(Amended: 5/14/18)

AGENDA
CITY COUNCIL MEETING
May 15, 2018

1. Call the Meeting to Order

2. Pledge of Allegiance

   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 Council Chambers.

   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. Presentation of plaque to Ken Chamberlain for his years of service to the Wayne Community as Councilmember and Mayor

4. ~~**Presentation by Wayne Elementary School students for a public "Thank You" to the Wayne Police Department**~~

5. **Proclamation — Police Memorial Day – May 15th**

6. **Proclamation — Public Works' Week – May 20th – 26th**

7. **Approval of Minutes – May 1, 2018**

8. **Approval of Claims**

9. Update on housing grant received and action on the $200,000 commitment to the project — Luke Virgil, Executive Director of Wayne Area Economic Development and Megan Weaver, Director of Wayne Community Housing Corporation

   Background: This will update the Council on the grant WCHDC received for housing (LB 518), and confirm the cash commitment from the City. Luke and/or Megan will discuss the amount of the fund and how it will be divided proportionately between Wayne and Wakefield, based on the contribution level of each.

10. Appointment – Phil Monahan as Fire Chief

11. **Ordinance 2018-9: Amending Wayne Municipal Code Title VII Traffic Code, Section 78-96 Location Reserved for Handicapped Parking (additional handicapped parking stall by the Presbyterian Church) (Third and final Reading)**

12. **Ordinance 2018-10: Amending Wayne Municipal Code Title IX General Regulations, Chapter 91 Streets, Sidewalks and other Public Places, Sec. 91.030 Construction by Owner (Third and final Reading)**

13. **Ordinance 2018-11: Amending Wayne Municipal Code Title IX General Regulations, Chapter 91 Streets, Sidewalks and other Public Places, Sec. 91.052 Driveway Permits (Third and final Reading)**

14. **Ordinance 2018-12: Amending Wayne Municipal Code Title IX General Regulations, Chapter 91 Streets, Sidewalks and other Public Places, Sec. 91.076 Permit Required (Third and final Reading)**

15. **Ordinance 2018-13: Amending Wayne Municipal Code Title IX General Regulations, Chapter 91 Streets, Sidewalks and other Public Places, Sec. 91.078 Digging in Street (Third and final Reading)**

16. **Ordinance 2018-14: Amending Wayne Municipal Code Title IX General Regulations, Chapter 91 Streets, Sidewalks and other Public Places, Sec. 91.080 Surety Bond (Second Reading) (waive the third and final reading)**

17. **Resolution 2018-26: Authorizing the sale of the East 19.97 feet of the North 25 feet of Lot 11, Southview II Addition to the City of Wayne, Wayne County, Nebraska, to Brendon L. Pick**

    Background: The City traded property with the property owner to square up a lot at the intersection of Sherman Street and Grainland Road. The property owner gave the City property for a future (Chicago) street. This action was done correctly on the plat, but needs to be perfected through this process to give clean title to the property owner.

18. **Ordinance 2018-16: Directing the sale of the East 19.97 feet of the North 25 feet of Lot 11, Southview II Addition to the City of Wayne, Wayne County, Nebraska, to Brendon L. Pick (waive the required three readings)**

19. **Resolution 2018-27: Approving Interlocal Agreement to Share Law Enforcement Services between the City of Wayne and the Board of Trustees of the Nebraska State Colleges, d/b/a Wayne State College**

    Background: This is an annual renewal of the City's interlocal agreement with Wayne State College (WSC) to provide a certified officer part-time on campus. The monetary amount has stayed the same at $30,000; however, the hours have been reduced from 22 to 18.

20. **Resolution 2018-28: Approving Interlocal Cooperation Agreement and Special Operation and Maintenance Agreement between the City of Wayne and the Lower Elkhorn Natural Resource District ($30,000 in funds for the "Versacourt Play Area Project)**

    Background: The Lower Elkhorn Natural Resource District has notified us that our application for funding has been approved, and will be included in their 2019 budget. Their funding is limited to 50% of the eligible components of our project, not to exceed $30,000. This is to update the basketball area at the old pool location. This

project must be completed and a request for payment forwarded to their office by 6/15/19.

21. **Resolution 2018-29: Accepting bid and awarding contract on the purchase of a 4x4 Cab and Chassis Truck with Dump Box**

    Background: Five bids were received on May 9th. After reviewing the bids received, staff is recommending that the contract be awarded to the low bidder, Freightliner Truck Center of Norfolk for $107,010.00. In addition, Joel Hansen will be asking you to consider adding on an additional $1,200 to enclose the valves to keep them free of mud, dirt, etc., and we are deducting $435 from the bid which is for a light bar, bringing the total $107,775.

