; WESCO, SU, 881.82; WAPA, SE, 31905.64; WINNING FINISH, SU, 276.00; AMAZON, SU, 202.66; APPEARA, SE, 129.49; CITY EMPLOYEE, RE, 217.36; CARHART LUMBER, SU, 364.80; CEDAR-KNOX PUBLIC POW DST, SE, 261.00; CITIZENS STATE BANK. RE, 84700.00; CITY OF NORFOLK, SE, 504.95; CITY OF WAYNE, RE, 108.98; COVENTRY HEALTH, SE, 19565.38; DE LAGE LANDEN FINANCIAL, SE, 394.00; DIGITAL ALLY, SE, 155.00; DON HANSEN, RE, 250.00; EASYPERMIT POSTAGE, SU, 650.96; ECHO GROUP, SU, 210.78; FIRST SOURCE TITLE&ESCROW, SE, 75.00; GEMPLER'S, SU, 153.00; CITY EMPLOYEE, RE, 139.26; HAWKINS, SU, 785.00; HD SUPPLY WATERWORKS, SU, 599.38; CITY EMPLOYEE, RE, 136.41; IMPACT SPECIALTIES, SU, 803.25; JEO CONSULTING GROUP, SE, 17421.22; KIRKHAM MICHAEL, SE, 7253.39; KNIFE RIVER MIDWEST, SE, 591.43; KRIZ-DAVIS, SU, 479.25; MICHAEL TODD & CO, SU, 348.32; MID-WEST TLC, SU, 18296.20; NE POWER REVIEW BOARD, RE, 472.11; NE PUBLIC HEALTH, SE, 210.00; NPPD, SE, 310076.49; PITNEY BOWES, SU, 648.00; RAMADA INN - KEARNEY, SE, 144.00; REBECCA AGLER, SE, 400.00; STADIUM SPORTING GOODS, SU, 45.00; THE WAKEFIELD REPUBLICAN, SE, 28.50; TOM'S BODY &

PAINT SHOP, SE, 218.80; TURFWERKS, SU, 60.59; WAYNE AUTO PARTS, SU, 575.19; WAYNE GRAIN & FEED, SU, 11.10; WAYNE HERALD, SE, 385.50

Councilmember Alexander made a motion and seconded by Councilmember Sturm 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.

Gene Hansen, Superintendent of Electric Production, reported on the Environmental Protection Agency's Final Rule on the National Emission Standard for Hazardous Air Pollutants for Reciprocating Internal Combustion Engines (RICE Rule).

The RICE mandate will take effect in May of 2013. The reason we need to comply with the RICE regulations is that NPPD has no use for our contract if we can't run our power plant under the new EPA regulations. Our contract/lease with NPPD runs until 2022. Staff has put \$750,000 in the budget to do this conversion. This does not include engineering fees. We receive about \$650,000 plus each year from NPPD for the lease agreement. This emission equipment would have about an 18-month payback. The intent is to have the equipment ordered and on site in the spring/summer of 2012, which then gives them one year to install the equipment.

There being no further discussion, Mayor Chamberlain moved onto the next agenda item.

Mayor Chamberlain declared the time was at hand for the public hearing on the Annexation Plan for property known as “Western Ridge Third addition and Western Ridge First Addition” which is located west of the Western Ridge Subdivision on Highway 35, and to consider the Planning Commission’s recommendation regarding the matter.

Joel Hansen, Zoning Administrator, advised the Council that the Petitioners who wish to annex this property are Vicki Pick, Steve and Cynthia Meyer, and Mark and Lona Meyer. The annexation area includes the property owned by Kelby Herman (Western Ridge First Addition), and the area west (including Glen’s Auto Body) up to and including Pheasant Run Road. The annexation area covers about 25.46 acres, more or less. The Planning Commission held a public hearing on this matter and recommended approval thereof, with the “Findings of Fact” being:

- Staff’s recommendation; and
- Consistency with the Comprehensive Plan, and the current and future land use maps.

The timetable for having the paving, water, sewer and electric services completed is November 30th. Paving will be installed to the north edge of the annexation area on Pheasant Run Road which is about 750’.

City Clerk McGuire had not received any comments, either written or verbal, for or against this public hearing.

Glen Nichols, the owner of Glen’s Auto Body, was present. He stated he has his own septic system which works very well. He was opposed to being assessed (\$6,000 to \$8,000) for the sewer line which will go across the front of his property. That amount also includes a portion of the south side of the corner lot to the west, because a corner lot

cannot be assessed on both sides. It also includes the costs associated with getting the sewer line across the Highway. He opposes the project for those reasons. This would be a grievance for him. He is the only property owner out there that would be responsible for paying an assessment. The other property owner will receive tax increment financing to pay for their portion of the improvements. Mr. Nichols also had an issue with things being done differently on the east side of town as opposed to the west side of town (e.g. annexing).

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

Administrator Johnson stated the business locating in this area is Bomgaars. The reason for annexing the property is because they want tax increment financing to develop the site. In order to provide tax increment financing, the property must be inside city limits. Annexing or not annexing the property doesn't resolve the issue of the cost/assessment for Mr. Nichols. When we extend water or sewer lines, we create districts and then assess the costs to the property owners. That would still happen because we cannot defer those costs. Mr. Nichols could petition to opt out of the district. If one foot more than 50% of all the frontages in the district petition out, then the district fails. Staff has been trying to come up with ideas on how to reduce the burden on Mr. Nichols. We don't have the authority to determine who does or does not get assessed in the district.

Mr. Hansen also advised the Council that the owners of the property, outside of Glen's, wanted to annex this large an area because they didn't want to have to come before the Planning Commission and the City Council every time they wanted to sell a piece of that property.

Councilmember Sturm stated he thought the sewer line would be advantageous to Glen's Auto Body if he ever sold his property. He asked whether or not this would qualify for LB840 funds. Administrator Johnson stated that we may be able to capture more of the tax increment financing to pay, for example, the cost to run the sewer line under the highway, which is estimated to be around \$16,000.

Mr. Hansen stated that at the last Council meeting, Council approved an agreement with Advanced Consulting Engineering Services to redesign Pheasant Run Road. The County was already planning to take that road down. Once the road is designed, staff will visit with the neighbor to the west and review the plans with them and address any concerns they may have. The preliminary plans, at this time, reflect that the hill will come down around 11'.

Councilmember Sturm introduced Ordinance No. 2011-6, and moved for its approval;

Councilmember Alexander stated he had concerns with what Mr. Nichols stated in regard to how the City treats the east side compared to the west side.

Councilmember Sturm disagreed with that statement.

Mayor Chamberlain opined that if Great Dane or Heritage Homes asked to be annexed into the city limits so they could use tax increment financing, we wouldn't have a problem with doing that.

Councilmember Alexander then asked if those businesses would want to be annexed if they weren't offered something.

Nancy Braden, Finance Director, explained that tax increment financing is on the incremental increase in property valuation. If Mr. Nichols made improvements to his

property which would increase his valuation and taxes, then he would be eligible. These specific improvements are not going to change his valuation

BJ Woehler thought the City should pay for that portion of the sewer line crossing the highway because that will benefit the whole area. As far as annexation, he agreed that the east is different than the west, but he encouraged the Council not to go backwards, but to move forward with the annexation since the majority of the property owners approve it.

Councilmember Alexander suggested tabling the matter until we can find out what we (the City) or Glen can actually do (e.g. use tax increment financing, LB840 funds, etc.). There are too many unanswered questions for him to vote yes at this time.

Administrator Johnson stated he would need to check with Mike Bacon, the City's TIF Attorney, and the engineers to verify whether or not tax increment financing is an eligible tool to be used by Mr. Nichols. In addition, the Council needs to think about what kind of precedent they are setting for future projects.

Councilmember Berry then seconded the motion.

Mayor Chamberlain noted if there was one "no" vote, then Bomgaars will not relocate.

Councilmember Alexander stated he would like to talk about this matter at the July 26th Council meeting. It was noted that this discussion item would be added to the agenda for that meeting.

ORDINANCE NO. 2011-6

AN ORDINANCE ANNEXING CERTAIN REAL ESTATE TO THE CITY OF WAYNE AND EXTENDING THE CORPORATE LIMITS IN THE NORTHWEST QUADRANT OF THE CITY OF WAYNE TO INCLUDE SAID REAL ESTATE.

Mayor Chamberlain stated the motion, and the result of roll call being all Yeas, the Mayor declared the motion carried. The second reading will take place at the next meeting.

Mayor Chamberlain declared the time was at hand for the public hearing to consider the Planning Commission's recommendation regarding the Preliminary and Final Plats for Western Ridge Third Addition. The applicants are Victoria Pick, Steven and Cynthia Meyer, and Mark and Lona Meyer.

Brent Pick, representing the developers of the project, was present to answer questions. Bomgaars is expecting to move dirt August 1st if everything goes as planned. They are planning on building a 25,000 sq. ft. building, which is twice the size of what they currently have.

The Planning Commission held a public hearing on this matter and recommended approval of the Preliminary and Final Plats for Western Ridge Third Addition with the "Findings of Fact" being:

- Staff's recommendation; and
- Consistency with the Comprehensive Plan, and the current and future land use maps.

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

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

Councilmember Alexander introduced Resolution No. 2011-52 and moved for its approval; Councilmember Berry seconded.

RESOLUTION NO. 2011-52

A RESOLUTION APPROVING THE PRELIMINARY AND FINAL PLATS AND SUBDIVISION AGREEMENT FOR WESTERN RIDGE THIRD ADDITION, AND AUTHORIZING THE EXECUTION OF THE SUBDIVISION AGREEMENT.

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

Mayor Chamberlain declared the time was at hand for the public hearing to consider the Planning Commission's recommendation in regard to amending Wayne Municipal Code, Section 90-836 Expiration of Exception Use Permits. The applicant is the City of Wayne.

The Planning Commission held a public hearing on this matter on July 18, 2011, and recommended amending Section 90-836 of the Municipal Code with the "Findings of Fact" being staff's recommendation.

Joel Hansen, Zoning Administrator, advised the Council that a couple of years ago, Dr. Burrows applied for a use by exception for the new dental clinic he wanted to build on Pearl Street. Because their permit expired after one year, they had to come back and start the process over and apply for a new use by exception permit before they could begin to build the dental clinic.

The code states that within one year of the approval of the use by exception permit, construction of the proposed site shall have commenced or the approval is void. The applicant, however, can apply for a one year extension if this is done prior to the expiration of the approval to the Planning Commission or the City Council.

Staff is recommending that the use by exception permit, once granted, be good for three years. This would eliminate the need to apply for an extension and having to come before the Planning Commission and City Council.

Administrator Johnson was also recommending that Dr. Burrows' second use by exception permit application fee of \$400 be refunded. He noted that the applicant did not request a refund.

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

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

Councilmember Sturm introduced Ordinance No. 2011-7, and moved for its approval; Councilmember Haase seconded.

ORDINANCE NO. 2011-7

AN ORDINANCE TO AMEND CHAPTER 90, ARTICLE XI EXCEPTIONS AND CONDITIONAL USES, SECTION 90-836 EXPIRATION OF EXCEPTION USE PERMITS; TO PROVIDE FOR THE REPEAL OF CONFLICTING ORDINANCES OR SECTIONS; AND TO PROVIDE FOR AN EFFECTIVE DATE.

Councilmember Alexander verified that the \$400 refund was not a part of this motion, and it was not.

Mayor Chamberlain stated the motion, and the result of roll call being all Yeas, the Mayor declared the motion carried. The second reading will take place at the next meeting.

Joel Hansen, Zoning Administrator, stated the following Ordinance would amend Chapter 18, Article VI Unsafe Buildings, Sec. 18-242 Property maintenance Code, and by adding Sec. 18-243 Conflicts, 18-244 Additions, Insertions and Changes, and 18-245

Structures Damaged by Fire, Flood, Wind, Disaster or other Calamity. The Property Maintenance Code, as it is written, states that when you have a property that has been condemned, your only course of action is to demolish the trailer, but the only way the City can recoup its costs is to put a lien against the property. The property isn't the trailer, but the trailer court. Therefore, staff is proposing to amend the code, which is patterned after the City of Norfolk, so that both the owner of the trailer and the owner of the property under the trailer are both responsible to make sure that if the property is condemned that it gets removed. In addition, it allows for a fine of not less than \$500 per day to be assessed once the time limit has expired for removing the nuisance.

Attorney Pieper stated this gives the property owners an incentive to comply with the orders by authorizing a fine for failure to comply. Both the owner of the trailer and the owner of the trailer court can be notified at the same time. This gives the City an additional tool to work towards trying to keep things progressing in an orderly fashion.

BJ Woehler, a trailer court owner, stated this is another tool to add to what they have already been doing. He explained that he has to wait 60 days to break the lease with trailer owners in his trailer court. He requested that the Council consider adding language to the ordinance which would state that trailer court owners would be given notice at the same time, which would allow them time to give their 60-day notice to their tenants. He then asked if the Council would give them, the trailer court owners, 60 days before the fine started kicking in. He asked that this be cleared up before the final reading.

Councilmember Sturm introduced Ordinance No. 2011-8, and moved for its approval; Councilmember Alexander seconded.

ORDINANCE NO. 2011-8

AN ORDINANCE TO AMEND CHAPTER 18, ARTICLE VI UNSAFE BUILDINGS, BY AMENDING SECTION 18-242 PROPERTY MAINTENANCE CODE ADOPTED BY REFERENCE; AND BY ADDING SECTIONS 18-243 CONFLICTS, 18-244 ADDITIONS, INSERTIONS AND CHANGES, AND 18-245 STRUCTURES DAMAGED BY FIRE, FLOOD, WIND, DISASTER OR OTHER CALAMITY; TO PROVIDE FOR THE REPEAL OF CONFLICTING ORDINANCES OR SECTIONS; AND TO PROVIDE FOR AN EFFECTIVE DATE.

Mayor Chamberlain stated the motion, and the result of roll call being all Yeas, the Mayor declared the motion carried. The second reading will take place at the next meeting.

Garry Poutre, Superintendent of Public Works & Utilities, updated Council on the additional information he obtained on spraying/fogging for mosquitoes. The company from Newman Grove that sprays in some of the smaller communities in the area does it for about \$1.00 to \$1.25 per capita per month. He sprays one time per week for four months. It's estimated this would cost Wayne about \$5,000 per month or \$20,000 annually. Mr. Poutre then spoke with a representative of Van Diest Supply. They recommended a machine which would cost about \$10,000. The chemical will cost about \$150 per hour, and it is expected that this machine should be able to do the community in 2-3 hours. Labor and vehicle would be approximately \$30 per hour, depending upon who the operator is. The total cost for each application would be about \$500-600.

Administrator Johnson stated the City of Norfolk sprays 1/5th of the residential areas at a time. They spray five nights in a row that have weather conditions that work. Their costs were similar to the above.

Mayor Chamberlain noted that he received a couple of e-mails today from people in opposition to fogging for mosquitoes. He did not think this was any different than

weeds. The City doesn't spray everybody's property for weeds; that's the property owner's responsibility. He noted the budget sessions are next week and he has been advised by the Finance Director that this is a very lean budget, and unless Council wants to seriously consider significantly raising everybody's property taxes, he thought he knew what action the Council should take this evening.

Councilmember Sturm made a motion to table action on this matter until their meeting on July 26th to discuss the budget; Councilmember Haase seconded the motion. Mayor Chamberlain stated the motion, and the result of roll call being all Yeas, the Mayor declared the motion carried.

Joel Hansen, Building Inspector/Planner, stated the Council has already approved an agreement with Advanced Consulting Engineering Services (ACES) to design and construct the paving project on Pheasant Run Road to access Lot 1 in the Western Ridge Third Addition. This amendment will add the sewer and water extension projects to Lot 1 to the original engineering agreement. The additional engineering services fees will be \$8,000.

LeAnn Ritter of ACES was present to answer any questions.

Councilmember Sturm made a motion, which was seconded by Councilmember Haase to amend the original contract with Advanced Consulting Engineering Services to add design and construction engineering services for the water and sewer utility extension projects to Lot 1 of Western Ridge Third Addition provided it is needed for Bomgaars. Mayor Chamberlain stated the motion, and the result of roll call being all Yeas, the Mayor declared the motion carried.

Nancy Braden, Finance Director, stated the following Resolution would allocate \$62,000 in property tax to the Wayne Municipal Airport Authority. This is an annual request that the Airport Authority makes to the Council. This amount represents about \$.035 of the \$.45 property tax allocation that the City could receive. The City is proposing to levy \$.36 in tax revenues for City operations.

Councilmember Alexander introduced Resolution No. 2011-53 and moved for its approval; Councilmember Haase seconded.

RESOLUTION NO. 2011-53

A RESOLUTION AUTHORIZING THE ALLOCATION OF PROPERTY TAXES TO THE WAYNE AIRPORT AUTHORITY.

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

Garry Poutre, Superintendent of Public Works and Utilities, stated that the EPA is requiring the City to remove the sludge from the lagoon by the summer of 2013. It is the City's plan to do some of that removal this fall after the crops are harvested. JEO Consulting Group has put together some specifications and an advertisement for bid to hire a contractor to do this. It is going to cost somewhere in the area of \$250,000 - \$500,000 to remove the entire amount of sludge that is in the lagoon. Because we are still unsure as to what the end might be for the lagoon, we are going to just remove a portion of the sludge this fall and then see where we are at this time next year. The decision was made to put together a \$150,000 project. The bid advertisement is for contractors to remove \$150,000.00 worth of sludge from the lagoon. The sludge will likely be pumped directly from the lagoon from a couple of mile long hoses to a truck

that is in a field that will knife the sludge directly into the ground. This is expected to be a 120-day project. Bids are to be received on August 11th at 2:00 p.m.

Councilmember Brodersen made a motion, which was seconded by Councilmember Alexander, approving the specifications for the 2011 Lagoon Sludge Removal and Application Project. Mayor Chamberlain stated the motion, and the result of roll call being all Yeas, the Mayor declared the motion carried.

Councilmember Brodersen made a motion, which was seconded by Councilmember Sturm, authorizing JEO Consulting Group to begin advertising for bids for the 2011 Lagoon Sludge Removal and Application Project. Mayor Chamberlain stated the motion, and the result of roll call being all Yeas, the Mayor declared the motion carried.