22. **Resolution 2018-30: Accepting bid and awarding contract on the purchase of a 2018 Ford PUV Police Utility Interceptor for $31,121 (State Bid) from Arnie's Ford**

    Background: Marlen has received the State Bid from Arnie's Ford for the purchase of a 2018 Ford Police Utility Interceptor for $31,121. This does not include accessories to outfit the vehicle.

23. **Resolution 2018-31: Approving Drug and Alcohol Policies as recommended by the Nebraska Department of Transportation — Wayne Senior Center**

    Background: The Nebraska Department of Transportation has notified Diane Bertrand, Senior Center Coordinator, that the Federal Drug and Alcohol Regulations have recently changed and that their policies (zero tolerance and 2nd chance) are now outdated. They provided template policies and the same are included in this packet and need Council approval by July 1, 2018.

24. **Action on Pay Application No. 1 in the amount of $30,440 to OCC Builders, LLC, for the Wayne Golf & Country Club Clubhouse Improvement Project**

    Background: This Pay Application is for work completed to date on the project.

25. **Resolution 2018-32: Approving City Administrator Employment Agreement**

26. Adjourn

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CITY OF WAYNE

OFFICE OF THE MAYOR

Proclamation

WHEREAS, the Congress and President of the United States have designated May 15th as Peace Officers' Memorial Day, and the week in which it falls as Police Week; and

WHEREAS, the International Association of Chiefs' of Police has declared law enforcement officer safety and wellness a top priority, and the IAP's Center for Officer Safety and Wellness promotes the importance of individual, agency, family, and community safety and wellness awareness; and

WHEREAS, the members of the law enforcement agency of the City of Wayne play an essential role in safeguarding the rights and freedoms of the citizens of Wayne; and

WHEREAS, it is important that all citizens know and understand the problems, duties and responsibilities of their police department and that members of our police department recognize their duty to serve the people by safeguarding life and property, by protecting them against violence or disorder, and by protecting the innocent against deception and the weak against oppression or intimidation; and

WHEREAS, the police department of Wayne has grown to be a modern and scientific law enforcement agency which unceasingly provides a vital public service.

NOW, THEREFORE, BE IT RESOLVED that I, Jill Brodersen, Mayor of the City of Wayne, Nebraska, do hereby proclaim

Tuesday, May 15, 2018, as Police Memorial Day

and direct that the United States Flags flown at all City of Wayne facilities be lowered to half staff to honor the fallen law enforcement officers throughout our nation.

Given under my hand and the Seal of the City of Wayne this 15th day of May, 2018.

THE CITY OF WAYNE, NEBRASKA,

By_____
Mayor

ATTEST:

_____
City Clerk

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CITY OF WAYNE

OFFICE OF THE MAYOR

Proclamation

WHEREAS, Public Works services provided in our community are an integral part of our citizens' everyday lives; and

WHEREAS, the support of an understanding and informed citizenry is vital to the efficient operation of Public Works systems and programs such as streets and highways, storm sewers, parks, public buildings, solid waste collections, recycling, and snow removal; and

WHEREAS, the health, safety, and comfort of our community greatly depends on these facilities and services; and

WHEREAS, the quality and effectiveness of these facilities, as well as their planning, design, and construction are vitally dependent upon the efforts and skill of Public Works officials; and

WHEREAS, the efficiency of the qualified and dedicated personnel who staff the Public Works Department is materially influenced by the people's attitude and understanding of the importance of the work they perform.

NOW, THEREFORE, BE IT RESOLVED that I, Jill Brodersen, Mayor of the City of Wayne, Nebraska, do hereby proclaim May 20th – 26th, 2018, as

"NATIONAL PUBLIC WORKS' WEEK"

in the City of Wayne, Nebraska, and I call upon all citizens and civic organizations to acquaint themselves with the issues involved in providing our public works and to recognize the contributions which Public Works officials make every day to our health, safety, comfort, and quality of life.

DATED this 15th day of May, 2018.

THE CITY OF WAYNE, NEBRASKA,

By_____
Mayor

ATTEST:

_____
City Clerk

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MINUTES
CITY COUNCIL MEETING
May 1, 2018

The Wayne City Council met in regular session at City Hall on Tuesday, May 1, 2018, at 5:30 o'clock P.M.

Mayor Brodersen called the meeting to order, followed by the Pledge of Allegiance, with the following in attendance: Councilmembers Cale Giese, Rod Greve, Jon Haase, Jennifer Sievers, Jason Karsky, and Matt Eischeid; City Attorney Amy Miller; City Administrator Wes Blecke; and City Clerk Betty McGuire. Absent: Councilmember Terri Buck.

Notice of the convening meeting was given in advance by advertising in the Wayne Herald on April 19, 2018, 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.

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

Mayor Brodersen requested Council consideration to the appointment of Nick Muir as Councilmember for Ward 4.

Councilmember Eischeid made a motion, which was seconded by Councilmember Sievers, approving the mayoral appointment of Nick Muir as Councilmember for Ward 4. Mayor Brodersen stated the motion, and the result of roll call being all Yeas, with the exception of Councilmember Buck who was absent, the Mayor declared the motion carried.

Attorney Miller then gave the Oath of Office to Nick Muir as Councilmember for Ward 4.

Councilmember Giese made a motion, which was seconded by Councilmember Greve, whereas, the Clerk has prepared copies of the Minutes of the meeting of April 17, 2018, 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 Brodersen stated the motion, and the result of roll call being all Yeas, with the exception of Councilmember Buck who was absent, the Mayor declared the motion carried and the Minutes approved.

The following claims were presented to Council for their approval:

VARIOUS FUNDS: ALTONA FINISHING, SE, 510.00; AMAZON.COM, SU, 581.01; APPEARA, SE, 56.21; BACON, HALEY, RE, 172.90; BARRAGAN, ROSA, RE, 137.55; BATTERY SOLUTIONS, SU, 109.95; BOMGAARS, SU, 1186.69; BORDER STATES INDUSTRIES, SU, 418.97; C. H. GUERNSEY & COMPANY, SE, 3118.90; CENTER POINT, SU, 79.38; CENTURYLINK, SE, 416.83; CITY EMPLOYEE, RE, 17.87; CITY EMPLOYEE, RE, 3053.27; CITY EMPLOYEE, RE, 74.00; CITY EMPLOYEE, RE, -69.99; CITY EMPLOYEE, RE, 274.68; CITY EMPLOYEE, RE, 479.92; CLARITUS, SU, 166.58; COLONIAL RESEARCH, SU, 149.40; CORE & MAIN, SU, 1039.25; DANKO EMERGENCY EQUIPMENT, SU, 4085.00; DEARBORN NATIONAL LIFE, SE, 113.52; DONALD SIMMONS, RE, -4.00; ED M. FELD EQUIPMENT, SU, 151.00; ELLIS HOME SERVICES, SE, 314.06; FLOOR MAINTENANCE, SU, 404.28; FREDRICKSON OIL, SU, 202.40; GALE/CENGAGE LEARNING, SU, 16.89; GANSEBOM, SEAN, RE, 43.95; GROSSENBURG IMPLEMENT, SU, 256.60; HILAND DAIRY, SE, 148.94; HOMETOWN LEASING, SE, 70.18; HTM SALES, SU, 889.46; ICMA, SE, 9798.66; JACK'S UNIFORMS, SU, 201.84; JEO CONSULTING GROUP, SU, 8013.50; JWC ENVIRONMENT, SE, 6000.00; KATHLEEN A LAUGHLIN, CHAPTER 13 TRUSTEE, RE, 243.00; KAVANAGH, GLEN, RE, 59.94; L.G. EVERIST, SU, 2070.19; MAIN STREET AUTO CARE, SE, 400.00; MARCO TECHNOLOGIES, SE, 99.76; MARTIN, SHANE, RE, 150.00; METERING & TECHNOLOGY SOLUTIONS, SU, 2912.28; MZRB LLC, RE, 100.00; NE DEPT OF TRANSPORTATION, SE, 13273.08; NE DHHS, FE, 678.00; NE PUBLIC HEALTH ENVIRONMENTAL LAB, SE, 390.00; NNEDD, SE, 690.00; NORTHEAST POWER, SE, 12842.38; NORTHWEST ELECTRIC, SU, 333.47; NWOD, FE, 15.00; PROVIDENCE MEDICAL CENTER, RE, 250.00; SANDS, ALEXIS, RE, 124.58; SIOUX CITY JOURNAL, SU, 376.82; STADIUM SPORTING GOODS, SU, 80.00; STATE NEBRASKA BANK & TRUST, RE, 57726.25; STATE NEBRASKA BANK-PETTY CASH, RE, 99.38; T & S TRUCKING, SE, 1102.16; THE RETROFIT COMPANIES, SE, 111.05; TINA ZACARIAS, RE, 115.90; TOM'S BODY & PAINT SHOP, SE, 267.00; UNITED HEALTHCARE, SE, 35048.35; VAKOC CONSTRUCT, SU, 61.21; WAYNE AUTO PARTS, SU, 615.06; WAYNE COMMUNITY HOUSING, SE, 1640.00; WAYNE COUNTY CLERK, SE, 16.00; WAYNE HERALD, SE, 355.00; WAYNE HERALD, SE, 2323.30; WAYNE STATE COLLEGE, SE, 250000.00; WAYNE VET'S CLUB, RE, 350.00; WESCO, SU, 818.55; WOEHLER TRAILER COURT, RE, 837.00; ZIMCO SUPPLY, SU, 440.00; ZVACEK CONSTRUCTION, SU, 1350.00; AMERITAS, SE, 60.16; AMERITAS, SE, 2421.18; AMERITAS, SE, 72.00; AMERITAS, SE, 106.92; APPEARA, SE, 48.30; BLACK HILLS ENERGY, SE, 1600.48; BORDER STATES INDUSTRIES, SU, 1273.64; CHAMBERLAIN, KEN, RE, 10.00; CITY OF PONCA, RE, 15032.24; CITY OF WAYNE, PY, 73388.20; CITY OF WEST POINT, RE, 21817.34; CITY OF WISNER, RE, 2273.45; DAS STATE ACCTG-CENTRAL FINANCE, SE, 448.00; DEARBORN NATIONAL LIFE, SE, 2411.22; DUTTON-LAINSON CO, SU, 269.58; ECHO GROUP, SU, 61.84; ED M. FELD