Administrator Johnson stated the following Resolution would approve a “Memorandum of Understanding” with Bomgaars regarding the intent of both parties to execute a Redevelopment Contract with the Community Development Agency to help finance the infrastructure improvements needed for the development of Lot 1, Western Ridge Third Addition. This starts the clock for any activities on this tax increment financing project. This project should generate about \$22,000 a year in new property taxes. If we allocate their taxes to them at 6% interest for site improvements and purchase of the property over the next 14 years, we can loan them \$200,000 up front which is how the TIF financing works. The Memorandum of Understanding was drafted by Mike Bacon, our tax increment financing attorney.

Councilmember Sturm introduced Resolution No. 2011-54 and moved for its approval; Councilmember Alexander seconded.

RESOLUTION NO. 2011-54

A RESOLUTION APPROVING MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF WAYNE AND BOMGAARS, INC., TO COMPLETE A TAX INCREMENT FINANCING AGREEMENT.

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

Deb Scholten of the Northeast Nebraska Health Department was present requesting Council consideration to allowing them to install their sign as close to the sidewalk as possible so that it is visible from the south. This sign was purchased prior to them adding the addition onto their building on Pearl Street.

Sec. 18-341 of Wayne Municipal Code provides that it is unlawful for any person to erect or place any business sign or awning on, in, or over any sidewalk street or public property in the city without obtaining a permit from the Council. Because of the addition to the building and where the sign must now be placed, it will overhang onto the sidewalk.

Joel Hansen, Building Inspector/Planner, asked whether or not a condition of this permit could be that the lights on the sign must be dimmed at night. Ms. Scholten would inquire as to whether or not this can be done.

Councilmember Alexander made a motion, which was seconded by Councilmember Sturm, giving the Northeast Nebraska Public Health Department permission to allow their sign to overhang the sidewalk, with said sign being at least 8' above the sidewalk. Mayor Chamberlain stated the motion, and the result of roll call being all Yeas, the Mayor declared the motion carried.

Nancy Braden, Finance Director, gave a brief overview of the proposed 2011-2012 budget.

Mayor Chamberlain requested Council consideration to the following appointment to the Swimming Pool Renovation/Replacement Committee: Tammy Evetovich.

Councilmember Sturm made a motion and seconded by Councilmember Alexander approving the appointment of Tammy Evetovich to the Swimming Pool Renovation/Replacement Committee. Mayor Chamberlain stated the motion, and the result of roll call being all Yeas, the Mayor declared the motion carried.

Councilmember Sturm made a motion and seconded by Councilmember Alexander to adjourn the meeting. Mayor Chamberlain stated the motion, and the result of roll call being all Yeas, the Mayor declared the motion carried and the meeting adjourned at 7:25 p.m.

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CLAIMS LISTING AUGUST 2, 2011

AMERICAN BROADBAND	FIBER LINE LEASE	330.00
AMERICAN PUBLIC POWER	DUES	981.32
AMERITAS LIFE INSURANCE	POLICE RETIREMENT	2,322.39
APPEARA	MAT SERVICE	27.09
ARNIE'S FORD-MERCURY INC	A/C REPAIR	159.27
AS CENTRAL SERVICES	TELECOMMUNICATION SERVICES	448.00
BANK FIRST	FRATERNAL ORDER OF POLICE DUES	165.00
CITY EMPLOYEE	CLOTHING REIMBURSEMENT	30.25
BLACK HILLS ENERGY	GAS BILLS	533.62
BOMGAARS	KEY-FIRE DEPT	5.96
CITY EMPLOYEE	HEALTH REIMBURSEMENT	90.00
CITY OF WAYNE	BUILDING PERMIT DEPOSIT REFUND	500.00
CITY OF WAYNE	PAYROLL	64,150.15
CITY OF WAYNE	SWIM LESSON REFUNDS	120.00
CITY OF WAYNE	UTILITY REFUNDS	519.86
COMMUNITY HEALTH	HEALTH CHARITIES	3.00
CREDIT MANAGEMENT	PAYROLL DEDUCTION	112.16
CITY EMPLOYEE	HEALTH REIMBURSEMENT	187.31
CITY EMPLOYEE	HEALTH REIMBURSEMENT	276.18
ECHTENKAMP, DOUGLAS J	TREE INCENTIVE	50.00
EGAN SUPPLY CO	VACUUM BAGS	64.21
ELECTRIC FIXTURE & SUPPLY	FLOOR FAN	217.60
FIRST CONCORD GROUP LLC	CAFETERIA PLAN	5,696.48
FIRST NATIONAL INSURANCE	INSURANCE PREMIUM	272.42
FLETCHER FARM SERVICE INC	FERTILIZER	630.00
FLOOR MAINTENANCE	TISSUE PAPER/BLEACH/PLATES	524.21
FORT DEARBORN LIFE	DISABILITY & LIFE INSURANCE	1,575.51
GENERAL SUPPLY AND SERVICE	CAC LIGHT BULBS	27.65
GERHOLD CONCRETE CO INC.	CONCRETE	20.18
GOV'T FINANCE OFFICERS	DUES	170.00
GUARANTEE OIL CO INC	BRAKE CLEANER	59.56
CITY EMPLOYEE	CLOTHING/HEALTH/VISION/SAFETY RMB	398.31
HAUFF MID-AMERICAN SPORTS	MARKING PAINT	145.95
HAUGE ASSOCIATES, INC.	PAYROLL DEDUCTION	167.75
HAWKINS, INC	POOL CHEMICALS	875.83
HD SUPPLY WATERWORKS, LTD	WATER METER W/ERTS	2,711.74
CITY EMPLOYEE	HEALTH REIMBURSEMENT	43.15
CITY EMPLOYEE	HEALTH REIMBURSEMENT	552.95
ICMA RETIREMENT TRUST-457	ICMA RETIREMENT	5,642.29
IRS	FEDERAL WITHHOLDING	21,120.75
ITRON	HARDWARE/SOFTWARE AGREEMENT	3,426.53
J & A TRAFFIC PRODUCTS	TRAFFIC BARREL DRUMS	1,272.00
M. LEE SMITH PUBLISHERS	EMPLOYMENT LAW LETTER	387.00
MCGUIRE & NORBY	CIVIL SERVICE ATTORNEY FEES	7,978.94
MCKINNIS ROOFING	POWER PLANT ROOF DRAIN REPAIRS	3,300.00

MICROFILM IMAGING SYSTEMS	DIGITIZE WAYNE HERALD	2,004.69
MIDWEST OFFICE AUTOMATION	COPY USAGE	1,051.19
NE DEPT OF REVENUE	STATE WITHHOLDING	3,166.61
NORTHEAST NE PUBLIC POWER	ELECTRICITY	3,188.96
OLSSON ASSOCIATES	BENSCOTER ADDITION	455.00
CITY EMPLOYEE	MILEAGE/MEAL REIMBURSEMENT	158.97
PEOSTA CAMPUS LIBRARY	I.L.L. REIMBURSEMENT	50.00
POLLARD PUMPING	CHICKEN SHOW PORT A POTTIES	935.00
POUTRE, GARRY	ENERGY INCENTIVE	364.90
CITY EMPLOYEE	HEALTH REIMBURSEMENT	135.06
QUILL CORPORATION	COUNCIL BUDGET SUPPLIES	154.86
QWEST	TELEPHONE CHARGES	309.79
RANDY BELT	METER INSTALLATION REIMBURSEMENT	181.82
CITY EMPLOYEE	HEALTH REIMBURSEMENT	63.30
CITY EMPLOYEE	HEALTH REIMBURSEMENT	3,367.81
STATE NATIONAL BANK	PETTY CASH-LIBRARY	123.63
THE COFFEE SHOPPE	COFFEE-SUMMER READING	20.00
TURFWERKS	BOLT/BUSHING	21.77
UNIVERSITY OF NE-LINCOLN	WELLHEAD PROTECTION WORKSHOP	750.00
USA BLUE BOOK	LEATHER WORK GLOVES	171.59
UTILITIES SECTION	LINEWORKERS SAFETY/STREET LIGHT TRNG	2,122.50
VAN DIEST SUPPLY	WEED CONTROL	127.40
VERIZON WIRELESS SERVICES	CELL PHONES	196.69
VIAERO	CELL PHONES	138.18
WAYNE AUTO PARTS	FUEL FILTERS/RADIATOR HOSE	20.82
WAYNE SENIOR CENTER	WORKSHOP REIMBURSEMENT	65.00
WESCO DISTRIBUTION INC	ELECTRIC METERS	479.25
WINNING FINISH	WASH & WAX	50.00

COMMUNITY DEVELOPMENT AGENCY

RESOLUTION NO. 2011-3

A RESOLUTION OF THE COMMUNITY DEVELOPMENT AGENCY OF THE CITY OF WAYNE, NEBRASKA, RECOMMENDING APPROVAL OF A REDEVELOPMENT CONTRACT.

WHEREAS, this Community Development Agency of the CITY OF WAYNE, Nebraska ("Agency"), has received a redevelopment proposal pursuant to the Nebraska Community Development Law (the "Act"), for redevelopment of an area within the City limits of the CITY OF WAYNE; and

WHEREAS, the Agency has considered all of the redevelopment proposals and financial and legal ability of the prospective redevelopers to carry out their proposals; and

WHEREAS, the Agency deems it to be in the public interest and in furtherance of the purposes of the Act to accept the redevelopment contract proposal submitted in the form of the proposed redevelopment contract attached hereto.

NOW, THEREFORE, BE IT RESOLVED, AS FOLLOWS:

1. The Agency recommends the adoption and approval of the Redevelopment Plan contained in the Redevelopment Contract attached to this Resolution with Bomgaars, Inc.
2. The Agency has conducted a cost benefit analysis of the project, provided in the "Redevelopment Plan" attached to the Redevelopment Contract, and finds no adverse impact on the City, employers or taxing entities affected by the project.
3. The Agency hereby gives notice to the Mayor and City Council of its intent to enter into the attached Redevelopment Contract on the passage of 30 days from the date hereof.

PASSED AND APPROVED this 2nd day of August, 2011.

COMMUNITY DEVELOPMENT AGENCY
OF THE CITY OF WAYNE, NEBRASKA

By _____
Chairperson

ATTESTED:

Secretary

RESOLUTION NO. 2011-55

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF WAYNE, APPROVING A REDEVELOPMENT PLAN AS CONTAINED IN A REDEVELOPMENT CONTRACT; MAKING FINDINGS WITH REGARD TO SUCH PLAN AND APPROVING OTHER ACTION THEREON.

WHEREAS, the City of Wayne, Nebraska a municipal corporation, has determined it to be desirable to undertake and carry out urban redevelopment projects in areas of the City which are determined to be substandard and blighted and in need of redevelopment; and

WHEREAS, the Nebraska Community Development Law, Chapter 18, Article 21, Nebraska Reissue Revised Statutes of 1943, as amended (the "Act"), prescribes the requirements and procedures for the planning and implementation of redevelopment projects; and

WHEREAS, The City has previously declared an areas of the City to be substandard and blighted and in need of redevelopment pursuant to the Act; and

WHEREAS, The Community Development Agency of the City of Wayne, Nebraska (the Agency) has prepared an Amended Redevelopment Plan as contained in a Redevelopment Contract pursuant to Section 18-2111 of the Act:

NOW, THEREFORE, be it resolved by the Mayor and City Council of the City of Wayne, Nebraska:

1. The Redevelopment Plan as contained in the Redevelopment Contract in the form attached to this Resolution as Exhibit "A" is hereby determined to be feasible and in conformity with the general plan for the development of the City of Wayne as a whole and the Redevelopment Plan is in conformity with the legislative declarations and determinations set forth in the Act;

2. The Mayor and City Council specifically find, as follows:

(a) The project described in the redevelopment contract and plan attached thereto, would not be economically feasible without the use of tax-increment financing;

(b) The project would not occur in the Redevelopment Area without the use of tax-increment financing; and

(c) The costs and benefits of the Project, including costs and benefits to other affected political subdivisions, the economy of the community, and the demand for public and private services have been analyzed by the governing body and have been found to be in the long term best interests of the community impacted by the project.

3. Approval of the Redevelopment Plan is hereby approved, ratified and affirmed and the Agency is hereby directed to execute the Redevelopment Contract and implement the Redevelopment Plan in accordance with the Act, with such amendments and revisions as are appropriate.

4. Pursuant to Section 18-2147 of the Act, any ad valorem tax levied upon real property described herein, shall be divided, for the period not to exceed 15 years after the effective date of the provision, which effective date shall be January 1, 2012, as to the following described real estate, to wit:

Lot 1 of Western Ridge Third Addition to the City of
Wayne, Wayne County, Nebraska.

a. That portion of the ad valorem tax which is produced by levy at the rate fixed each year by or for each public body upon the redevelopment project valuation shall be paid into the funds, of each such public body in the same proportion as all other taxes collected by or for the bodies; and

b. That portion of the ad valorem tax on real property in the redevelopment project in excess of such amount, if any, shall be allocated to and, when collected, paid into a special fund of the Agency to pay the principal of; the interest on, and any premiums due in connection with the bonds, loans, notes, or advances on money to, or indebtedness incurred by, whether funded, refunded, assumed, or otherwise, such Agency for financing or refinancing, in whole or in part, a redevelopment project. When such bonds, loans, notes, advances of money, or indebtedness including interest and premium due have been paid, the Agency shall so notify the County Assessor and County Treasurer and all ad valorem taxes upon real property in such redevelopment project shall be paid into the funds of the respective public bodies.

5. The Chairman and Clerk are authorized and directed to execute and deliver, from time to time, to the County Clerk, Treasurer and Assessor, the Notice of Allocation of Taxes with the appropriate description of real estate, as established pursuant to the Redevelopment Contract and Redevelopment Plan.

PASSED AND APPROVED this 2nd day of August, 2011.

THE CITY OF WAYNE, NEBRASKA,

By _____
Mayor

ATTEST:

City Clerk

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REDEVELOPMENT CONTRACT

This Redevelopment Contract is made and entered into as of the ____th day of _____, 2011, by and between the City of Wayne, Nebraska, acting as the Community Development Agency of the City of Wayne, Nebraska (“City”), and Bomgaars, Inc. an Iowa Corporation (“Redeveloper”).

WITNESSETH:

WHEREAS, the City of Wayne, Nebraska (the “City”), in furtherance of the purposes and pursuant to the provisions of Section 2 of Article VIII of the Nebraska Constitution and Sections 18-2101 to 18-2154, Reissue Revised Statutes of Nebraska, 2007, as amended (collectively the “Act”), and has designated an area in the City as blighted and substandard; and

WHEREAS, City and Redeveloper desire to enter into this Redevelopment Contract for acquisition and redevelopment of a parcel in the blighted and substandard area;

NOW, THEREFORE, in consideration of the Redevelopment Area and the mutual covenants and agreements herein set forth, Agency and Redeveloper do hereby covenant, agree and bind themselves as follows:

ARTICLE I

DEFINITIONS AND INTERPRETATION

Section 1.01 Terms Defined in this Redevelopment Contract.

Unless the context otherwise requires, the following terms shall have the following meanings for all purposes of this Redevelopment Contract, such definitions to be equally applicable to both the singular and plural forms and masculine, feminine and neuter gender of any of the terms defined:

“**Act**” means Section 2 of Article VIII of the Nebraska Constitution, Sections 18-2101 through 18-2154, Reissue Revised Statutes of Nebraska, 2007, as amended, and acts amendatory thereof and supplemental thereto

“**Agency**” means the Community Development Agency of the City of Wayne, Nebraska.

“**Certificate of Completion**” means a certificate, executed by a Manager or other duly authorized officer of Redeveloper, representing and warranting that the Project is substantially complete.

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“**City**” means the City of Wayne, Nebraska.

“**Governing Body**” means the Mayor and City Council of the City.

“**Holder**” means the holders of TIF indebtedness issued by the City from time to time outstanding.

“**Liquidated Damages Amount**” means the amounts to be repaid to Agency by Redeveloper pursuant to Section 6.02 of this Redevelopment Contract.

“**Project**” means the improvements to the Redevelopment Area, as further described in Exhibit B attached hereto and incorporated herein by reference and, as used herein, shall include the Redevelopment Area real estate.

“**Project Cost Certification**” means a statement prepared and signed by an independent certified public accountant verifying the payment of Project Costs identified on Exhibit D

“**Project Costs**” means only costs or expenses incurred by Redeveloper to acquire the Project and for streets and utilities pursuant to the Act as identified on Exhibit D.

“**Redeveloper**” means Bomgaars, Inc. an Iowa Corporation.

“**Redevelopment Area**” means that certain real property situated in the City of Wayne, Wayne County, Nebraska, which has been declared blighted and substandard by the City pursuant to the Act, and which is more particularly described on Exhibit A attached hereto and incorporated herein by this reference.

“**Redevelopment Contract**” means this redevelopment contract between the Agency and Redeveloper with respect to the Project.

“**Redevelopment Plan**” means the Amended Redevelopment Plan for the Redevelopment Area as set forth in the Redevelopment Contract, prepared by the Agency and approved by the City pursuant to the Act, as amended from time to time.

“**Resolution**” means the Resolution of the City, as supplemented from time to time, approving this Redevelopment Contract.

“**TIF Indebtedness**” means any bonds, notes, loans, and advances of money or other indebtedness, including interest and premiums, if any, thereon, incurred by the Agency pursuant to Article III hereof and secured in whole or in part by TIF Revenues.

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“**TIF Revenues**” means incremental ad valorem taxes generated by the Project which are allocated to and paid to the Agency pursuant to the Act.

Section 1.02 Construction and Interpretation.

The provisions of this Redevelopment Contract shall be construed and interpreted in accordance with the following provisions:

(a) Wherever in this Redevelopment Contract it is provided that any person may do or perform any act or thing the word “may” shall be deemed permissive and not mandatory and it shall be construed that such person shall have the right, but shall not be obligated, to do and perform any such act or thing.

(b) The phrase “at any time” shall be construed as meaning “at any time or from time to time.”

(c) The word “including” shall be construed as meaning “including, but not limited to.”

(d) The words “will” and “shall” shall each be construed as mandatory,

(e) The words “herein,” “hereof,” “hereunder,” “hereinafter” and words of similar import shall refer to the Redevelopment Contract as a whole rather than to any particular paragraph, section or subsection, unless the context specifically refers thereto.

(f) Forms of words in the singular, plural, masculine, feminine or neuter shall be construed to include the other forms as the context may require.

(g) The captions to the sections of this Redevelopment Contract are for convenience only and shall not be deemed part of the text of the respective sections and shall not vary by implication or otherwise any of the provisions hereof.

ARTICLE II

REPRESENTATIONS

Section 2.01 Representations by Agency.