EQUIPMENT, SU, 690.00; FAIRFIELD INN & SUITES, SE, 930.00; FIRST CONCORD GROUP, SE, 2688.86; GENO'S STEAKHOUSE, SE, 1536.00; GROSSENBURG IMPLEMENT, SU, 138.62; HELENA AGRI-ENTERPRISES, SU, 48.50; HOMETOWN LEASING, SE, 409.53; HTM SALES, SU, 12.80; HYTREK LAWN, SE, 700.00; IRS, TX, 0.58; IRS, TX, 2.52; IRS, TX, 13079.62; IRS, TX, 9987.08; IRS, TX, 3059.06; JOHN ETTER, RE, 60.00; KEPCO, SU, 29.04; LORA HEITHOLD, RE, 70.00; MAIN STREET AUTO CARE, SE, 100.00; MAIN STREET AUTO CARE, SE, 100.00; MELISSA DOBBINS, RE, 60.00; MILLER LAW, SE, 5259.73; MILO MEYER CONSTRUCTION, RE, 6240.00; NE DEPT OF REVENUE, TX, 4107.25; NE LAW ENFORCEMENT, FE, 50.00; PONCA RURAL FIRE BOARD, RE, 3598.43; SHARP CONSTRUCTION, RE, 250.00; STADIUM SPORTING GOODS, SU, 407.00; STAPLES, SU, 96.29; VIAERO, SE, 116.55; VILLAGE OF WINSIDE, RE, 4809.84; WAED, SE, 7535.83; WIGMAN COMPANY, SU, 812.18

Councilmember Giese made a motion, which was seconded by Councilmember Eischeid, to approve the claims. Mayor Brodersen stated the motion, and the result of roll call being all Yeas, with the exception of Councilmember Buck who was absent, the Mayor declared the motion carried.

City Clerk McGuire advised the Council she had received a Manager Application on behalf of Nathan M. Malcom for the Shopko Stores Operating Co. LLC, d/b/a "Shopko Hometown #670." Council can either approve, deny or make no recommendation to the Nebraska Liquor Control Commission.

Councilmember Eischeid made a motion, which was seconded by Councilmember Giese, approving the Manager Application on behalf of Nathan M. Malcom for the Shopko Stores Operating Co. LLC, d/b/a "Shopko Hometown #670." Mayor Brodersen stated the motion, and the result of roll call being all Yeas, with the exception of Councilmember Buck who was absent, the Mayor declared the motion carried.

Phil Monahan, Fire Chief, was present requesting Council consideration to waiving the open burning ban per Wayne Municipal Code Sec. 97.08 so that the Fire Department can burn down a house north of Great Dane on or about June 10th or June 24th. They also would like to close E. 14th Street from Rainbow World (Vintage Hill Drive) to Centennial Road during that time (6:00 a.m. to about 3:00 p.m.).

Councilmember Giese made a motion, which was seconded by Councilmember Eischeid, approving the request of Phil Monahan, Fire Chief, to waive the open burning ban per Wayne Municipal Code Sec. 97.08, and allowing city staff to close E. 14th Street from Rainbow World (Vintage Hill Drive) to Centennial Road from 6:00 a.m. to 3:00 p.m. on either June 10th or June 24th. Mayor Brodersen stated the motion, and the result of roll call being all Yeas, with the exception of Councilmember Buck who was absent, the Mayor declared the motion carried.

Irene Fletcher, representing Wayne Area Economic Development, Inc., and on behalf of the Chicken Show Committee, was requesting the following streets be closed during the Chicken Show activities:

- On Friday, July 13th, the Committee is requesting the closure of the following streets from 2:30 p.m. until 2:00 a.m. for the Annual Henoween Celebration: Main Street from 1st Street to the alley between 3rd and 4th Streets; 2nd and 3rd Streets from Pearl to the alley east of Main Street; and that 3rd Street from the alley west of Main Street to Pearl Street be dedicated to handicap parking.

Councilmember Eischeid made a motion, which was seconded by Councilmember Giese, approving the request of the Chicken Show Committee to close the following streets on Friday, July 13th from 2:30 p.m. until 2:00 a.m. for the Annual Henoween Celebration: Main Street from 1st Street to the alley between 3rd and 4th Streets; 2nd and 3rd Streets from Pearl to the alley east of Main Street; and that 3rd Street from the alley west of Main Street to Pearl Street be dedicated to handicap parking. Mayor Brodersen stated the motion, and the result of roll call being all Yeas, with the exception of Councilmember Buck who was absent, the Mayor declared the motion carried.

Irene Fletcher, representing Wayne Area Economic Development, Inc., and on behalf of the Chicken Show Committee, was requesting the following streets be closed during the Chicken Show activities:

- On Saturday, July 14th, the Committee is requesting the closure of the following streets from 6:00 a.m. until 5:00 p.m., for the Annual Chicken Show Celebration in Bressler Park: 10th Street from Lincoln Street to Douglas Street; Lincoln and Douglas Streets from 10th Street to 8th Street. The intersections at 10th and Douglas and 10th and Lincoln Streets and 9th and Lincoln Streets are also requested to be closed.

Councilmember Eischeid made a motion, which was seconded by Councilmember Greve, approving the request of the Chicken Show Committee to close the following streets on Saturday, July 14th from 6:00 a.m. until 5:00 p.m. for the annual Chicken Show celebration in Bressler Park: 10th Street from Lincoln Street to Douglas Street; Lincoln and Douglas Streets from 10th Street to 8th Street; and the intersections at 10th and Douglas and 10th and Lincoln Streets, and 9th and Lincoln Streets. Mayor Brodersen stated the motion, and the result of roll call being all Yeas, with the exception of Councilmember Buck who was absent, the Mayor declared the motion carried.

Irene Fletcher, representing Wayne Area Economic Development, Inc., and on behalf of the Chicken Show Committee, was requesting the following streets be closed during the Chicken Show activities:

- On Saturday, July 14th for the Annual Chicken Show Parade from 9:00 a.m. until 11:30 a.m. (or until the end of the parade): Main Street from 1st to 10th Street (including intersections) and 10th Street from Main Street to Lincoln Street. Lincoln Street from 10th Street to 7th Street will also be used for the parade.

Councilmember Eischeid made a motion, which was seconded by Councilmember Greve, approving the request of the Chicken Show Committee to close the following streets on Saturday, July 14th for the Annual Chicken Show Parade from 9:00 a.m. until 11:30 a.m. (or until the end of the parade): Main Street from 1st to 10th Street (including intersections) and 10th Street from Main Street to Lincoln Street. Mayor Brodersen stated the motion, and the result of roll call being all Yeas, with the exception of Councilmember Buck who was absent, the Mayor declared the motion carried.

Councilmember Giese introduced Resolution No. 2018-24 and moved for its approval; Councilmember Eischeid seconded.

RESOLUTION NO. 2018-24

A RESOLUTION ACKNOWLEDGING NEBRASKA DEPARTMENT OF ROADS' REQUIREMENTS FOR THE TEMPORARY USE OF THE STATE HIGHWAY SYSTEM FOR SPECIAL EVENTS (HENOWEEN AND WAYNE CHICKEN SHOW).