The Agency makes the following representations and findings:

(a) the Agency is a duly organized and validly existing community development agency under the Act.

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(b) The Redevelopment Plan has been duly approved and adopted by the City pursuant to Section 18-2109 through 18-2117 of the Act.

(c) The Agency deems it to be in the public interest and in furtherance of the purposes of the Act to accept the proposal submitted by Redeveloper as specified herein.

(d) The Redevelopment Project will achieve the public purposes of the Act by, among other things, increasing employment, improving public infrastructure, increasing the tax base, and lessening conditions of blight and substandard in the Redevelopment Area.

(e) (1) The Redevelopment Plan is feasible and in conformity with the general plan for the development of the City as a whole and the plan is in conformity with the legislative declarations and determinations set forth in the Act, and

(2) (i) the Project would not be economically feasible without the use of tax-increment financing,

(ii) the Project would not occur in the Redevelopment Area without the use of tax-increment financing, and

(iii) the costs and benefits of the Project, including costs and benefits to other affected political subdivisions, the economy of the community, and the demand for public and private services have been analyzed by the Agency and have been found to be in the long-term best interest of the community impacted by the Project.

(f) The Agency has determined that the proposed land uses and building requirements in the Redevelopment Area are designed with the general purpose of accomplishing, in conformance with the general plan, a coordinated, adjusted, and harmonious development of the City and its environs which will, in accordance with present and future needs, promote health, safety, morals, order, convenience, prosperity, and the general welfare, as well as efficiency and economy in the process of development: including, among other things, adequate provision for traffic, vehicular parking, the promotion of safety from fire, panic, and other dangers, adequate provision for light and air, the promotion of the healthful and convenient distribution of population, the provision of adequate transportation, water, sewerage, and other public utilities, schools, parks, recreational and community facilities, and other public requirements, the promotion of sound design and arrangement, the wise and efficient expenditure of public funds, and the prevention of the recurrence of insanitary or unsafe dwelling accommodations, or conditions of blight.

Section 2.02 Representations of Redeveloper.

The Redeveloper makes the following representations:

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(a) The Redeveloper is an Iowa Corporation, having the power to enter into this Redevelopment Contract and perform all obligations contained herein and by proper action has been duly authorized to execute and deliver this Redevelopment Contract.

(b) The execution and delivery of the Redevelopment Contract and the consummation of the transactions therein contemplated will not conflict with or constitute a breach of or default under any bond, debenture, note or other evidence of indebtedness or any contract, loan agreement or lease to which Redeveloper is a party or by which it is bound, or result in the creation or imposition of any lien, charge or encumbrance of any nature upon any of the property or assets of the Redeveloper contrary to the terms of any instrument or agreement.

(c) There is no litigation pending or to the best of its knowledge threatened against Redeveloper affecting its ability to carry out the acquisition, construction, equipping and furnishing of the Project or the carrying into effect of this Redevelopment Contract or, except as disclosed in writing to the Agency, as in any other matter materially affecting the ability of Redeveloper to perform its obligations hereunder.

(d) Any financial statements of the Redeveloper or its Members delivered to the Agency prior to the date hereof are true and correct in all respects and fairly present the financial condition of the Redeveloper and the Project as of the dates thereof; no materially adverse change has occurred in the financial condition reflected therein since the respective dates thereof; and no additional borrowings have been made by the Redeveloper since the date thereof except in the ordinary course of business, other than the borrowing contemplated hereby or borrowings disclosed to or approved by the Agency.

ARTICLE III

OBLIGATIONS OF THE AGENCY

Section 3.01 Division of Taxes.

In accordance with Section 18-2147 of the Act, the Agency hereby provides that any ad valorem tax on real property in the Project for the benefit of any public body be divided for a period of fifteen years after the effective date of this provision as set forth in this section. The effective date of this provision shall be January 1, 2012.

(a) That proportion of the ad valorem tax which is produced by levy at the rate fixed each year by or for each public body upon the Redevelopment Project Valuation (as defined in the Act) shall be paid into the funds of each such public body in the same

proportion as all other taxes collected by or for the bodies; and

(b) That proportion of the ad valorem tax on real property in the Redevelopment Area in excess of such amount, if any, shall be allocated to, is pledged to, and, when collected, paid into a special fund of the Agency to pay the principal of, the interest on, and any premiums due in connection with the bonds, loans, notes or advances of money to, or indebtedness incurred by whether funded, refunded, assumed, or otherwise, such Agency for financing or refinancing, in whole or in part, such Project. When such bonds, loans, notes, advances of money, or indebtedness, including interest and premium due have been paid, the Agency shall so notify the County Assessor and County Treasurer and all ad valorem taxes upon real property in such Project shall be paid into the funds of the respective public bodies.

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Section 3.02 Issuance of TIF Indebtedness

Agency shall incur TIF Indebtedness in the form and principal amount and bearing interest amid being subject to such terms amid conditions as are specified on the attached exhibit C. No TIF Indebtedness will be issued until Redeveloper has (a) acquired fee title to the Redevelopment Area; (b) obtained financing commitments as described in Section 5.01; (c) obtained approvals necessary for construction of the Project from the Nebraska Department of Environmental Quality; and (d) entered into a contract for construction of the Project. The Agency shall have no obligation to find a lender or investor to acquire the TIF Indebtedness, but rather shall issue the TIF Indebtedness to or to the order of Redeveloper upon payment of the principal amount thereof. The Agency may (but is not obligated to), from time to time and subject to the provisions of the Act, issue additional TIF Indebtedness secured by the TIF Revenues for the purpose of funding additional Project Costs, if projected TIF Revenues are projected to be sufficient to pay principal and interest on such additional TIF indebtedness.

Section 3.03 Pledge of TIF Revenues.

The Agency hereby pledges the TIF Revenues as security for the TIF Indebtedness.

Section 3.04 Grant of Proceeds of TIF Indebtedness.

From the proceeds of the TIF indebtedness incurred as described on Exhibit C, the Agency shall grant the following sums of \$200,000 (\$1 million valuation of improvements X \$2.20/\$100 @ 6% interest for 14 years) to the following entities, to wit: to the City the sum of \$80,000 (\$30,000 paving assessment and \$15,000 water and \$35,000 sewer assessments) as payment for installation of streets and related water and sewer utilities to be installed by the City; and the balance to the Redeveloper for costs of Project acquisition and infrastructure. An amount equal to interest payable on such TIF Indebtedness prior to projected receipt of TIF Revenues may be retained by any underwriter, placement agent, or bank and applied for such purpose or, at the option of any such underwriter, placement agent, or bank, deposited in a reserve fund of Redeveloper to be applied for such purpose.

Notwithstanding the foregoing, the amount of the grant shall not exceed the amount of Project Costs certified pursuant to Section 4.02. The grants shall be paid to the City and Redeveloper upon receipt of requisitions for Project Costs which include supporting documentation requested by Agency and shall, if requested by Redeveloper, be made in one or more advances.

Section 3.05 Creation of Fund.

The Agency will create a special fund to collect and hold the TIF Revenues. Such special

fund shall be used for no purpose other than to pay TIF Indebtedness issued pursuant to Sections 3.02 and 3.03 above.

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Section 3.06 Installation of Infrastructures

The Agency shall provide that the City shall install the infrastructure required to be installed by the City pursuant to Exhibit E.

ARTICLE IV

OBLIGATIONS OF REDEVELOPER

Section 4.01 Construction of Project; Insurance.

(a) Redeveloper will complete the Project and install all improvements, buildings, fixtures, equipment and furnishings necessary to operate the Project. Redeveloper shall be solely responsible for obtaining all permits and approvals necessary to acquire, construct and equip the Project. Until construction of the Project has been completed, Redeveloper shall make reports in such detail and at such times as may be reasonably requested by the Agency as to the actual progress of Redeveloper with respect to construction of the Project. Promptly after completion by the Redeveloper of the Project, the Redeveloper shall furnish to the Agency a Certificate of Completion. The certification by the Redeveloper shall be a conclusive determination of satisfaction of the agreements and covenants in this Redevelopment Contract with respect to the obligations of Redeveloper and its successors and assigns to construct the Project. As used herein, the term "completion" shall mean substantial completion of the Project.

(b) Any general contractor chosen by the Redeveloper or the Redeveloper itself shall be required to obtain and keep in force at all times until completion of construction, policies of insurance including coverage for contractors' general liability and completed operations and a penal bond as required by the Act. The City, the Agency and the Redeveloper shall be named as additional insureds. Any contractor chosen by the Redeveloper or the Redeveloper itself, as an owner, shall be required to purchase and maintain property insurance upon the Project to the full insurable value thereof. This insurance shall insure against the perils of fire and extended coverage and shall include "All Risk" insurance for physical loss or damage. The contractor or the Redeveloper, as the case may be, shall furnish the Agency with a Certificate of Insurance evidencing policies as required above. Such certificates shall state that the insurance companies shall give the Agency prior written notice in the event of cancellation of or material change in any of any of the policies.

Section 4.02 Cost Certification.

Redeveloper shall submit to Agency a certification of Project Costs, on or before the date of submission of the Certificate of Completion, prepared by a certified public accountant acceptable to Agency, which shall contain detail and documentation showing the payment of Project Costs specified on the attached Exhibit D in an amount at least equal to the grant to

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Redeveloper pursuant to Section 3.05.

Section 4.03 Redeveloper to Operate Project.

Redeveloper will operate the Project for not less than 15 years from the effective date of the provision specified in Section 3.01 of this Redevelopment Contract. Redeveloper shall be relieved of this obligation should it pay the Liquidated Damages Amount as set forth in Section 6.02.

Section 4.04 City Costs.

Redeveloper shall reimburse the City, on the date of approval of this contract by the City for legal fees and costs then due, and again upon the issuance of TIF Indebtedness, for legal fees and costs incurred by the City in connection with this Redevelopment Contract. This sum is estimated to equal \$15,000.00.

Section 4.05 No Discrimination.

Redeveloper agrees and covenants for itself, its successors and assigns that as long as any TIF Indebtedness is outstanding, it will not discriminate against any person or group of persons on account of race, sex, color, religion, national origin, ancestry, disability, marital status or receipt of public assistance in connection with the Project. Redeveloper, for itself and its successors and assigns, agrees that during the construction of the Project, Redeveloper will not discriminate against any employee or applicant for employment because of race, religion, sex, color, national origin, ancestry, disability, marital status or receipt of public assistance. Redeveloper will comply with all applicable federal, state and local laws related to the Project.

Section 4.06 Pay Real Estate Taxes.

Redeveloper intends to create a taxable real property valuation of the Redevelopment Area and Project of One Million Dollars (\$1,000,000) no later than as of January 1, 2012. During the period that any TIF Indebtedness is outstanding, Redeveloper will (1) not protest seeking to obtain a real estate property valuation on the Redevelopment Area of less than One Million Dollars (\$1,000,000) after substantial completion or occupancy; (2) not convey the Redevelopment Area on structures thereon to any entity which would be exempt from the payment of real estate taxes or cause the nonpayment of such real estate taxes; (3) cause all real estate taxes and assessments levied on the Redevelopment Area and Project to be paid prior to the time such become delinquent during the term that any' Bonds are outstanding; and affirmatively protest for an increase in real estate property valuation on the Redevelopment Area in the event that the Redeveloper receives notice that the Wayne County Assessor intends to value the real property in the Redevelopment Area at a value of less than

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One Million Dollars

Section 4.07 Payment in Lieu of Real Estate Taxes.

Redeveloper agrees to make payments in lieu of taxes, immediately upon receipt of notice from City, if for any reason at any time TIF Revenues received by the Agency are not sufficient to pay principal and interest on the TIF Indebtedness when due. This payment in lieu of tax obligation may be represented by a note or other evidence of indebtedness. Such TIF Revenues shall be deemed not sufficient and the Agency shall not be required to send notice if such revenues are less than \$22,500 for the years 2014 through and including 2025. (It is the intent of this provision that the taxes becoming delinquent in 2013 through and including 2026 be deemed those for which this provision is effective.)

Section 4.08 No Assignment or Conveyance.

Redeveloper shall not convey, assign or transfer the Redevelopment Area, the Project or any interest therein prior to the termination of the 15 year period commencing on the effective date specified in Section 3.01 hereof without the prior written consent of the Agency, which the Agency shall grant or deny within fifteen (15) days of receipt of written request from Redeveloper, which consent shall not be unreasonably withheld, and which the Agency may make subject to any reasonable terms or conditions it deems appropriate, except for the following conveyances, which shall be permitted without consent of City:

(a) any conveyance as security for indebtedness incurred by Redeveloper for Project Costs on any subsequent physical improvements to the Redevelopment Area, provided that any such conveyance shall be subject to the obligations of the Redeveloper pursuant no this Redevelopment Contract;

(b) any conveyance to any person or entity which owns more than 50% of the voting equity interests of Redeveloper (if Redeveloper is a corporation, partnership, limited liability company or other entity) or with respect to which Redeveloper owns more than 50% of the voting equity interests, provided that any such successor owner of the Project agrees to assume all obligations of the Redeveloper and be bound by all terms and conditions of this Redevelopment Contract;

(c) if Redeveloper is a corporation, partnership or limited liability company, any merger, consolidation, split off, split-up, spin off or other reorganization of Redeveloper which does not result in a substantial change of control or management of the Redeveloper, provided that any such successor owner of the Project agrees to assume all obligations of the Redeveloper and be bound by all terms and conditions of this Redevelopment Contract.

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ARTICLE V

FINANCING REDEVELOPMENT PROJECT; ENCUMBRANCES

Section 5.01 Financing.

Redeveloper shall pay all Project Costs and any and all other costs related to the Redevelopment Area and the Project which are in excess of the amounts paid from the proceeds of the TIF Indebtedness granted to Redeveloper. Prior to issuance of the TIF Indebtedness, Redeveloper shall provide Agency with evidence satisfactory to the Agency that private funds have been committed to the Redevelopment Project in amounts sufficient to complete the Redevelopment Project. Redeveloper shall timely pay all costs, expenses, fees, charges and other amounts associated with the Project.

Section 5.02 Encumbrances.

Redeveloper shall not create any lien, encumbrance or mortgage on the Project or the Redevelopment Area without the prior written consent of the Agency except encumbrances which secure indebtedness incurred to acquire, construct and equip the Project or for any other physical improvements to the Redevelopment Area.

ARTICLE VI

DEFAULT, REMEDIES; INDEMNIFICATION

Section 6.01 General Remedies of Agency and Redeveloper.

Subject to the further provisions of this Article VI, in the event of any failure to perform or breach of this Redevelopment Contract or any of its terms or conditions, by any party hereto or any successor to such party, such party, or successor, shall, upon written notice from the other, proceed immediately to commence such actions as may be reasonably designed to cure or remedy such failure to perform or breach which cure or remedy shall be accomplished within a reasonable time by the diligent pursuit of corrective action. In case such action is not taken, or diligently pursued, or time failure to perform or breach shall not be cured or remedied within a reasonable time, this Redevelopment Contract shall be in default and the aggrieved party may institute such proceedings as may be necessary or desirable to enforce its rights under this Redevelopment Contract, including, but not limited to, proceedings to compel specific performance by the party failing to perform on in breach of its obligations.

Section 6.02 Additional Remedies of Agency

In the event that:

(a) The Redeveloper, on successor in interest, fails to commence construction of the Project (which, for purposes of this paragraph shall mean expenditure (on binding commitments to incur expenditures) of an amount equal to at least thirty percent (30%) of the total projected cost of the Project) by January 1, 2012;

(b) the Redeveloper, on successor in interest, shall fail to complete the construction of the Project on or before January 1, 2012, or shall abandon construction work for any period of 90 days,

(c) the Redeveloper, on successor in interest, shall fail to pay real estate taxes or assessments on the Redevelopment Area on any part thereof or payments in lieu of taxes pursuant to Section 4.07 when due; or

(d) There is, in violation of Section 4.08 of this Redevelopment Contract, and such failure or action by the Redeveloper has not been cured within 30 days following written notice from Agency, then the Redeveloper shall be in default of this Redevelopment Contract.

In the event of such failure to perform, breach or default occurs and is not cured in the period herein provided, the parties agree that the damages caused to the Agency would be difficult to determine with certainty and that a reasonable estimation of the amount of damages that could be incurred is the amount of the grant to Redeveloper pursuant to Section 3.04 of this Redevelopment Contract, less any reductions in the principal amount of the TIF Indebtedness, plus interest on such amounts as provided herein (the "**Liquidated Damages Amount**"). The Liquidated Damages Amount shall be paid by Redeveloper to Agency within 30 days of demand from Agency.

Interest shall accrue on the Liquidated Damages Amount at the rate of one percent (1%) over the prime rate as published and modified in the Wall Street Journal from time to time and interest shall commence from the date that the Agency gives notice to the Redeveloper demanding payment.

Payment of the Liquidated Damages Amount shall not relieve Redeveloper of its obligation to pay real estate taxes on assessments or payments in lieu of taxes with respect to the Project.

Section 6.03 Remedies in the Event of Other Redeveloper Defaults.

In the event the Redeveloper fails to perform any other provisions of this Redevelopment Contract (other than those specific provisions contained in Section 6.02), the Redeveloper shall be in default. In such an instance, the Agency may seek to enforce the terms of this Redevelopment Contract or exercise any other remedies that may be provided in this Redevelopment Contract or by applicable law; provided, however, that the default covered by this Section shall not give rise to a right of rescission or termination of this Redevelopment Contract, and shall not be covered by the Liquidated Damages Amount.

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Section 6.04 Forced Delay Beyond Party's Control.

For the purposes of any of the provisions of this Redevelopment Contract, neither the Agency nor the Redeveloper, as the case may be, nor any successor in interest, shall be considered in breach of or default in its obligations with respect to the conveyance or preparation of the Redevelopment Area for redevelopment, or the beginning and completion of construction of the Project, or progress in respect thereto, in the event of forced delay in time performance of such obligations due to unforeseeable causes beyond its control and without its fault or negligence, including, but not restricted to, acts of God, or of the public enemy, acts of the Government, acts of the other party, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, amid unusually severe weather or delays in subcontractors due to such causes; it being the purpose and intent of this provision that in the event of the occurrence of any such forced delay, the time or times for performance of the obligations of the Agency or of the Redeveloper with respect to construction of the Project, as the case may be, shall be extended for the period of the forced delay: Provided, that the party seeking the benefit of the provisions of this section shall, within thirty (30) days after the beginning of any such forced delay, have first notified the other party thereto in writing, and of the cause or causes thereof amid requested an extension for the period of the forced delay.