Mayor Brodersen stated the motion, and the result of roll call being all Yeas, with the exception of Councilmember Buck who was absent, the Mayor declared the motion carried.

Administrator Blecke stated that one proposal was received for the Operation Agreement for the Transfer Station, and that was from Gill Hauling. Both Leonard and Bernie Gill were present to answer questions. They have agreed to everything in the request for proposal, with the exception that they would like to be able to charge for taking recycling in the future. In addition, they have increased their monthly payment to the City from $1,000 to $1,500.

Scott with Van's Sanitation and Recycling out of LeMars, Iowa, explained why there might need to be a charge for recycling in the future. It is not uncommon for facilities to charge for recycling. He started the facility five years ago. At that time, they ran the facility only 2.5 days per week. They are now up to 7 days per week. Gill is bringing in five, sometimes six, loads per week.

Mr. Gill stated in 2017, they picked up approximately 210 tons of recycling and in 2016, that number was 115 tons. They have seen a large increase from the City of Wayne in recyclables. Handling recyclables is expensive. He gave the Wayne Green Team a lot of credit for promoting recycling, but he thought what everybody had to understand was that recycling is no longer free, nor can it be free. They will continue doing business as usual for the next 30 days, but sometime between now and the next 30 days, they have to have further discussions before approving a contract. The City of Wayne has done a very good job at promoting recycling; in fact, too good a job. The City could make recycling mandatory, which would cut down on the confusion at the transfer station, at least on Friday and Saturday. He suggested a

minimum of $1.00 per transaction at the transfer station, whether it is somebody who wants to bring in recycling in a small bag or in a 50-gallon barrel.

Councilmember Giese stated he thought the Council wanted to see two different proposals. One, continuing down the same path as they have been going where they charge for recycling, and the other being where the trash service would subsidize the need to charge a fee at the transfer station.

Councilmember Eischeid made a motion, which was seconded by Councilmember Giese, to table action on Resolution No. 2018-25 until the June 5th council meeting. Mayor Brodersen stated the motion, and the result of roll call being all Yeas, with the exception of Councilmember Buck who was absent, the Mayor declared the motion carried.

Councilmember Eischeid introduced Ordinance No. 2018-9, and moved for approval of the second reading thereof; Councilmember Greve seconded.

ORDINANCE NO. 2018-9

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

Mayor Brodersen stated the motion, and the result of roll call being all Yeas, with the exception of Councilmember Buck who was absent, the Mayor declared the motion carried. The third and final reading will take place at the next meeting.

Councilmember Eischeid introduced Ordinance No. 2018-10, and moved for approval of the second reading thereof; Councilmember Greve seconded.

ORDINANCE NO. 2018-10

AN ORDINANCE TO AMEND WAYNE MUNICIPAL CODE TITLE IX GENERAL REGULATIONS, CHAPTER 91 STREETS, SIDEWALKS AND OTHER PUBLIC PLACES, SECTION 91.030 CONSTRUCTION BY OWNER; TO PROVIDE FOR THE REPEAL OF CONFLICTING ORDINANCES OR SECTIONS; AND TO PROVIDE FOR AN EFFECTIVE DATE.

Mayor Brodersen stated the motion, and the result of roll call being all Yeas, with the exception of Councilmember Buck who was absent, the Mayor declared the motion carried. The third and final reading will take place at the next meeting.

Councilmember Giese introduced Ordinance No. 2018-11, and moved for approval of the second reading thereof; Councilmember Greve seconded.

ORDINANCE NO. 2018-11

AN ORDINANCE TO AMEND WAYNE MUNICIPAL CODE TITLE IX GENERAL REGULATIONS, CHAPTER 91 STREETS, SIDEWALKS AND OTHER PUBLIC PLACES, SECTION 91.052 DRIVEWAY PERMITS; TO PROVIDE FOR THE REPEAL OF CONFLICTING ORDINANCES OR SECTIONS; AND TO PROVIDE FOR AN EFFECTIVE DATE.

Mayor Brodersen stated the motion, and the result of roll call being all Yeas, with the exception of Councilmember Buck who was absent, the Mayor declared the motion carried. The third and final reading will take place at the next meeting.

Councilmember Eischeid introduced Ordinance No. 2018-12, and moved for approval of the second reading thereof; Councilmember Haase seconded.