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within thirty (30) days after the beginning of any such forced delay, have first notified the other party thereto in writing, and of the cause or causes thereof amid requested an extension for the period of the forced delay.

Section 6.05 Limitations of Liability; Indemnification.

Notwithstanding anything in this Article VI or this Redevelopment Contract to the contrary, neither the City, the Agency, nor their officers, directors, employees, agents or their governing bodies shall have any pecuniary obligation or monetary liability under this Redevelopment Contract. The sole obligation of the Agency under this Redevelopment Contract shall be the issuance of the TIF Indebtedness and granting of a portion of the proceeds thereof to Redeveloper, as specifically set forth in Sections 3.02 and 3.04. The obligation of the City and Agency on any TIF Indebtedness shall be limited solely to the TIF Revenues pledged as security for such TIF Indebtedness. Specifically, but without limitation, neither the City or Agency shall be liable for any costs, liabilities, actions, demands, or damages for failure of any representations, warranties or obligations hereunder. The Redeveloper releases the City and Agency from, agrees that neither the City or Agency shall be liable for, and agrees to indemnify and hold the City and Agency harmless from any liability for any loss or damage to property or any injury to or death of any person that may be occasioned by any cause whatsoever pertaining to the Project.

The Redeveloper will indemnify and hold each of the City and Agency and their directors, officers, agents, employees and member of their governing bodies free and harmless from any loss, claim, damage, demand, tax, penalty, liability, disbursement, expense, including litigation expenses, attorneys' fees and expenses, or court costs arising out of any damage or injury, actual or claimed, of whatsoever kind or character, to property (including loss of use thereof) or persons, occurring or allegedly occurring in, on or about the Project during the term of this Redevelopment Contract or arising out of any action or inaction of Redeveloper, whether on not related to the Project, or resulting from or in any way connected with specified events, including the management of the Project, or in any way related to the enforcement of this Redevelopment Contract or any other cause pertaining to the Project.

ARTICLE VII

MISCELLANEOUS

Section 7.01 Notice Recording.

This Redevelopment Contract or a notice memorandum of this Redevelopment Contract shall be recorded with the County Register of Deeds in which the Redevelopment Area is located.

Section 7.02 Governing Law.

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This Redevelopment Contract shall be governed by the laws of the State of Nebraska, including but not limited to the Act.

Section 7.03 Binding Effect; Amendment.

This Redevelopment Contract shall be binding on the parties hereto and their respective successors and assigns. This Redevelopment Contract shall run with the Redevelopment Area. The Redevelopment Contract shall not be amended except by a writing signed by the party to be bound.

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IN WITNESS WHEREOF, City and Redeveloper have signed this Redevelopment Contract as of the date and year first above written.

ATTEST:

CITY OF WAYNE, NEBRASKA

City Clerk

By: _____
Mayor

Bomgaars, Inc

By: _____
Manager

STATE OF NEBRASKA)
) ss.
COUNTY OF WAYNE)

The foregoing instrument was acknowledged before me this _____ day of _____, _____, by _____ and _____, Mayor of the City and City Clerk, respectively, of the City of Wayne, Nebraska, on behalf of the City.

Notary Public

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STATE OF NEBRASKA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, _____, by _____, Manager of Bomgaars, Inc. on behalf of the corporation.

Notary Public

EXHIBIT A
DESCRIPTION OF REDEVELOPMENT AREA

To be inserted

A-I

EXHIBIT B
DESCRIPTION OF PROJECT

EXHIBIT C

TIF INDEBTEDNESS

1. Principal Amount: Series A: The maximum amount, which, together with Interest accruing thereon, can be fully amortized by **December 31, 2026**, solely from projected TIF Revenues based on the current aggregate ad valorem tax rate (together with the City's ad valorem tax rate) applicable to the Redevelopment Area times an assumed project valuation of \$1,000,000.
2. Payments: Semi-annually or more frequent, with interest only until 2013, in substantially equal amounts sufficient to fully pay the TIF indebtedness in full on or before **December 31, 2026**.
3. Interest Rate: (6%) Or determined by Redeveloper.
4. Maturity Date: On or before December 31, 2026.

EXHIBIT D
PROJECT COSTS

All Project Costs payable from the proceeds of TIF indebtedness pursuant to the Act including:

1. Redevelopment Area Acquisition cost
2. Site work and site preparation
3. Utility extensions, installation of gas, water, sewer
4. Construction of roadways
5. Public parking lots and lighting

Exhibit E

DESCRIPTION OF PROJECT AND AMENDEDE REDEVELOPERS REDEVELOPMENT PLAN FOR BOMGAARS, INC. PROJECT

OVERVIEW:

This a redevelopment plan is intended to redevelop an area within the City of Wayne, which has been declared blighted and substandard within the meaning of the Community Development Law of the State of Nebraska.

The Redeveloper will acquire and rehabilitate the real estate shown on Exhibit A by constructing an _____ square foot retail facility. Additionally, the Redevelopers shall install a paved parking lot of at least _____ parking spaces and make the same available for parking of the general public during the term that the TIF Indebtedness remains outstanding.

The Redeveloper will not develop the project in the redevelopment area or elsewhere without the benefit of tax increment financing. The costs of the project are simply too great to be absorbed by the Redeveloper without the assistance of tax increment financing. All financing for the project is entirely contingent on the grant set forth in the redevelopment contract to which this exhibit is attached. The Redeveloper proposes that the Community Development Agency issue Bonds to be repaid from the incremental tax revenues generated by the redevelopment project pursuant to §18-2147 of the Nebraska Revised Statutes, for a period of 15 years from an effective date of January 1, 2011. The Redeveloper will use the proceeds of the Bonds to assist in the construction and acquisition of the Project in accordance with the Act.

THE REDEVELOPMENT PLAN:

1. Relationship of Plan to Local objectives for appropriate land use: This plan contemplates a change in current land use. Reutilization of the existing real estate meets existing local objectives for appropriate land use for the area affected by this plan.
2. Relationship of Plan to Local objectives for improved traffic flow and public utilities in plan area: This plan contemplates creation and paving of an access road. There will be a burden on traffic flow as employees and customers will access the facility from adjacent streets. However, current traffic signals are sufficient to handle the increased traffic. The Agency shall pay the City of Wayne the sum of \$112,000 for paving Pheasant Run Road and installation of water and sewer lines fronting the Redevelopment Area boundary.
3. Relationship of Plan to Local objectives for community facilities: This plan neither provides nor requires any additional community facilities. However, it will provide an attractive

expanded **retail** facility in the community. Additionally, the community will benefit from the public parking provided by the development.

4. Redevelopment project boundaries: Exhibit E-1 to the Redevelopment Contract shows the boundaries of the project. The property is unimproved.

5. Proposed land use plan: Exhibit E-1 shows the proposed land use plan after redevelopment as a **retail facility**.

6. Information on standards for population densities; land coverage; building intensities; and land coverage after redevelopment: Population density will remain unchanged for the area. An approximately _____ square foot building will be added to the real estate as part of the Redevelopment Plan.

7. Statement regarding change in street layouts: This Plan proposes a change in street layout. As shown on Exhibit E-1. Redeveloper shall construct the facility in such a manner so as to prevent rain water from ponding on the adjacent properties.

8. Site plan after redevelopment: Exhibit E-1 is an accurate site plan of the redevelopment project after redevelopment.

9. Statement as to the kind and number of additional public facilities or utilities required to support land use after redevelopment: Additional public utilities are required to support the proposed change. These extensions will be paid from the proceeds of the TIF Indebtedness and will be installed by the City.

10. Public cost/benefit analysis: This plan requires that the Redevelopers will construct and own a **retail** facility. No public funds, other than the tax increment financing benefit, will be used on the structure. The Redeveloper will provide all financing for the project. The Redeveloper will obtain funds for the purchase of the Bonds issued by the Agency, or purchase such bonds outright. Such bonds shall not be backed by the City or the Agency, and will only be repaid from the increased ad valorem tax stream created by the project rehabilitation, over a 15 year period commencing **January 1, 2011**. After the 15-year TIF period, the increased taxes will be paid to the normal taxing authorities.

Tax benefit: Currently the real estate is unimproved.

The project will result in the addition of employees but it is estimated that most employees will come from the surrounding area. Therefore, no undue stress on the school system, police or fire protection is contemplated. Current housing in Wayne is adequate for the current employees. No adverse impact to other employers in the area is contemplated. The Agency has not identified any additional negative impacts to citizens or taxing entities affected by the Redevelopment Project

11. Pledge of Incremental Taxes. Pursuant to Section 18-2147 of the Act, any ad valorem tax

levied upon real property in the Redevelopment Project area specified in the plan, shall be divided, for the period not to exceed 15 years after the effective date of the provision, which effective date shall be **January 1, 2011**.

a. That portion of the ad valorem tax which is produced by levy at the rate fixed each year by or for each public body upon the redevelopment project valuation shall be paid into the funds, of each such public body in the same proportion as all other taxes collected by or for the bodies; and

b. That portion of the ad valorem tax on real property in the redevelopment project in excess of such amount, if any, shall be allocated to and, when collected, paid into a special fund of the Agency to pay the principal of; the interest on, and any premiums due in connection with the bonds, loans, notes, or advances on money to, or indebtedness incurred by, whether funded, refunded, assumed, or otherwise, such Agency for financing or refinancing, in whole or in part, a redevelopment project. When such bonds, loans, notes, advances of money, or indebtedness including interest and premium due have been paid, the Agency shall so notify the County Assessor and County Treasurer and all ad valorem taxes upon real property in such redevelopment project shall be paid into the funds of the respective public bodies.

E-1
Site Plan with Street and Utility Extensions

ORDINANCE NO. 2011-6

AN ORDINANCE ANNEXING CERTAIN REAL ESTATE TO THE CITY OF WAYNE AND EXTENDING THE CORPORATE LIMITS IN THE NORTHWEST QUADRANT OF THE CITY OF WAYNE TO INCLUDE SAID REAL ESTATE.

BE IT ORDAINED by the Mayor and Council of the City of Wayne, Nebraska:

Section 1. The City of Wayne does hereby find and declare that the following described real estate:

A tract of land located in the South 1/2 of the Southwest 1/4 of Section 12 and a part of the Southeast 1/4 of the Southeast 1/4 of Section 11, T26N, R3E of the 6th P.M. and, Wayne County, Nebraska, more particularly described as follows:

Commencing at the Southwest corner of the Southwest 1/4 of Section 12, T26N, R3E of the 6th P.M., Wayne County, Nebraska; thence N 88°13'37" E on an assumed bearing on the South line of said Southwest 1/4, 1605.62 feet; thence N 01°46'23" W and perpendicular to said South line, 67.86 feet to a point on the North Right-of-Way line of Highway 35, said point being the Southeast corner of Western Ridge First Addition and the point of beginning; thence S 88°02'41" W on said North Right-of-Way line, 993.95 feet to a point 64.7 feet North of said South line; thence N 83°32'17" W on said North Right-of-Way line, 512.45 feet to a point 138.10 feet North of said South line and 105.00 feet East of the West line of said Southwest 1/4; thence N 06°44'43" W on said North Right-of-Way line, 361.20 feet; thence S 88°01'08" W and perpendicular to said West line, 108.00 feet to a point on the West Right-of-Way line of Pheasant Run; thence N 01°58'52" W on said West Right-of-Way line, 327.17 feet; thence N 88°13'37" E and parallel to said South line, 1310.49 feet to the Northwest corner of Outlot B of Western Ridge II Addition; thence S 02°08'07" E on the West line of said Outlot B, 183.25 feet to the Southwest corner of said Outlot B; thence N 89°36'24" E on the South line of said Outlot B, 326.48 feet to the Southeast corner of said Outlot B; thence S 02°08'07" E on the West line of said Addition, 565.76 feet to the point of beginning, containing 25.46 acres, more or less,

is immediately adjoining and contiguous to the corporate limits of the City of Wayne, Nebraska.

Section 2. The Planning Commission, at a public hearing held on on July 18, 2011, recommended approval hereof, based upon the following "Findings of Fact":

1. Staff's recommendation; and
2. Consistency with the Comprehensive Plan, and the current and future land use maps.

Section 3. The above described real estate is annexed to the City of Wayne, Nebraska, and is declared to be within the corporate limits of the City of Wayne, Nebraska, pursuant to Section 19-916 (R.R.S. 1943).

Section 4. The corporate limits of the City of Wayne, Nebraska, are hereby extended to include said real estate.

Section 5. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 6. This ordinance shall take effect and be in full force from and after its passage, approval, and publication or posting as required by law.

PASSED AND APPROVED this 2nd day of August, 2011.

THE CITY OF WAYNE, NEBRASKA,

By _____
Mayor

ATTEST:

City Clerk

RESOLUTION NO. 2011-58

A RESOLUTION APPROVING MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF WAYNE AND FOURTH GENERATION FAMILY LIMITED PARTNERSHIP TO COMPLETE A TAX INCREMENT FINANCING AGREEMENT.

WHEREAS, the Wayne City Council is desirous of entering into a Memorandum of Understanding with Fourth Generation Family Limited Partnership to complete a tax increment financing agreement.

NOW, THEREFORE BE IT RESOLVED, by the Mayor and City Council of the City of Wayne, Nebraska, that the Memorandum of Understanding between the City of Wayne and Fourth Generation Family Limited Partnership be accepted as recommended, and the Mayor is authorized and directed to execute said Memorandum of Understanding on behalf of the City.

PASSED AND APPROVED this 2nd day of August, 2011.

THE CITY OF WAYNE, NEBRASKA,

By _____
Mayor

ATTEST:

City Clerk

MEMORANDUM OF UNDERSTANDING

This **MEMORANDUM OF UNDERSTANDING** (the “**MOU**”) is made and entered into this 2nd day of August, 2011, between the City of Wayne, Nebraska (the “**City**”), by and through the Community Development Agency of the City (the “**CDA**”) and Fourth Generation Family Limited Partnership, an Iowa Partnership (the “**Company**”).

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

WHEREAS, upon completion, the Company intends to operate the Project and will do business on the Property; and

WHEREAS, prior to making additional financial commitments and continuing due diligence, the Company desires to have an indication of interest from the City and CDA with regard to certain financing and other assistance necessary to develop the Project; and

WHEREAS, the City and CDA finds it in the public interest to cooperate with the Company to promote the development of business activity in the City; and

WHEREAS, the parties desire to set forth their understandings and obligations to bring about the accomplishment of the foregoing recitals, all in accordance with the terms set forth in this MOU.

NOW, THEREFORE, in consideration of the foregoing recitals (which are specifically incorporated herein by this reference), the mutual covenants and agreements contained herein, and other good and valuable consideration, the parties hereby agree as follows:

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

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

a. *Development of Project.* The Company agrees to use its best efforts to acquire the Property and commence construction on the Project no later than _____, 2011.

b. *Project Requires TIF.* The Company verifies that: (i) the Project would not be economically feasible without the use of tax-increment financing; and (ii) the Project would not occur in the Redevelopment Area without the use of tax-increment financing.

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

d. *Pay for Cost of TIF Issuance.* The Company agrees to pay for costs related to the TIF grant, including costs of blight studies and legal expenses, currently estimated at \$15,000.00.

e. *Additional Payments.* The Company will be required to pay an amount in lieu of real property tax in the event that the TIF Revenue Funds are insufficient to amortize the borrowing for the grant described in paragraph 3 below.

3. *City's Obligations.* In order to induce the Company to build the Project on the Property, the City and CDA shall use its best reasonable efforts consistent with applicable law to work in good faith to consider any application for tax increment financing, community development debt or grants, or other financial incentives which might be available to promote the Company's economic development of the Project in the City. Specifically, the City and CDA shall consider the following:

a. *TIF Revenue Funds.* The City and CDA shall consider a grant in the amount \$200,000 to pay costs eligible for reimbursement as redevelopment project costs as defined by Neb. Rev. Stat. §18-2103(12). Such grant shall be payable only from City funds generated by the Property pursuant to Neb. Rev. Stat. §18-2147(1)(b).

4. *Economic Feasibility.* Neb. Rev. Stat. 18-2116(1) requires the City and CDA to make findings as follows if a TIF application requests the use of funds as described in Section 3 above: (i) the Project would not be economically feasible without the use of tax-increment financing, (ii) the Project would not occur in the City without the use of tax-increment financing. Due to the proposed construction schedule of the Project and the impact of weather concerns on such schedule, the Company desires to begin construction on the Project immediately. If the Company does begin such construction, the City and CDA will analyze the economic feasibility of the Project and the likelihood the Project would occur in the City as of the time prior to the commencement of construction.

5. *Redevelopment Contract.* The City, CDA and the Company shall use their best reasonable efforts to negotiate and enter into a redevelopment contract in accordance with any timelines required by applicable law, subject to Section 3. The redevelopment contract shall outline the obligations and agreements with regard to the financing matters set forth in Section 3 above, including, without limitation, the amount of any tax increment revenue financing proceeds to be granted to the Company, along with any other agreements deemed necessary. Upon execution of the redevelopment contract, this MOU shall be deemed superseded and of no further force and effect.

6. *Intent of MOU.* The undersigned parties each acknowledge and agree that the Company would be unwilling to pursue any further discussions with regard to locating the Project in the City without execution of this MOU. The Company acknowledges and agrees that, until the City acts in accordance with law with regard to each parties' obligations as outlined in this MOU (i.e., following all notice and hearing requirements, etc.), any obligations set forth in this MOU for the City are nonbinding. This MOU does not approve or create an obligation to approve any subsequent TIF application submitted by the Company. The City and CDA retains full legislative Agency to approve or deny any TIF application submitted by the Company.

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

8. *Time.* This MOU and all obligations contained herein shall terminate _____, 2011.

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

THE CITY OF WAYNE, NEBRASKA

By: _____
Mayor

FOURTH GENERATION FAMILY LIMITED PARTNERSHIP

By: _____
President

“EXHIBIT A”

LEGAL DESCRIPTION OF PROPERTY

Lot 1 of Western Ridge Third Addition to the City of Wayne, Wayne County,
Nebraska.

ORDINANCE NO. 2011-7

AN ORDINANCE TO AMEND CHAPTER 90, ARTICLE XI EXCEPTIONS AND CONDITIONAL USES, SECTION 90-836 EXPIRATION OF EXCEPTION USE PERMITS; TO PROVIDE FOR THE REPEAL OF CONFLICTING ORDINANCES OR SECTIONS; AND TO PROVIDE FOR AN EFFECTIVE DATE.

BE IT ORDAINED by the Mayor and Council of the City of Wayne, Nebraska:

Section 1. That Chapter 90, Article XI Exceptions and Conditional Uses, Section 90-836 of the Wayne Municipal Code is amended to read as follows:

Sec. 90-836. Expiration of Exception Use Permits.

Within ~~three~~ **one** years of the approval, construction of the proposed site shall have commenced or the approval is void. ~~However, the applicant may file a letter requesting an extension prior to the expiration of the approval to the planning commission or the council, whichever granted the original permit. The planning commission or the council shall review all requests for extensions. They may approve for a specified period up to 12 months or disapprove, indicating their reasons for such an action. The planning commission's or the council's reasons for disapproval shall be forwarded to the applicant.~~

(b) After expiration, a new application is required if construction has not started and processed according to the provisions outlined in this chapter.

Section 2. The Planning Commission, at a public hearing held on on July 18, 2011, recommended approval hereof, based upon the "Finding of Fact" being staff's recommendation.

Section 3. That the original Section and all ordinances or parts of ordinances in conflict herewith are hereby amended and repealed.

Section 4. This ordinance shall take effect and be in full force from and after its passage, approval, and publication or posting as required by law.

PASSED AND APPROVED this ____ day of August, 2011.

THE CITY OF WAYNE, NEBRASKA,

By _____
Mayor

ATTEST:

City Clerk

ORDINANCE NO. 2011-8

AN ORDINANCE TO AMEND CHAPTER 18, ARTICLE VI UNSAFE BUILDINGS, BY AMENDING SECTION 18-242 PROPERTY MAINTENANCE CODE ADOPTED BY REFERENCE; AND BY ADDING SECTIONS 18-243 CONFLICTS, 18-244 ADDITIONS, INSERTIONS AND CHANGES, AND 18-245 STRUCTURES DAMAGED BY FIRE, FLOOD, WIND, DISASTER OR OTHER CALAMITY; TO PROVIDE FOR THE REPEAL OF CONFLICTING ORDINANCES OR SECTIONS; AND TO PROVIDE FOR AN EFFECTIVE DATE.

BE IT ORDAINED by the Mayor and Council of the City of Wayne, Nebraska:

Section 1. That Article VI Unsafe Buildings, Section 18-242 is amended to read as follows:

Sec. 18-242. Property maintenance code adopted by reference.

~~To provide the standards for supplied utilities and facilities and other physical things and conditions essential to ensure that structures are safe, sanitary, and fit for occupation and use; and the condemnation of buildings and structures unfit for human occupancy and use and the demolition of such structures, the 2006 International Property Maintenance Code, printed in book or pamphlet form, is incorporated by reference in addition to all amendments thereto as though printed in full in this section insofar as such code does not conflict with the state statutes. One copy of the code adopted in this section is on file at the office of the building inspector and is available for public inspection at any reasonable time. The provisions of the code adopted in this section shall be controlling throughout the city and throughout its zoning jurisdiction.~~

A certain document, one (1) copy which is on file in the office of the building inspector of the City of Wayne, Nebraska, being marked and designated as the "International Property Maintenance Code 2006," as published by The International Code Council, Inc., is hereby adopted as the property maintenance code of the City of Wayne, Nebraska, as if fully set out in this section, with the additions, insertions, deletions and changes, if any, prescribed in section 18-244 of this article.

State law references: Adoption by reference authorized, R.R.S. 1943, 18-132.

Section 2. That Article VI Unsafe Buildings is amended by adding the following sections as follows:

Sec. 18-243. Conflicts.

In the event of a conflict between the provisions of the publication adopted by reference in this article and any other provisions of this Code, such other provisions shall be controlling.

Sec. 18-244. Additions, insertions and changes.

The following sections of the property maintenance code adopted in section 18-242 are hereby revised as follows:

Section 101.1 Title. Insert: the City of Wayne, Nebraska.

Section 103.5 Fees. Amend section to read as follows:

“The fees for activities and services performed by the department in carrying out its responsibilities under this code shall be charged as necessary to reasonably recover costs.”

Section 110.1 General. Amend section to read as follows:

"The code official shall order the owner of any structure or the owner of the premises upon which any structure is located that has been condemned by the code official pursuant to this code, or in the code official's judgment is so old, dilapidated or has become so out of repair as to be dangerous, unsafe, unsanitary or otherwise unfit for human habitation or occupancy, and such that it is unreasonable to repair the structure, to demolish and remove such structure; or if such structure is capable of being made safe by repairs, to repair and make safe and sanitary or to demolish and remove at the structure owner's or property owner's option; or where there has been a cessation of normal construction of any structure for a period of more than two years, to demolish and remove such structure. In the event the structure and premises upon which the structure is located are in separate ownership, then both the owner of the structure and the owner of the premises shall be responsible for said removal."

Section 110.3 Failure to comply. Amend section to read as follows:

Any person who fails to comply with a demolition order within the time prescribed shall be deemed guilty of an offense punishable by a fine of not less than five hundred dollars. Each day that a violation continues after due notice has been served shall be deemed a separate offense. The code official may cause the structure to be demolished and removed, either through an available public agency or by contract or arrangement with private persons, and the cost of such demolition and removal shall be charged against the real estate upon which the structure is located and shall be a lien upon such real estate.

Section 111.1 Application for appeal. Amend section to read as follows:

"Any person directly affected by a decision of the code official or a notice or order issued under this code shall have the right to appeal to the board of appeals, provided that a written application for appeal is filed within 20 days after the day the decision, notice or order was served. A fee set forth by the city council shall accompany each application for appeal to the board of appeals; and a schedule of such fees is on file and available in the city clerk's office. Such fee shall be refunded to the applicant in the event the board of appeals finds in favor of the applicant. An application for appeal shall be based on a claim that the true intent of this code or the rules legally adopted thereunder have been incorrectly interpreted, the provisions of this code do not fully apply, or the requirements of this code are adequately satisfied by other means, or that the strict application of any requirement of this code would cause an undue hardship."

Section 302.4 Weeds. Insert: twelve (12) inches.

Section 304.14 Insect Screens. Insert: April 1 to November 1.

Section 602.3 Heat supply. Amend section to read as follows:

"Every owner and operator of any building who rents, leases or lets one or more dwelling unit, rooming unit, dormitory or guestroom on terms, either expressed or implied, to furnish heat to the occupants thereof shall supply heat to maintain a temperature of not less than 68 F. (20 C.) in all habitable rooms, bathrooms, and toilet rooms.

Exception: When the outdoor temperature is below the winter outdoor design temperature for the locality, maintenance of the minimum room temperature shall not be required provided that the heating system is operating at its full design capacity. The winter outdoor design temperature for the locality shall be as indicated in Appendix D of the International Plumbing Code."

Section 602.4 Occupiable work spaces. Amend section to read as follows:

"Indoor occupiable work spaces shall be supplied with heat to maintain a temperature of not less than 65 F. (18 C.) during the period the spaces are occupied.

Exceptions:

1. Processing, storage and operation areas that require cooling or special temperature conditions.
2. Areas in which persons are primarily engaged in vigorous physical activities."

Sec. 18-245. Structures damaged by fire, flood, wind, disaster or other calamity.

Any structure becoming uninhabitable, unusable or unoccupiable as a result of fire, flood, wind, disaster or other calamity shall be completely repaired within one (1) year of the fire, flood, wind, disaster or other calamity. If repairs are not completed within one (1) year, the structure shall be inspected by the code official. If following the inspection, the structure is determined to be uninhabitable, unusable or unoccupiable by the code official, the structure shall be demolished by the owner of the property. In the event the structure and premises upon which the structure is located are in separate ownership, then both the owner of the structure and the owner of the premises shall be responsible for said removal. Any appeal of the code official's decision shall be governed by the appeal provisions contained in the property maintenance code adopted by the city.

Secs. 18-246 — 18-300. Reserved

Section 3. That the original Sections and all ordinances or parts of ordinances in conflict herewith are hereby amended and repealed.

Section 4. This ordinance shall take effect and be in full force from and after its passage, approval, and publication or posting as required by law. This ordinance may be published in pamphlet form as authorized by law.

PASSED AND APPROVED this _____ day of August, 2011.

THE CITY OF WAYNE, NEBRASKA

By _____
Mayor

ATTEST:

City Clerk

RESOLUTION NO. 2011-59

A RESOLUTION ESTABLISHING ONE-WAY AND TWO-WAY TRAFFIC IN THE CITY OF WAYNE, NEBRASKA

WHEREAS, there is hereby established the following one-way and two-way traffic streets in the City of Wayne:

1. One-way traffic going south on School View Drive between 4th Street and 5th Street.
2. One-way traffic going east on 4th Street between School View Drive and Sherman Street.
3. Two-way traffic on 5th Street between Sherman Street and School View Drive.
4. **One-way traffic going south on Douglas Street between Third and Fourth Street.**
5. **One-way traffic going north on Sherman Street between Third and Fourth Street.**

PASSED AND APPROVED this 2nd day of August, 2011.

THE CITY OF WAYNE, NEBRASKA

By _____
Mayor

ATTEST:

City Clerk

ORDINANCE NO. 2011-9

AN ORDINANCE TO AMEND SECTION 78-132 OF CHAPTER 78, ARTICLE III, OF THE WAYNE MUNICIPAL CODE RELATING TO PARKING; PROHIBITED PARKING; SOUTHWEST QUADRANT OF THE CITY; TO PROVIDE FOR THE REPEAL OF CONFLICTING ORDINANCES OR SECTIONS; AND TO PROVIDE FOR AN EFFECTIVE DATE.

BE IT ORDAINED by the Mayor and Council of the City of Wayne, Nebraska.

Section 1. That Chapter 78, Article III, Section 78-132 of the Municipal Code of Wayne, is hereby amended as follows:

§ 78-132 PROHIBITED PARKING; SOUTHWEST QUADRANT OF THE CITY; No person shall, at any time, park a motor vehicle upon the following described streets:

1. The south side of the centerline of West Seventh Street from the west line of Main Street west to the city limits.
2. The south side of the centerline of West Sixth Street from the west line of Main Street west to the east line of Sherman Street.
3. The south side of the centerline of West Fifth Street from the west line of Main Street west to the east line of the elementary school.
4. The south side of the centerline of West Fourth Street from the west line of Pearl Street west to the east line of the elementary school.
5. The south side of the centerline of West Third Street from the west line of Pearl Street west to the east line of Oak Drive.
6. The south side of the centerline of West Second Street from the north-south alley between Pearl Street and Lincoln Street west to the east line of Blaine Street.
7. The south side of the centerline of West First Street from the west line of Pearl Street west to the east line of Wilcliff Drive.
8. The south side of the centerline of First Avenue from the west line of Maple Street west to the east line of Birch Street.
9. The north side of the centerline of Second Avenue from the west line of Maple Street west to the east line of Birch Street.
10. The south side of the centerline of Grainland Road from the west line of Sherman Street west to the city limits.
11. The west side of the centerline of Birch Street from the north line of First Avenue north to the south line of Second Avenue.
12. The south side of the centerline of Third Avenue from the west line of Oak Drive west to the city limits.
13. The east side of the centerline of Oak Drive from the north line of Second Avenue north to the south line of West Seventh Street.

14. The east side of the centerline of Maple Street from the north line of Grainland Road north to the south line of Second Avenue.
15. The east side of the centerline of Wilcliff Drive from the north line of West First Street north to the south line of West Third Street.
16. The east side of the centerline of Blaine Street from the north line of Grainland Road north to the south line of West Third Street.
17. The east side of the centerline of Sherman Street from the south line of West Seventh Street south to the **north line of West Fourth Street and from the south line of West Third Street south to the north line of Grainland Road** ~~city limits~~.
18. The east side of the centerline of Douglas Street from the south line of West Seventh Street south to the city limits.
19. The east side of the centerline of Lincoln Street from the south line of West Seventh Street south to the city limits.
20. The east side of the centerline of Pearl Street from the north line of West Fifth Street north to the south line of West Seventh Street.
21. The west side of the centerline of Pearl Street from the north line of Sixth Street north to the south line of West Seventh Street.
22. The south side of the centerline of Clark Street from the west line of Main Street west to the east line of Pearl Street.
23. The west side of the centerline of Main Street from the north line of Fourth Street north to the south line of Seventh Street.
24. The north side of the centerline of West Sixth Street from the west line of Main Street west to the east line of the north-south alley between Main Street and Pearl Street.
25. The east side of the center line of Donner Pass from the south line of West Seventh Street south to the south line of Nathan Drive.
26. The south side of the center line of Nathan Drive from the west line of Donner Pass west to the city limits.
27. West of the centerline of Main Street beginning 65' north of the centerline of the 100 block of West 1st Street, south to the intersection of Main and West 1st Street. Said curb shall be painted yellow to clearly designate this restricted parking area.
- 28. The west side of the centerline of Sherman Street from the south line of West Fourth Street south to the north line of West Third Street.**

(b) Appropriate signs shall be placed to advise the public of these prohibited parking regulations

Section 2. The original Section and any other sections in conflict with this ordinance are hereby repealed.

Section 3. This ordinance shall take effect and be in full force from and after its passage, approval, and publication or posting, as required by law.

PASSED AND APPROVED this _____ day of August, 2011.

THE CITY OF WAYNE, NEBRASKA

By _____
Mayor

ATTEST:

City Clerk

ORDINANCE NO. 2011-10

AN ORDINANCE TO AMEND SECTION 78-133 OF CHAPTER 78, ARTICLE III, OF THE WAYNE MUNICIPAL CODE RELATING TO RESTRICTED PARKING 12:00 MIDNIGHT TO 5:00 A.M.; SOUTHWEST QUADRANT OF THE CITY; TO PROVIDE FOR THE REPEAL OF CONFLICTING ORDINANCES OR SECTIONS; AND TO PROVIDE FOR AN EFFECTIVE DATE.

BE IT ORDAINED by the Mayor and Council of the City of Wayne, Nebraska.

Section 1. That Chapter 78, Article III, Section 78-133 of the Municipal Code of Wayne, is hereby amended as follows:

Sec. 78-133. Restricted parking 12:00 midnight to 5:00 a.m.; southwest quadrant of the city

- (a) No person shall, at any time, park a vehicle between the hours of 12:00 midnight and 5:00 a.m. upon any of the following described streets or parts of streets:
1. The north side of the centerline of West Sixth Street from the north-south alley between Main Street and Pearl Street west to the east line of Sherman Street.
 2. The north side of the centerline of West Fifth Street from the west line of Main Street west to the east line of the elementary school.
 3. The north side of the centerline of West Fourth Street from the west line of Main Street west to the east line of the elementary school.
 4. The north side of the centerline of West Third Street from the north-south alley between Pearl Street and Lincoln Street west to the east line of Oak Drive.
 5. The north side of the centerline of Third Avenue from the west line of Oak Drive west to the city limits.
 6. The north side of the centerline of West Second Street from the west line of Pearl Street to the east line of Blaine Street.
 7. The north side of the centerline of Grainland Road from the west line of Sherman Street west to the city limits.
 8. The west side of the centerline of Sherman Street from the south line of West Seventh Street south to the north line of **West Fourth Street and from the south line of West Third Street south to the north line of** Grainland Road.
 9. The west side of the centerline of Douglas Street from the south line of West Seventh Street south to the city limits.
 10. The west side of the centerline of Blaine Street from the south line of West Second Street south to the north line of Grainland Road.
 11. **The east side of the centerline of Sherman Street from the south line of West Fourth Street south to the north line of West Third Street.**

(b) Appropriate signs shall be placed to advise the public of these prohibited parking regulations.

Section 2. The original Section and any other sections in conflict with this ordinance are hereby repealed.

Section 3. This ordinance shall take effect and be in full force from and after its passage, approval, and publication or posting, as required by law.

PASSED AND APPROVED this 2nd day of August, 2011.

THE CITY OF WAYNE, NEBRASKA

By _____
Mayor

ATTEST:

City Clerk

ORDINANCE NO. 2011-11

AN ORDINANCE TO AMEND WAYNE MUNICIPAL CODE CHAPTER 78, ARTICLE III, PARKING, BY ADDING SECTION 78-142 RESTRICTED PARKING FROM 7:00 A.M. TO 9:00 A.M. AND FROM 3:00 P.M. TO 5:00 P.M. MONDAY THROUGH FRIDAY; TO PROVIDE FOR THE REPEAL OF CONFLICTING ORDINANCES AND SECTIONS; AND TO PROVIDE FOR AN EFFECTIVE DATE.

BE IT ORDAINED by the Mayor and Council of the City of Wayne, Nebraska:

Section 1. Section 78-142 of the City of Wayne Municipal Code is hereby added to read as follows:

Sec. 78-142. Restricted Parking from 7:00 a.m. to 9:00 a.m. and from 3:00 p.m. to 5:00 p.m. Monday through Friday.

(a) No person shall, at any time, park a vehicle between the hours of 7:00 a.m. and 9:00 a.m. and between the hours of 3:00 p.m. and 5:00 p.m. Monday through Friday upon any of the following streets:

(1) The north side of the centerline of 5th Street from the west line of Sherman Street to the west line of School View Drive.

(2) The west side of the centerline of Douglas Street from the south line of West Fourth Street to the north line of West Third Street.

(3) The east side of the centerline of Sherman Street from the south line of West Fourth Street to the north line of West Third Street.

(b) Appropriate signs shall be placed to advise the public of these restricted parking regulations.

Section 2. Any other ordinance or parts of ordinance in conflict herewith are repealed.

Section 3. This ordinance shall take effect and be in full force after its passage, approval, and publication as provided by law.

PASSED AND APPROVED THIS 2nd day of August, 2011.

THE CITY OF WAYNE, NEBRASKA

By _____
Mayor

ATTEST:

City Clerk

RESOLUTION NO. 2011-60

A RESOLUTION APPROVING THE FEDERAL FUNDS PURCHASE PROGRAM AGREEMENT.

Whereas, each year the Federal Government makes available to Nebraska certain federal-aid transportation funds including funds from the Surface Transportation Program (STP) and the Highway Bridge Program (HBP) (formerly known as the Highway Bridge Replacement and Rehabilitation Program), for use on State and local federal-aid transportation projects; and

Whereas, certain federal-aid STP and HBP funds have historically been made available to the LPA by the State for its use in funding federal-aid projects on the public streets or roads within its jurisdiction; and

Whereas, LPA and the NDOR wish to enter into an Agreement to provide for the purchase, at a discount, certain federal-aid dollars currently made available to the LPA; and

Whereas, the LPA is interested in selling its available federal-aid funds to the State on the terms and conditions set out in this Agreement, including certain limitations on the use of the cash received by the LPA; and

Whereas, the City Council has reviewed the Agreement and has determined that it is in its best interest to enter into the Agreement in the attached form.