ORDINANCE NO. 2018-12

AN ORDINANCE TO AMEND WAYNE MUNICIPAL CODE TITLE IX GENERAL REGULATIONS, CHAPTER 91 STREETS, SIDEWALKS AND OTHER PUBLIC PLACES, SECTION 91.076 PERMIT REQUIRED; TO PROVIDE FOR THE REPEAL OF CONFLICTING ORDINANCES OR SECTIONS; AND TO PROVIDE FOR AN EFFECTIVE DATE.

Mayor Brodersen stated the motion, and the result of roll call being all Yeas, with the exception of Councilmember Buck who was absent, the Mayor declared the motion carried. The third and final reading will take place at the next meeting.

Councilmember Giese introduced Ordinance No. 2018-13, and moved for approval of the second reading thereof as amended; Councilmember Haase seconded.

ORDINANCE NO. 2018-13

AN ORDINANCE TO AMEND WAYNE MUNICIPAL CODE TITLE IX GENERAL REGULATIONS, CHAPTER 91 STREETS, SIDEWALKS AND OTHER PUBLIC PLACES, SECTION 91.078 DIGGING IN STREET; TO PROVIDE FOR THE REPEAL OF CONFLICTING ORDINANCES OR SECTIONS; AND TO PROVIDE FOR AN EFFECTIVE DATE.

Mayor Brodersen stated the motion, and the result of roll call being all Yeas, with the exception of Councilmember Buck who was absent, the Mayor declared the motion carried. The third and final reading will take place at the next meeting.

Councilmember Eischeid introduced Ordinance No. 2018-14, and moved for approval thereof; Councilmember Greve seconded.

ORDINANCE NO. 2018-14

AN ORDINANCE TO AMEND WAYNE MUNICIPAL CODE TITLE IX GENERAL REGULATIONS, CHAPTER 91 STREETS, SIDEWALKS AND OTHER PUBLIC PLACES, SECTION 91.080 SURETY BOND; TO PROVIDE FOR THE REPEAL OF CONFLICTING ORDINANCES OR SECTIONS; AND TO PROVIDE FOR AN EFFECTIVE DATE.

Mayor Brodersen stated the motion, and the result of roll call being all Yeas, with the exception of Councilmember Buck who was absent, the Mayor declared the motion carried. The second reading will take place at the next meeting.

Amy Miller, City Attorney, advised the Council that the Civil Service Commission has reviewed and made amendments to their Rules and Regulations. The last amendment was in 2012. State Statutes require that anything that deals with complaints, discharge, demotion and procedures be approved by ordinance by the governing body. The same is identified as Article V in their Rules and Regulations. Attorney Miller has reviewed the amendments with Chief Chinn and they, as well as the Civil Service Commission, are recommending approval thereof.

Attorney Miller, after review of the proposed ordinance, had some additional changes, and those were highlighted in blue.

Councilmember Giese introduced Ordinance No. 2018-15, and moved for approval thereof; Councilmember Eischeid seconded.

ORDINANCE NO. 2018-15

AN ORDINANCE AMENDING CIVIL SERVICE RULES AND REGULATIONS, SPECIFICALLY THE PROVISION RELATING TO DEMOTIONS, SUSPENSIONS AND DISCHARGE; TO PROVIDE FOR THE REPEAL OF CONFLICTING ORDINANCES OR SECTIONS; AND TO PROVIDE FOR AN EFFECTIVE DATE.

Mayor Brodersen stated the motion, and the result of roll call being all Yeas, with the exception of Councilmember Buck who was absent, the Mayor declared the motion carried.

Councilmember Giese made a motion and Councilmember Haase seconded to suspend the statutory rules requiring ordinances to be read by title on three different days. Mayor Brodersen stated the motion, and the result of roll call being all Yeas, with the exception of Councilmember Buck who was absent, the Mayor declared the motion carried.

Councilmember Giese made a motion, which was seconded by Councilmember Greve, to move for final approval of Ordinance No. 2018-15. Mayor Brodersen stated the motion, and the result of roll call being all Yeas, with the exception of Councilmember Buck who was absent, the Mayor declared the motion carried.

Councilmember Giese made a motion, which was seconded by Councilmember Sievers, to adjourn the meeting. Mayor Brodersen stated the motion, and the result of roll call being all Yeas, with the exception of Councilmember Buck who was absent, the Mayor declared the motion carried and the meeting adjourned at 6:54 p.m.