Be It Resolved: by the City Council of the City of Wayne that Ken Chamberlain, Mayor, is hereby authorized to sign the attached Federal Funds Purchase Program Agreement between the City of Wayne and the NDOR.

PASSED AND APPROVED this 2nd day of August, 2011, at Wayne, Nebraska.

The City Council of the City of Wayne

Board/Council Member _____

Moved the adoption of said resolution

Member _____ Seconded the Motion

Roll Call: _____ Yes _____ No _____ Abstained _____ Absent

Resolution adopted, signed and billed as adopted

ATTEST:

Betty A. McGuire, City Clerk

**FEDERAL-AID TRANSPORTATION FUND
PURCHASE-SALE AGREEMENT**

**Nebraska Department of Roads
City of Wayne**

THIS AGREEMENT made and entered into by and between the State of Nebraska, Department of Roads, hereinafter referred to as the "State," and the City of Wayne, Nebraska, hereinafter referred to as Local Public Agency, or "LPA."

RECITALS

WHEREAS, the State and LPA have authority to enter into this Agreement and to expend funds pursuant to LB 98 of the 2011 Nebraska Legislature, signed by the Governor, which will be codified in Neb. Rev. Stat. §§ 39-1307 and 66-4,100; and,

WHEREAS, each year the federal government makes available to Nebraska certain federal-aid transportation funds, including funds from the Surface Transportation Program (STP) and the Highway Bridge Program (HBP) (formerly known as the Highway Bridge Replacement and Rehabilitation Program), for use on State and local federal-aid transportation projects; and,

WHEREAS, certain federal-aid STP and HBP funds have historically been made available to the LPA by the State for its use in funding federal-aid projects on the public streets or roads within its jurisdiction; and,

WHEREAS, the State presently intends, and LPA wishes to replace that historical practice with a purchase-sale process as further set out herein; and,

WHEREAS, the HBP fund portion of this purchase program will also apply to communities that make up the Transportation Management Areas (TMA) in Nebraska; and,

WHEREAS, for LPA to use federal funds for a federal-aid transportation project, the LPA must provide a local match and meet all federal-aid funding program requirements, some of which would not apply to a project constructed under State laws; and,

WHEREAS, LPA believes that it is not able to expend these federal-aid funds as efficiently or effectively as it would prefer because of the complexity of the processes required of LPAs on federal-aid transportation projects; and,

WHEREAS, the federal-aid funds made available to the LPA are of a type that would also be eligible for use by the State for federal-aid projects on certain State highway and bridge projects; and,

WHEREAS, the State is willing to obligate and expend additional federal-aid project funds, and the State is willing to assume the risk of meeting all federal-aid requirements for use of any additional federal-aid funds it obtains, and,

WHEREAS, the State is interested in purchasing at a discount certain federal-aid funds currently allocated to LPA, such discount to cover the costs and risks incurred by the State to meet federal-aid requirements; and,

WHEREAS, the LPA is interested in selling its available federal-aid funds to the State on the terms and conditions set out in this Agreement, including certain limitations on the use of the cash received by LPA.

NOW, THEREFORE, in consideration of these facts, the State and the LPA agree as follows:

SECTION 1. Effective Date and Term of this Agreement. This Agreement will be effective only upon the execution of this Agreement by the State. The term of this Agreement is four years, beginning on the date that the State makes the first "cash payment" to LPA. At the end of the initial term, this Agreement will automatically renew for successive one year terms, unless the LPA provides the State with notice of termination sixty or more days before the end of any term of this Agreement. The State may terminate this Agreement for any reason at any time by giving LPA advance notice 60 days prior to the date of termination.

SECTION 2. Federal Funds Eligible for Purchase. This Agreement applies to the following categories of federal-aid funds: (a) STP Funds (for both Populations less than 5,000, and Populations 5,000 to 200,000), and (b) HBP Funds. Each year the State will determine the total dollar amount of each of these funds that will be eligible for purchase (hereinafter "the Purchase Pool"), from all funds made available by the federal government for use on local projects within these categories.

SECTION 3. Calculation of LPA's share of the Federal-Aid Funds Purchase Pools. The following will govern the annual calculation of LPA's share of the Purchase Pool established by NDOR for each category of funds. Only LPAs who enter into a Federal-Aid Transportation Fund Purchase-Sale Agreement with the State (hereinafter referred to as a "Participating" LPA, County or City) will (a) be counted for calculating the proportions described below and (b) will be eligible to receive a share of the Purchase Pools. The historical practice of allocating Federal funds to LPAs in existence prior to the effective date of this Agreement will not be considered in making any calculations under this Agreement.

A. STP Funds Calculation.

1. STP Funding for Populations 5,000 to 200,000 (cities of the first class group). Each year, the State will determine the share of the Purchase Pool attributable to each Participating City of the First Class based on the proportion of that City's total population to the population of all Participating Cities of the First Class in Nebraska. Population will be based upon the latest U.S. Census Bureau census figures.
2. STP Funding for Populations Less Than 5,000. (This category is made up of the 93 Nebraska Counties; each City of the Second Class and Village located within a County draws solely from the County's share of these funds, at the discretion of the County.) Each year, the State will determine the share of the Purchase Pool attributable to each Participating County by calculating each County's proportional share of the totals of all Participating Counties using the following factors and weights:
 - The number of rural residents as reported by the U.S. Census Bureau (25%).
 - The number of rural motor vehicles registered in the County (25%).
 - The number of centerline miles of classified (on- and off-federal system) rural roads in the County (50%).

For this section, rural is defined as the areas outside the corporate limits of any City of the First Class, City of the Primary Class or City of the Metropolitan Class.

B. HBP Funds Calculation.

Each year, the State will determine the share of the Purchase Pool attributable to each Participating County and City of the First Class, including those within the Omaha and Lincoln TMAs and the Cities of Omaha and Lincoln, based on the proportion of that LPA's square feet of bridge deck area of deficient bridges by the total number of square feet of bridge deck area of deficient bridges of all Participating LPAs in this category.

SECTION 4. Cash Payment Calculation and Payment Date. The cash payment to be made by the State to LPA will be equal to eighty percent (80%) of the total dollar amount of federal-aid funds purchased by the State from LPA beginning in Fiscal Year 2013. The cash payment will be made to LPA on or about March 1 of each year beginning on or about March 1, 2014.

Based on the project cost estimates and anticipated funding levels shown in Exhibit A – Transition Plan for First Class City STP Projects, which is hereby incorporated herein by this reference, there will not be any STP funds for purchase by the State until FY 2015. Therefore, the first payment to First Class City LPA's for purchased STP funds is anticipated to be on or about March 1, 2016.

SECTION 5. Limitations on LPA's Use of Cash Payment. The portion of the cash payment received by LPA from the State for the purchase of **STP funds** shall be used solely for the cost of construction, reconstruction, maintenance, or repair of public highways, streets, roads, or bridges and facilities, appurtenances, and roadway structures deemed necessary in connection therewith. The portion of the cash payment received by LPA from the State for the purchase of **HBP funds** shall be used solely for the construction, reconstruction, improvement, repair or maintenance of LPA public road bridges. The LPA's use of the cash payment for "maintenance," under the prior two sentences, shall be limited to maintenance projects that preserve, restore or correct

major roadway or bridge conditions and the cash payment will not be used for LPA's routine maintenance activities.

The phrase "facilities, appurtenances, and roadway structures deemed necessary in connection therewith," as used in the first sentence of this section, includes medians; accessory lanes; steps; handrails; sidewalks, adjoining trails, paths and related structures; drainage facilities such as storm sewers, curb or grate inlets, culverts, ditches, and other drainage structures; guardrails; lighting facilities; driveways; retaining walls and other similar facilities that are necessary or desirable and directly related to the proper design of streets, roads and highways.

LPA shall segregate the cash payment and shall separately account for the STP and HBP portions of any cash payment received from the State within its accounting system. The LPA may accumulate and invest the STP or HBP portions of the cash payment it receives so long as the earnings from such investments are used for the applicable purposes provided in this section. The cash payment funds may be used for any phase of an allowable project. The phases of an allowable project include, but are not limited to: 1) preliminary engineering, 2) right-of-way acquisition, 3) utility relocations, 4) construction, and 5) construction engineering.

All roads and bridges shall be designed and constructed to meet the minimum standards of the Nebraska Board of Public Roads Classifications and Standards.

SECTION 6. Annual Certification of Use of Cash Payment and Action Required for Improper Use of Funds. LPA shall file an annual certification with the State, using a copy of the attached Annual Certification Form (Exhibit B), confirming that it has used the cash payment it received solely for the purposes allowed under this Agreement. The annual certification shall be filed with the Local Projects Division of the State and the form shall be submitted by LPA within 90 days after the end of LPA's fiscal year. Further, LPA agrees to immediately report to State any use of the cash payment for a nonconforming use under this Agreement. Within 60 days of discovery of any improperly diverted funds, LPA shall provide the State with a repayment plan for LPA to replace the improperly diverted funds by depositing an equivalent amount of other local funds into the cash payment account. If LPA fails to repay the funds, or fails to provide a repayment plan that is acceptable to the State, the State will withhold LPA's

future annual payments under this Agreement until LPA repays all improperly diverted funds. If LPA fails to meet the requirement of the prior sentence, the State may terminate this Agreement and redistribute any funds it holds on behalf of LPA.

SECTION 7. Additional Terms and Conditions. The parties agree to the following additional terms and conditions:

- A. Federal Legislation. The LPA authorizes the State to take such steps as are deemed by the State to be necessary or advisable for the purpose of securing the benefits of the current Federal-Aid Surface Transportation Act for this Agreement. The terms of this Agreement are subject to changes in federal legislation. The State reserves the right to (1) change the dollar amount of federal-aid funds the State purchases from LPA, or (2) terminate this Agreement, in the event such changes in federal law significantly impacts, nullifies or renders impractical the continuing purchase of LPA's federal-aid funds.
- B. Availability of State Funds. The total federal-aid funds purchased by the State under this Agreement are contingent upon the availability of State funds to make the purchase. If, in the judgment of the State, sufficient State funds are not available to make the payments under this Agreement, the State may (1) reduce the dollar amounts of federal-aid funds the State purchases from LPA, or (2) terminate this Agreement without additional cost, responsibility or obligation to LPA.
- C. Application of Purchased Funds. The LPA understands that the State, at its sole discretion, may use the federal-aid funds purchased from LPA for any federally eligible purpose or project within the State.
- D. Audits. The LPA agrees to make its records and books available at any time to representatives or designees of the State for audit.
- E. Applicable Law. The LPA agrees to follow all applicable laws governing the transaction set out in this Agreement and the use of the State payment for local street, road or bridge projects.

- F. Local Ordinances and Resolutions. The LPA agrees to adopt all necessary ordinances and/or resolutions and to take such legal steps as may be required to give full effect to the terms of this Agreement.
- G. Maintenance of and Commitments for Projects Constructed with Federal Funds. This Agreement does not relieve the LPA of maintaining, at its own expense, all transportation projects under its jurisdiction which have used, or will use federal funds in the future (see, 23 U.S.C. § 116). The LPA agrees to make provisions each year for the maintenance costs involved in properly maintaining all of its federal-aid routes and facilities. The LPA shall also be solely responsible for any required environmental commitments, including monitoring, and any other commitments made, after the construction of projects on its federal-aid routes which have used, or will use federal funds in the future. In the event that the federal government withholds funds from the State related to LPA's failure to meet its obligations under this section, LPA agrees that the State, in addition to all other remedies, may withhold its future cash payments under this agreement until all funds are repaid.
- H. Repayment of Federal Funds For Projects Not Completed. If LPA presently has a federal-aid project under development that has not been constructed, but for which federal-funds have been received by LPA, LPA has certain time periods under federal law to complete construction of such project, or LPA will be required to repay all federal funds it has been reimbursed for the project. (See 23 C.F.R. § 630.112(c).) In the event that LPA fails to complete construction of such a project, LPA shall repay the federal government, or the State on its behalf, an amount equal to all federal-aid funds previously reimbursed to LPA expended for the project. In the event that LPA fails to repay the federal government or the State, LPA agrees that the State, in addition to all other remedies, may withhold its future cash payments to LPA under this Agreement until all funds are repaid.

- I. Bridges. LPA is responsible for the safety inspection and evaluation of all public street or road bridges under its jurisdiction. These responsibilities include inspections, reports, load ratings, quality control, maintaining bridge files, and all other requirements of the National Bridge Inspection Standards (NBIS). LPA shall provide to the State copies of all bridge plans, hydraulic design reports, load rating reports and inspection reports for all bridges under its jurisdiction. If LPA fails to carry out its duties concerning the NBIS, the State will withhold LPA's future annual payment under this Agreement until LPA complies with all NBIS requirements. If LPA fails to meet the requirements of the prior sentence, the State may terminate this Agreement and redistribute any funds it holds on behalf of LPA.
- J. Right-of-Way. The LPA is advised to use the "Uniform Act" and keep good records when purchasing right-of-way for a project. The "Uniform Act" is the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, and administrative regulations contained in 49 C.F.R. § 24, entitled "Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs."
- K. No Third-Party Benefits. No third-party beneficiaries are intended to be created by this Agreement, nor do the parties herein authorize anyone not a party to this Agreement to maintain a suit for damages pursuant to the terms or provisions of this Agreement.
- L. Fair Employment Practices Act. The LPA agrees to abide by Nebraska Fair Employment Practices Act, as provided by Neb. Rev. Stat. §§ 48-1101 through 48-1126, which is hereby made a part of and included in this Agreement by reference.

IN WITNESS WHEREOF, the LPA and State hereto have caused this Agreement to be executed by their proper officials thereunto duly authorized as of the dates below indicated.

EXECUTED by the LPA this ____ day of _____, 2011.

WITNESS:

CITY OF WAYNE

LPA Clerk

By

Title

EXECUTED by the State this ____ day of _____, 2011.

STATE OF NEBRASKA
DEPARTMENT OF ROADS

By

Title

Federal Fund Purchase Program

First Class City Transition Plan

Transition

Based on the general consensus observed by the Nebraska League of Municipalities and NDOR Local Projects Division, the transition into the Federal Fund Purchase Program for the First Class Cities (L200) should be to Federally Fund all projects listed in the Transition Plan for the following reasons:

1. All Projects in Exhibit A have Program Agreements where NDOR and the LPA agreed to build/fund the projects.
2. Nearly all projects within Exhibit A have Federal Funds obligated and most have expended Federal Funds. Failure to Federally fund these projects (through construction) would likely result in the repayment of Federal funds by the LPA's.
3. The projected cash payments to the First Class Cities will not provide adequate funding to advance the major projects within the FHWA allotted timeframes.
4. First Class Cities recently formed an executive committee to represent the collective group be responsible for recommending project selection, etc. At the meeting in March 2011, new projects were selected primarily based on the LPA's STP "point" balance, which is essentially the LPA's turn for the Federal Funds. By funding the selected projects, NDOR is essentially allowing each of the First Class Cities their turn at the Federal Funds.
5. Federally funding all of the projects listed in Exhibit A creates the fairest transition for the most LPA's. Local Projects Division has discussed the transition with each city. The vast majority are generally in favor of the Federal Fund Purchase Program, but only if their programmed project is Federally funded.

Estimated Schedule

The schedule requirements of all projects shown in the Transition Plan are such that they should be completed near the end of FY 2014. However the level of spending authority and projects estimates over the next couple years could vary and may require Federal obligation beyond FY 2014 in order to avoid a repayment situation as described in (2) above. The program of projects will be closely monitored during the transition and adjustments will be made based on project delivery.

Conditions

The following conditions apply to the transition plan described above:

1. LPA's must prosecute the listed projects in a timely fashion. Failure to do so could result in the withdrawal of the project from this transition plan. LPA's with projects withdrawn will be required to complete the project with local funds or repay the federal funds that have been reimbursed. In the case of the former, Federal law with prescribed time limits shall apply.

Federal Fund Purchase Program
First Class City Transition Plan

2. Any substantial changes of scope requiring additional funds shall not delay the project substantially and must be approved by NDOR or locally funded by the LPA.
3. Based on current estimates, the transition should be complete by the end of FY 2014, but changes to project estimates (including supplemental engineering agreements and construction change orders) or funding levels may affect the schedule of this transition. For example:
 - a. If project costs go up or funding levels go down, the transition may extend into FY 2015.
 - b. If the opposite occurs, the transition may be completed earlier.
4. NDOR will purchase the balance of unused STP funds in the fiscal year the transition is completed and each subsequent year after according to the Federal Funds Purchase Program agreement. For example:
 - a. If the transition is completed in FY 2014 with \$1m of unused STP funds remaining, NDOR will purchase the \$1m of STP based on the discounted rate of \$0.80 per Federal dollar and distribute the \$800,000 among the First Class Cities with an executed FFPP agreement on or about March 1, 2015.
 - b. If funding levels decrease, project costs increase, or conditions beyond the control of the LPA cause a project to be delayed beyond FY 2014, the purchase pool for FY 2015 will be reduced by NDOR in order to accommodate obligated project expenses.

Summary

In summary the proposal for the First Class City Federal Fund Purchase Program Transition would be to fund the finite list of projects with projected schedule/cost estimates shown in the following pages to be substantially completed near the end of FY 2014.

Close communication with LPA's and NDOR officials will be required during this transition to allow for the timely development of State projects necessary for the Federal Funds Purchase Program.

Transition Projects for First Class Cities

STP Projects

Control Number	Project Number	Project Name
12693	STPAA-6759(2)	Columbia Ave., Seward
12839A	STPAA-6904(2)	13th St., Code Ave. - Hawthorne Ave., Crete
12938	URB-6217(3)	4th Corso In Nebraska City
13086	URB-6108(1)	Beatrice Citywide Resurfacing
13159	URB-6217(4)	4th Corso Viaduct, Nebraska City
13161	URB-6763(1)	Karol Kay Blvd, Bader - Hillcrest, Seward
21953	STPAA-5625(2)	Bell St., Fremont
22313	URB-6404(1)	4th Ave., 16th St.-Hillcrest, Plattsmouth
22439	URB-5610(5)	Military Ave., Broad - Bell, Fremont
22507	URB-6462(1)	Jackson St, 3rd - River Rd, Blair
TBD*	TBD	Blair Bypass - South Segment
31838	STPAA-6708(1)	10th St.-Main to Windom
31875	URB-6001(1)	25th St. from US-275 to Benjamin
31990	URB-6065(6)	3rd Ave-8th to S 5th
31991	URB-6709(2)	Windom Street from East 3rd St to East 7th St
32074	URB-5314(20)	E 17th Autumn Drive - Riverview
32081	URB-5305(10)	Dakota Ave. 29th - 37th
32184	URB-5314(3)	Riverview Dr., 17th to Foundry, S. Sioux City
32186	URB-5306(8)	W 29th St, US77 - Lake Ave, S. Sioux City
32187	URB-6067(1)	E 14th Ave, 23rd - 38th St, Columbus
32189	URB-6957(1)	Various Locations in Schuyler
40352A	URB-30-4(158)	US-30 Drainage Improvement, Grand Island
42292	STPAA-5516(7)	12th St., Elm Ave.-6th Ave., Hastings
42525	URB-7552(1)	E. Lochland Rd., US281-N 1st Ave., Hastings
42578	URB-5514(2)	9th St., Turner Ave.-2nd Ave., Hastings
42631	URB-5516(8)	Multiple Locations - Resurf, Hastings
42696	URB-6312(2)	19th Street, Blackburn - Delaware, York
42697	URB-6303(4)	Division Ave., Marquis - US-34, York
42704	URB-5505(4)	Baltimore Ave, 12th - 14th St, Hastings
42705	URB-5514(4)	9th St, Burlington - Elm Ave, Hastings
42706	URB-5409(2)	Various Locations in Grand Island
42707	URB-5436(5)	Capital Ave, Webb - Broadwell, Grand Island
51347	URB-6263(1)	South Potash Ave, Alliance
51449	URB-5701(8)	Broadway, 14th - 20th St, Scottsbluff
51450	URB-6255(3)	Emerson Avenue, 18th - 25th Street
51454	URB-5720(1)	27th St, Ave I - Hwy 26, Scottsbluff
51456	URB-6363(3)	10th St, Hickory - Osage, Sidney
51486	URB-6359(1)	Fort Sidney Rd, US30 - 11th Ave, Sidney
51488	URB-5703(2)	Ave 'I', Overland - 27th St, Scottsbluff
51489	URB-5701(9)	10th St, Crescent Dr - River Bridge, Gering
51490	URB-6254(7)	10th St, Box Butte - Flack, Alliance
61489	URB-6561(2)	Jackson St, Lexington
61537	URB-6558(1)	17th ST, Madison - Van Buren, Lexington
61552	URB-6850(1)	West 5th St, East 'A' - West 'I', Ogallala
61554	URB-6552(1)	6th St, Grant - Taft, Lexington
71135	URB-6154(1)	H' St, Norris Ave - Airport Rd, McCook
71145	URB-6602(2)	11th Ave, Morton - Logan, Holdrege
71151	URB-6158(1)	E 7th St, 'H' St - Country Club Dr, McCook
71152	URB-6606(2)	18th Ave, Baltimore-West Ave, Holdrege

* The first phase of the Blair Bypass was selected to receive \$2m of STP funds from the First Class Cities at the project selection meeting in March 2011 in addition to the \$940k of HUD earmark. The STP funds will be available for phases obligated through FY 2014. The City of Blair will be required to identify other funding sources for remaining phases beyond FY 2014. The project will be programmed once the Federal Aid route is created.

Transition Projects for First Class Cities

BR Projects

Control Number	Project Number	Project Name
12886	BRO-7076(22)	13th St./Blue River Bridge, Crete

RRZ/TMT/STP Projects

Control Number	Project Number	Project Name
22177	STPN-TMT-5616(1)	23rd St. Viaduct, Fremont
31924	RRZ-TMT-6065(5)	UPRR/3rd Ave., Columbus
31925	RRZ-TMT-6061(8)	UPRR/12th & 18th Ave., Columbus
31926	RRZ-TMT-6057(2)	UPRR/23rd & 25th Ave., Columbus
61457	URB-1705(3)	Lexington East Viaduct

Safety Projects

Control Number	Project Number	Project Name
22503	HSIP-27(62)	1st St, Luther Rd - Johnson Rd, Fremont
32081A	HSIP-5055(11)	Dakota Ave. 37th - I-129

STP Relinquishment Projects

Control Number	Project Number	Project Name
13034	NH-77-1(130)	N-112 - Beatrice (Relinquishment)
31941A	NH-81-3(139)	Norfolk South (State Project)

ANNUAL CERTIFICATION FORM

....., hereinafter "Local Public Agency" or "LPA"

Period of Time Covered by Certification

First Year --- Date of Receipt of First Cash Payment to Date of this Certification
Subsequent Years---Date of Last Certification to Date of this Certification

This certification is given by LPA pursuant to the requirements of the second paragraph of Neb. Rev. Stat. § 39-1307 (as this section was amended by Section 1 of LB98, 2011 Legislative Session), and as required by Section 5 of the Federal-Aid Transportation Fund Purchase-Sale Agreement (the Agreement) between the State of Nebraska Department of Roads (State) and LPA.

LPA has received cash payment funds from the State according to the terms of the Agreement. LPA agreed in Section 5 of the Agreement to restrict LPA's use of the cash payment funds to certain specified uses. (See the language of Section 5 set out below). Section 6 of the Agreement requires LPA to make this certification annually.

The undersigned hereby certifies that he or she:

- (1) Has been properly authorized by LPA's governing body to make this certification on behalf of the LPA.
- (2) Has sufficient information to accurately, fully and fairly make this certification.
- (3) Is familiar with the terms of the Agreement between the LPA and the State, including particularly, the limitations on LPA's use of the cash payment funds set out in Section 5 of the Agreement.
- (4) Is familiar with LPA's accounting systems and bank and investment accounts and knows (a) where the cash payment funds have been deposited or invested and (b) how the cash payment funds have been managed and accounted for within LPA's financial records.
- (5) Is familiar with the details of all projects or activities of LPA for which funds in the cash payment account have been used by LPA.
- (6) Believes, that to the best of his or her knowledge and belief, (1) LPA's use of the cash payment funds fully and fairly complies with the requirements of Section 5 of the Agreement, and (2) LPA has segregated the cash payment it received from the State and has separately accounted for any STP and HBP portions of the cash payment within its accounting system.

Date

Signature

Printed name

Title

SECTION 5. Limitations on LPA's Use of Cash Payment.

The portion of the cash payment received by LPA from the State for the purchase of STP funds shall be used solely for the cost of construction, reconstruction, maintenance, or repair of public highways, streets, roads, or bridges and facilities, appurtenances, and roadway structures deemed necessary in connection therewith. The portion of the cash payment received by LPA from the State for the purchase of HBP funds shall be used solely for the construction, reconstruction, improvement, repair or maintenance of LPA public road bridges. The LPA's use of the cash payment for "maintenance," under the prior two sentences, shall be limited to maintenance projects that preserve, restore or correct major roadway or bridge conditions and the cash payment will not be used for LPA's routine maintenance activities.

The phrase "facilities, appurtenances, and roadway structures deemed necessary in connection therewith," as used in the first sentence of this section, includes medians; accessory lanes; steps; handrails; sidewalks, adjoining trails, paths and related structures; drainage facilities such as storm sewers, curb or grate inlets, culverts, ditches, and other drainage structures; guardrails; lighting facilities; driveways; retaining walls and other similar facilities that are necessary or desirable and directly related to the proper design of streets, roads and highways.

LPA shall segregate the cash payment and shall separately account for the STP and HBP portions of any cash payment received from the State within its accounting system. The LPA may accumulate and invest the STP or HBP portions of the cash payment it receives so long as the earnings from such investments are used for the applicable purposes provided in this section. The cash payment funds may be used for any phase of an allowable project. The phases of an allowable project include, but are not limited to: 1) preliminary engineering, 2) right-of-way acquisition, 3) utility relocations, 4) construction, and 5) construction engineering.

All roads and bridges shall be designed and constructed to meet the minimum standards of the Nebraska Board of Public Roads Classifications and Standards.

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RESOLUTION NO. 2011-61

WHEREAS, the City of Wayne desires to amend Resolution No. 2011-6, a standard wage and salary schedule which was effective January 1, 2011;

NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of Wayne, Nebraska, that the City of Wayne Wage & Salary Schedule shall be as follows:

CITY OF WAYNE
NON-EXEMPT WAGE AND EXEMPT SALARY SCHEDULES
Effective August 2, 2011

NON-EXEMPT WAGE SCHEDULE

<u>LABOR GRADE</u>	<u>HOURLY RATE RANGE</u>	<u>JOB CLASSIFICATION(S)</u>
5	7.25 - 9.51	Community Activity Center/Recreation Program Aide Part-Time General Help Laborer -- PW / PU Library Aide Senior Center Activities Assistant
6	7.61 - 9.98	Clerk/Secretary Life Guard
7	8.04 - 10.56	Assistant Librarian I Custodian Recreation-Leisure Services Asst-I Senior Center Operations Assistant
8	8.45 - 11.09	Transfer Station Operator
9	8.88 - 11.65	Account Clerk-I Assistant Librarian II
10	9.32 - 12.23	
11	9.80 - 12.86	Accountant Apprentice Light Plant Oper. Handi-Van Driver Line Groundsman
12	10.28 - 13.49	Building Inspector/Planner-I Librarian I
13	10.80 - 14.17	Chief Custodian

			Executive Secretary
14	11.32	- 14.86	Heavy Equipment Operator-I Light Plant Operator-I Public Works Operations Tech.-I Water/Sewer Operator-I
15	11.91	- 15.63	Apprentice Lineman Mechanic I Staff Assistant
16	12.49	- 16.40	Account Clerk-II Accountant/Asst. Treasurer Administrative Assistant Building Manager/Custodian Heavy Equipment Operator-II Water/Wastewater Operator-II Community Activity Center Director Recreation-Leisure Services Director
17	13.15	- 17.26	Light Plant Operator-II Lineman-I Public Works Operations Tech.-II
18	13.76	- 18.05	
19	14.45	- 18.97	Assistant Street Foreman Class A Licensed Electrician Mechanic II
20	15.13	- 19.85	Certified Street Superintendent Street Foreman
21	15.93	- 20.90	Power Plant Foreman Water/Wastewater Operator III
22	16.69	- 21.90	Building Inspector/Planner II Lineman-II Technology Support Specialist
23	17.52	- 23.00	Water/Wastewater Foreman Chief of Electric Production
24	18.91	- 24.81	
25	20.40	- 26.77	Line Foreman/Asst. Supt.
26	21.21	- 27.83	

EXEMPT SALARY SCHEDULE

<u>JOB CLASSIFICATION</u>	<u>Hourly</u>	<u>MONTHLY SALARY RANGE</u>	<u>Hourly</u>
Recreation-Leisure Services Director	\$12.48	\$2,163 - \$3,287	(\$18.96)
Sr. Citizens Center Coordinator	\$12.48	\$2,162 - \$3,287	(\$18.96)
Library Director	\$12.48	\$2,163 - \$3,838	(\$22.14)
Police Lieutenant	\$13.98	\$2,736 - \$4,483	(\$24.34)
City Clerk	\$14.86	\$2,576 - \$4,658	(\$26.87)
Finance Director	\$14.86	\$2,576 - \$4,684	(\$27.03)
Electric Superintendent- Production	\$17.83	\$3,091 - \$4,688	(\$27.05)
Police Chief	\$16.78	\$3,091 - \$5,553	(\$30.15)
Supt. of Public Works & Utilities	\$18.72	\$3,245 - \$5,921	(\$34.16)
City Administrator		\$7,545	(\$43.53)

BE IT FURTHER RESOLVED that upon satisfactory evaluation, the normal progression between the labor grade steps shall be at least twelve (12) months, unless otherwise deemed warranted and appropriate by the City Administrator.

BE IT FURTHER RESOLVED that employees who are serving in a probationary period and/or receiving wage rates less than rates scheduled herein above shall have their wage rates adjusted only upon satisfactory evaluation at their next normal evaluation time.

PASSED AND APPROVED this 2nd day of August, 2011.

THE CITY OF WAYNE, NEBRASKA

By _____
Mayor

ATTEST:

City Clerk

RESOLUTION NO. 2011-62

A RESOLUTION APPROVING LETTER AGREEMENT FOR PROFESSIONAL SERVICES BETWEEN THE CITY OF WAYNE AND OLSSON ASSOCIATES FOR THE RICE NESHAP COMPLIANCE PROJECT.

WHEREAS, the Wayne City Council is desirous of entering into an Agreement with Olsson Associates for professional services regarding the “City of Wayne RICE NESHAP Compliance Project”; and

WHEREAS, a proposal has been requested and received from Olsson Associates for said services in an amount not to exceed \$15,000.00; and

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

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

PASSED AND APPROVED this 2nd day of August, 2011.

THE CITY OF WAYNE, NEBRASKA,

By _____
Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM AND CONTENT:

City Attorney



LETTER AGREEMENT FOR
PROFESSIONAL SERVICES

July 28, 2011

Mr. Gene Hansen
Superintendent of Electric Production
306 Pearl Street
Wayne, Nebraska 68787

Re: **AGREEMENT FOR PROFESSIONAL SERVICES**
RICE NESHAP Compliance, "Project"
Wayne, Nebraska

Dear Gene:

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

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

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

SCHEDULE FOR OLSSON'S SERVICES

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

Anticipated Start Date: August 8, 2011 Anticipated Completion Date: May 1, 2013

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

COMPENSATION

4. Client shall pay to Olsson for the performance of the Basic Services the actual time of personnel performing such Services on the basis of Salary Costs times a factor of 2.5 for services rendered by our employees engaged directly on the Project plus Reimbursable Expenses, unless otherwise agreed to by both parties. Reimbursable expenses will be invoiced in accordance with the Schedule contained in the General Provisions attached to this Letter Agreement. Olsson's Basic Services will be provided on a time and expense basis not to exceed \$15,000.00. Olsson shall submit invoices on a monthly basis, are due upon presentation and shall be considered past due if not paid within 30 calendar days of the due date.

TERMS AND CONDITIONS OF SERVICE

5. We have discussed with you the risks, rewards and benefits of the Project and our fees for services and the Agreement represents the entire understanding between Client and Olsson with respect to the Project. The Agreement may only be modified in writing signed by both parties.
6. If this proposal satisfactorily sets forth your understanding of our agreement, please sign in the space provided below (indicating Client's designated Project representative if different from the party signing). Retain a copy for your files and return an executed original to Olsson. This proposal will be open for acceptance for a period of 90 days from the date set forth above, unless changed by us in writing.

7. By signing below, you acknowledge that you have full authority to bind Client to the terms of the Agreement.

OLSSON ASSOCIATES

By *Ken Fairhill*

By _____

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

City of Wayne, "Client"

By _____

Title _____

Dated: _____

If different from above,

Client's Designated Project Representative

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GENERAL PROVISIONS

These General Provisions are attached to and made a part of a LETTER AGREEMENT, dated July 28, 2011 between City of Wayne ("Client") and Olsson Associates ("Olsson") for professional services in connection with RICE NESHAP Compliance, Wayne, Nebraska (hereinafter called the "Project").

SECTION 1—OLSSON'S BASIC SERVICES

See Exhibit "A", attached.

SECTION 2—ADDITIONAL SERVICES OF OLSSON

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

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

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

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

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

2.2.4 Providing renderings or models.

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

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

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

2.2.8 If Olsson's compensation for Basic Services is not on the basis of Direct Labor or Salary Costs, Additional Services shall include services necessary due to the Client's award of more than one prime contract for the Project, services necessary due to the construction contract containing cost plus or incentive-savings provisions, services necessary in order to arrange for performance by persons other than the prime

contractor and those services necessary to administer Client's contract(s).

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

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

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

2.2.12 Services to redesign some or all of the Project.

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

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

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

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

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

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

SECTION 3—CLIENT'S RESPONSIBILITIES

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

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

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

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

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

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

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

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

3.4.4 Provide engineering surveys to establish reference points for construction.

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

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

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

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

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

SECTION 4—MEANING OF TERMS

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

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

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

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

<u>Classification</u>	<u>Costs</u>
Automobiles	\$0.55.5/mile*
Suburbans and Pick-Ups	\$0.68/mile*
Duplication	
In-house	Actual Cost
Outside	Actual Cost+10%

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

* IRS Standard Mileage Rate (Subject to Change)

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

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

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

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

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

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

SECTION 5—TERMINATION

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

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

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

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

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

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

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

SECTION 6—DISPUTE RESOLUTION

6.1. Mediation

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

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

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

SECTION 7—MISCELLANEOUS

7.1 Reuse of Documents

All documents, including Drawings and Specifications prepared or furnished by Olsson (and Olsson's independent professional associates and consultants) pursuant to this Agreement, are instruments of service in respect of the Project and Olsson shall retain an ownership and property interest therein whether or not the Project is completed. Client may make and retain copies for information and reference in connection with the use and occupancy of the Project by Client and others; however, such documents are not intended or represented to be suitable for reuse by Client or others on extensions of the Project or on any other project. Any reuse without written verification or adaptation by Olsson for the specific purpose intended will be at Client's sole risk and without liability or legal exposure to Olsson, or to Olsson's independent professional associates or consultants, and Client shall indemnify and hold harmless Olsson and Olsson's independent professional associates and consultants from all claims, damages, losses and expenses including attorneys' fees arising out of or resulting therefrom. Any such verification or adaptation will entitle Olsson to further compensation at rates to be agreed upon by Client and Olsson.

7.2 Electronic Files

By accepting and utilizing any electronic file of any drawing, report or data transmitted by Olsson, the Client agrees for itself, its successors, assigns, insurers and all those claiming under or through it, that by using any of the information contained in the attached electronic file, all users agree to be bound by the following terms. All of the information contained in any electronic file is the work product and instrument of service of Olsson, who shall be deemed the author, and shall retain all common law, statutory law and other rights, including copyrights, unless the same have previously been transferred in writing to the Client. The information contained in any electronic file is provided for the convenience to the Client and is provided in "as is" condition. The Client is aware that differences may exist between the electronic files transferred and the printed hard-copy original signed and stamped drawings or reports. In the event of a conflict between the signed original documents prepared by Olsson and the electronic files, which may be transferred, the signed and sealed original documents shall govern. Olsson specifically disclaims all warranties, expressed or implied, including without limitation, and any warranty of merchantability or fitness for a particular purpose with respect to any electronic

files. It shall be Client's responsibility to confirm the accuracy of the information contained in the electronic file and that it accurately reflects the information needed by the Client. Client shall not retransmit any electronic files, or any portion thereof, without including this disclaimer as part of any such transmissions. In addition, Client agrees, to the fullest extent permitted by law, to indemnify and hold harmless Olsson, its officers, directors, employees and sub consultants against any and all damages, liabilities, claims or costs, including reasonable attorney's and expert witness fees and defense costs, arising from any changes made by anyone other than Olsson or from any reuse of the electronic files without the prior written consent of Olsson.

7.3 Opinions of Cost

Since Olsson has no control over the cost of labor, materials, equipment or services furnished by others, or over the Contractor(s)' methods of determining prices, or over competitive bidding or market conditions, Olsson's opinions of probable Total Project Costs and Construction Cost provided for herein are to be made on the basis of Olsson's experience and qualifications and represent Olsson's best judgment as an experienced and qualified professional engineer, familiar with the construction industry; but Olsson cannot and does not guarantee that proposals, bids or actual Total Project or Construction Costs will not vary from opinions of probable cost prepared by Olsson. If prior to the Bidding or Negotiating Phase Client wishes greater assurance as to Total Project or Construction Costs, Client shall employ an independent cost estimator as provided in paragraph 3.4.3. Olsson's services to modify the Contract Documents to bring the Construction Cost within any limitation established by Client will be considered Additional Services and paid for as such by Client.

7.4 Controlling Law and Venue

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

7.5 Subconsultants

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

7.6 Assignment

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

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

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

7.7 Indemnity

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

7.8 Limitation on Damages

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

7.8.2 Notwithstanding any other provision of this Agreement, Client agrees that, to the fullest extent permitted by law, Olsson's total liability to the Client for any and all injuries, claims, losses, expenses, damages, or claims expenses of any kind arising from any services provided by or through Olsson under this Agreement, shall not exceed \$500,000.00. Client acknowledges that such causes include,

but are not limited to, Olsson's negligence, errors, omissions, strict liability, breach of contract or breach of warranty.

7.9 Entire Agreement

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

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EXHIBIT "A" to GENERAL PROVISIONS ATTACHED TO
LETTER AGREEMENT FOR PROFESSIONAL SERVICES
BETWEEN CLIENT AND OLSSON, DATED July 28, 2011

DESCRIPTION OF BASIC PROFESSIONAL SERVICES AND RELATED MATTERS

This is an exhibit attached to and made a part of the General Provisions attached to the Proposed Letter Agreement for Professional Services dated July 28, 2011 between City of Wayne ("Client") and Olsson Associates ("Olsson") providing for professional services. The Basic Services of Olsson are as indicated below.

GENERAL

Olsson shall perform for Client professional services in all phases of the Project to which this Agreement applies as hereinafter provided. These services will include serving as Client's professional representative for the Project, providing professional consultation and advice and furnishing customary services incidental thereto.

1.0 PROJECT INITIATION/ADMINISTRATION

- 1.1 A project initiation meeting will be conducted with all parties involved to refine project scope, review the project site, identify specific goals, determine any survey requirements, establish schedule for completion, and establish channels of communication.
- 1.2 Coordinate with Client's representative for the project.
- 1.3 Provide general administrative services to manage and support the design of the RICE NESHAP Compliance project.
- 1.4 Prepare a Preliminary Design Memorandum (PDM) to analyze the project options and recommend a direction and project content.

2.0 DESIGN SERVICES

- 2.1 To be determined after Client acceptance of PDM.

3.0 CONSTRUCTION PHASE SERVICES

- 3.1 To be determined.

APPLICATION FOR PAYMENT NO. 12

To: City of Wayne, Nebraska
From: Eriksen Construction Company, Inc.
Contract For: 2009 - 2010 Wastewater Treatment Facility Improvements, Phase I
ENGINEER's Project No. 090621 (617S7)
For Work accomplished through the date of: 7/25/2011

1. Original Contract Price:	<u>\$ 5,098,770.00</u>
2. Net change by Change Orders and Written Amendments (+ or -) (#1 - #2):	<u>\$ 8,037.46</u>
3. Current Contract Price (1 plus 2):	<u>\$ 5,106,807.46</u>
4. Total completed and stored to date:	<u>\$ 4,535,634.98</u>
5. Percent of Project Completed	<u>89%</u>
6. Retainage (per agreement):	
<u>10%</u> of completed Work and Stored Materials:	<u>\$ 254,938.50</u>
(10% of the first 50% of work completed & stored)	
Total Retainage:	<u>\$ 254,938.50</u>
7. Total completed and stored to date less retainage (4 minus 6):	<u>\$ 4,280,696.48</u>
8. Less previous Application for Payments:	<u>\$ 3,703,187.04</u>
9. DUE THIS APPLICATION (7 MINUS 8):	<u>\$ 577,509.44</u>

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 10 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: _____ ERIKSEN CONSTRUCTION COMPANY, INC.

By: _____

Payment of the above AMOUNT DUE THIS APPLICATION is recommended.

Dated: _____ JEO CONSULTING GROUP, INC.

By: _____

APPLICATION APPROVED BY:

By: _____

Title: _____

Date: _____

ATTEST:

By: _____

Title: _____

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

Application Number: 12
Application Date: 07/25/11
Period From: 06/24/11
Period To: 07/25/11
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	E Work Completed			G Total Completed and Stored to Date D+E+F	H % G/C	I C-G	Retainage 10% (On first 50%)
			D	This Application					
			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	50,724.00	0.00	0.00	50724.00	100%	0.00	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	72,500.00	0.00	0.00	72500.00	90%	7626.00	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	287,240.00	6,760.00	0.00	294000.00	100%	0.00	0.00
18	Rebar	196,100.00	195,050.00	1,050.00	0.00	196100.00	100%	0.00	0.00
19	Hollow Core	2,500.00	2,500.00	0.00	0.00	2500.00	100%	0.00	0.00
20	Masonry	151,450.00	142,478.50	8,971.50	0.00	151450.00	100%	0.00	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	7,000.00	0.00	0.00	7000.00	33%	14000.00	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	194,400.00	26,000.00	0.00	220400.00	88%	29600.00	0.00
25	Carpentry	28,500.00	21,375.00	0.00	0.00	21375.00	75%	7125.00	0.00
26	Trusses	10,500.00	10,500.00	0.00	0.00	10500.00	100%	0.00	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	1,500.00	4,500.00	0.00	6000.00	75%	2000.00	0.00
31	Doors & Hardware	7,800.00	3,125.00	4,000.00	0.00	7125.00	91%	675.00	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	850.00	0.00	0.00	850.00	85%	150.00	0.00
34	Painting	45,000.00	4,500.00	0.00	0.00	4500.00	10%	40500.00	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	21,664.79	0.00	177085.21	198750.00	99%	1250.00	0.00
37	Submersible Lift Station Pumps	33,000.00	31,000.00	2,000.00	0.00	33000.00	100%	0.00	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	136,040.00	0.00	0.00	136040.00	82%	28960.00	0.00
40	Vertical Fine Screen	98,000.00	98,000.00	0.00	0.00	98000.00	100%	0.00	0.00
41	Intially Fed Drum Screen & Comp	142,500.00	63,135.00	0.00	79029.00	142164.00	100%	336.00	0.00
42	Gates	14,000.00	14,000.00	0.00	0.00	14000.00	100%	0.00	0.00
43	Aquarius MSABP	1,326,600.00	1,233,161.00	46,750.00	0.00	1279911.00	96%	46689.00	0.00
44	Possitive Displacement Blower	64,050.00	62,775.00	0.00	0.00	62775.00	98%	1275.00	0.00
45	Casework/Counter Top	11,865.00	11,865.00	0.00	0.00	11865.00	100%	0.00	0.00

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

Application Number: 12
Application Date: 07/25/11
Period From: 06/24/11
Period To: 07/25/11
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					
									E This Application	
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	113,208.00	0.00	0.00	113208.00	96%	4392.00	0.00	
48	Yard Piping	238,975.00	213,106.73	23,500.00	0.00	236606.73	99%	2368.27	0.00	
49	Manholes	174,900.00	171,905.27	2,994.73	0.00	174900.00	100%	0.00	0.00	
50	Process Piping	98,322.00	79,240.25	8,000.00	0.00	87240.25	89%	11081.75	0.00	
51	Mechanical	86,000.00	72,000.00	0.00	0.00	72000.00	84%	14000.00	0.00	
52	Electrical	613,900.00	246,000.00	189,869.00	0.00	435869.00	71%	178031.00	0.00	
53		0.00	0.00	0.00	0.00	0.00	0%	0.00	0.00	
		5,098,770.00	3948625.54	324,395.23	256114.21	4529134.98	89%	569635.02	254938.50	
CHANGE ORDERS										
CO1	Change Order No. 1	3,810.83	3,000.00	0.00	0.00	3000.00	79%	810.83	0.00	
CO2	Change Order No. 2	4,226.63	3,500.00	0.00	0.00	3500.00	83%	726.63	0.00	
CO3	Change Order No. 3	0.00	-	0.00	0.00	0.00		0.00	0.00	
		5,106,807.46	3955125.54	324395.23	256114.21	4535634.98	89%	571172.48	254938.50	

WAYNE MUNICIPAL AIRPORT AUTHORITY

June 13, 2011

7:00 P.M.

The regular meeting of the Airport Authority of the City of Wayne was called to order at the Wayne Municipal Airport's Pilots Lounge on the above date and time by Chairman Mitchell Nissen. The following members were present: David Ley, Jerome Conradt, Carl Rump and Mitchell Nissen. Also, attending the meeting were Dawn Navrkal, Nancy Braden Treasurer and Clay Bode Airport Manager.

Ley moved and Conradt 2nd to accept the minutes of May 9, 2011. Roll was called with the following results: Yeas: Nissen, Conradt, Rump and Ley. Nays: None. The Chairman declared the motion carried.

Conradt moved and Ley 2nd that we approve the claims as amended of June 13, 2011. Roll was called with the following results: Yeas: Nissen, Conradt, Rump and Ley. Nays: None. The chairman declared the motion carried.

Ley moved and Conradt 2nd that we enter into a Managers contract and Fixed Base Operators lease with a 5% increase with Becker Flying Service. Roll was called with the following results: Yeas: Nissen, Conradt, Rump and Ley. Nays: None. The chairman declared the motion carried.

Other matters requiring the attention of the Authority were discussed and it was determined that no further formal action was needed.

There being no further business Rump moved and Conradt 2nd that the meeting be adjourned. All voting in the affirmative the meeting was adjourned.

David R. Ley
Secretary

**Wayne Planning Commission Meeting Minutes
Monday, June 6, 2011**

Vice-Chair Lee Brogie called the regular meeting of the Wayne Planning Commission to order at 7:00 P.M., on Monday, June 6, 2011, in the Council Chambers of the Municipal Building. Roll call was taken with the following members present: Jill Sweetland, Derek Hill, Jessie Piper, Jeff Carstens, Vice-Chair Lee Brogie, and Inspector/Planner Joel Hansen. Absent: Kelby Herman, Mark Sorensen, Bill Kranz, and Pat Melena

Motion was made by Commissioner Sweetland and seconded by Commissioner Hill to approve the minutes as presented for January 3, 2011. Vice-Chair Brogie stated the motion and second. All were in favor; motion carried unanimously.

Motion was made by Commissioner Carstens and seconded by Commissioner Sweetland to approve the minutes as presented for March 7, 2011. Vice-Chair Brogie stated the motion and second. All were in favor; motion carried unanimously.

Vice-Chair Brogie read the Open Meetings Act and advised that anyone desiring to speak should limit themselves to three minutes and wait until being recognized by the Chair.

Vice-Chair Brogie declared the next item on the agenda is the discussion of the proposed amended language for Section 90-836 Expiration of Exception Use Permits.

Inspector Hansen informed the Commission that this agenda item steams from the January meeting, with the discussion of the use by exception permit for Dr. Robert Burrows. This is an item that has come before the Planning Commission back in 2007, which is a considerable amount of time. Inspector Hansen opined that he wanted this discussion to take place tonight rather than in July, due to the possibility of public hearings slated for that meeting. Currently Use by Exception permits once granted by Council is good for one year. Construction must begin within one year from date of approval by Council, if not the applicant can ask for a one year extension. Part of the process, the Zoning Steering Committee is trying to find ways to make things a little more user friendly for folks who wish to develop here in town. Trying to eliminate some hurdles so that they do not have to come before Council and ask for an extension. But the Committee realizes that there is concern that if someone gets a use by exception permit and the property next door would sell at some point, whoever would buy the property may not be aware that there was that pending Use by Exception permit. So the Commission needs to consider not letting them sit out there indefinitely with no action. Staff is proposing to change the one year extension to three years and then get rid of the requirement for the applicant to come and seek an extension

and just make it straight three years with no extension. Staff wanted to bring this forward to the Commission for discussion and see what their thoughts are.

Commissioner Hill questioned how many out of ten come back and ask for an extension.

Inspector Hansen stated that in the two plus years he has had this position, only the one from Dr. Burrows came back and asked for an extension. This was the only one in the prior three years. It is something that is not done all that often but the wind turbines were a use by exception last fall. This is part of what is bringing this up for discussion. There is more interest in having alternative energy and some of these are strictly use by exception. There may be more of these coming in the future. The wind tower will be a good example as they got their use back in November of 2010, so the clock is on them, unless the Commission does something, then next fall they will need to come back and ask for an extension.

Commissioner Hill questioned if most people who get a use by exception do something within the first year, which is why they are there in the first place.

Inspector Hansen stated that is what they are finding, like the one for Dr. Burrows, part of that was timing with the economy of course, but staff is also finding, such as the hotel here in town and the wind energy project, is the financing. The climate has changed and anymore the investors trying to get loans and grants, the deadlines for such, string things along to the point it is almost impossible. You don't really want to come spend \$400 to go through the process and ask for a use by exception before you have some of that financing in place; but in some instances, some people will not finance because the use is not allowed and they will make them get the use before the financing process can begin. That is kind of what is dragging things out due to the economic climate change in financing, which could make a year almost impossible for some of these things.

Commissioner Sweetland opined that in most instances, if someone comes before them requesting an extension, it would be granted because the Commission was in favor of it in the first place. So it would kind of a nuisance for the Planning Commission to go back and grant an extension. Commissioner Sweetland was curious as to why three years and not two. Commissioner Sweetland stated she did not have an opinion on the time, but was curious as to the time suggested.

Inspector Hansen stated it was a number chosen by Administrator Johnson. It was just a time thrown out there for the Commission to begin discussing.

Commissioner Carstens questioned what the rationale was for the one year time limit.

Inspector Hansen opined that it was for the property next door or two or three houses down, sold, say for instance the dentist office. The house next door or two or three houses down, would sell within the year and the people that were coming for whatever reason the lenders or real estate agents whoever, did not mention to them that a dentist office is being planned for down the street. So the house is bought, they move in and all of a sudden the houses are coming down and there is all this construction. They looked in the zoning and it is all residential, what is happening, why is a dentist office going up? This may be the reason for the one year.

Commissioner Carstens opined because of the short time frame people would remember it.

Commissioner Sweetland opined that it could still happen within that year.

Inspector Hansen opined that is not typically a question you would ask the real estate agent if anything was planned in the area.

Commissioner Sweetland further opined, especially if you were new to town you would not know those things.

Commissioner Hill questioned what would be more of a tracking issue to keep track of these over a three year time frame. Would it be harder or easier?

Inspector Hansen stated that with the city's calendar set up on Microsoft office, it is not an issue anymore to set that system up three years out and when it is due, it pops up on the calendar and says this timeline is up. You can even set it up for warning four months ahead of time so that you can remind the applicant.

Commissioner Carstens questioned what the disadvantages are to having the extra time frame; the conditions could deteriorate, not moving forward or be canceled on the request. Are there some significant disadvantages to a longer time period?

Inspector Hansen opined that the only downside he could think of would be that it is not in the people's mind that this action took place and someone may remember right away but two or three years later, you may not think of it right away. You are looking for a protection stand-point from neighbors.

Commissioner Sweetland opined that she feels a year goes by awful quickly, especially, when you are trying to get the exception first before they get all the financing in place. She was not for sure if three years was the answer, but increasing it is definitely a good idea.

Commissioner Carstens opined that he was in agreement with Commissioner Sweetland.

Commissioner Sweetland questioned if there was a cost associated with an applicant obtaining an extension.

Inspector Hansen stated that the cost is \$400; one hearing before the Planning Commission (cost \$200) and one hearing before the City Council (cost \$200). This cost is associated with advertising the public hearing and sending out notices to property owners within 300 feet of the subject area; these costs are calculated into that fee, including staff time. Staff will now include a legal description rather than just an address, so that the Council resolution can be filed with the deed at the courthouse allowing it to be easier to track. There will now be a little cost associated with it to be filed at the courthouse.

Vice-Chair Brogie opined that you also want those coming for the hearing to be serious about the request, so \$400 is a serious request. As far as keeping it in people's minds, is there anyway of putting up signage that could stay on the lot until construction began; a sign saying that this property has been approved for a use by exception and then to just contact city hall for more information; does not need to be very big.

Inspector Hansen opined that Section 90-836 Expiration, you could add a section that references, after approval the use must remain posted on the property somewhere a sign with the permit attached until construction commences. It could just be a small posting on the door. Everything is pretty much complaint based, so if someone saw something we would know.

Vice-Chair Brogie questioned how difficult it would be if someone called to see what the use by exception permits had been or are still viable. This may be something the City may want to let the realtors know.

Inspector Hansen opined that we should have something on file and if not city staff can prepare a spreadsheet of the use by exception permits.

Vice-Chair Brogie questioned if a motion was necessary by the Commission.

Inspector Hansen opined that he is just looking for some direction from the Commission, as to what they are going to feel comfortable with, so that this item may be placed on the July agenda as a public hearing.

Inspector Hansen informed the Commission that he had spoken with Commissioner Sorensen regarding the discussion item and Commissioner Sorensen opined that he liked the idea of a little longer time frame, but would be willing to go with the majority of the Commission.

Commissioner Hill questioned if there was time limit on the number of extensions an applicant may have.

Inspector Hansen opined that he understood the code to read that only one extension may be applied for.

Consensus of the Commission was to direct staff to bring draft language to the Commission at the next regular meeting in the form of a public hearing.

There being no further discussion, motion was made by Commissioner Sweetland and seconded by Commissioner Carstens to adjourn. Vice-Chair Brogie stated the motion and second. All were in favor; motion carried unanimously. Meeting was adjourned at 7:20 P.M.

Next meeting date is July 11, 2011