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City of Wayne, NE

Council Approval Listing

Payment Date Range: 05/01/2018 - 05/09/2018

Vendor	Payable Description	Payment Total
ALEXANDER, DEBRORAH	UTILITY REFUND	225.00
AMERICAN BROADBAND NE COMM	TELEPHONE CHARGES/FIBER LINE LEASE	2,471.20
ANDERSON, DEVIN	UTILITY REFUND	42.11
APPEARA	LINEN & MAT SERVICE	45.51
ARIZONA MUNICIPAL CLERKS ASSOCIATION	IIMC-MEAL	40.00
BAKER & TAYLOR BOOKS	BOOKS	909.44
BARONE SECURITY SYSTEMS	ANNUAL INSPECTION	788.04
BEEHIVE INDUSTRIES LLC	LICENSE RENEWAL	3,600.00
BODE, LIANE	UTILITY REFUND	21.01
BONILLA, OSCAR	UTILITY REFUND	47.21
BORDER STATES INDUSTRIES, INC	PHOTOCELL	51.36
BROGIE, ED	UTILITY REFUND	300.00
BUDDENHAGEN, CLAIRE	UTILITY REFUND	138.25
CARHART LUMBER COMPANY	BATTERIES/SEALANT/TOOLS/CORK BOARD/PVC	434.61
CARSON, MORGAN	UTILITY REFUND	55.56
CENTER POINT LARGE PRINT	BOOKS	56.17
CHRISTENSEN, CHANTELLE	UTILITY REFUND	130.54
CITY EMPLOYEE	MEDICAL REIMBURSEMENT	476.04
CITY EMPLOYEE	MEDICAL REIMBURSEMENT	770.26
CLINE, TYLER	UTILITY REFUND	49.46
COMFORT INN-GRAND ISLAND	LODGING-S SHADDEN	246.00
CONSOLIDATED MANAGEMENT CO	TRAINING CENTER MEALS	38.04
COPY WRITE PUBLISHING	OFFICE SUPPLIES/SHIPPING CHARGES	163.40
CORY SANDOZ	BUILDING PERMIT DEPOSIT REFUND	100.00
CURRAN, BENJAMIN	UTILITY REFUND	238.33
CUSIP SERVICE BUREAU	CUSIP MAINTENANCE	97.00
DAVE'S DRY CLEANING	POLICE UNIFORM CLEANING	87.00
DE NORA WATER TECHNOLOGIES, INC.	RELAY	718.38
DEAN BURBACH	BUILDING PERMIT DEPOSIT REFUND	100.00
DEMCO INC	FRAME/HOLE PUNCH/BOOKMARKS	146.99
DEPAZ, JUAN	UTILITY REFUND	62.74
DOMINGUEZ, ALICIA	A/R REFUND	0.63
DUGAN BUSINESS FORMS	55,000 UTILITY BILLS	1,209.90
EASYPERMIT POSTAGE	POSTAGE	1,807.81
ECHO GROUP INC JESCO	LED DIMMING LIGHT	137.50
ED M. FELD EQUIPMENT CO INC	CYLINDER VALVE	88.44
EICKHOFF, SHELBY	UTILITY REFUND	73.53
EISCHEID, MATT	MEN'S BASKETBALL REF REISSUE-VOID	-270.00
EISCHEID, MATT	MEN'S BASKETBALL REF REISSUE	270.00
ERICKSON, AUSTIN	UTILITY REFUND	137.81

Vendor	Payable Description	Payment Total
FLOOR MAINTENANCE	JANITORIAL SUPPLIES	477.37
FREDRICKSON OIL CO	TIRES	112.00
GARCIA, OSCAR	UTILITY REFUND	80.76
GERHOLD CONCRETE CO INC.	CONCRETE	536.25
GILL HAULING, INC	SANITATION SERVICE	237.50
GRADUATE LINCOLN	LODGING-KARDELL/BREITKREUTZ	215.00
GRAGERT, JESSICA	UTILITY REFUND	178.95
GRAHAM TIRE SIOUX CITY	TIRES	1,557.64
GRAVER, SYDNEY	UTILITY REFUND	32.16
GROSSENBURG IMPLEMENT INC	FILTERS	166.07
HAMPTON, MORGAN	UTILITY REFUND	93.82
HARDESTER, DALAN	UTILITY REFUND	134.52
HARE, EMMALINE	UTILITY REFUND	100.57
HAUFF MID-AMERICAN SPORTS	REC RUN MEDALS/RIBBONS	250.12
HELENA AGRI-ENTERPRISES, LLC	CRAB GRASS PREVENTER	1,200.00
HENDRIX, CHRISTINA	UTILITY REFUND	99.86
HILAND DAIRY	SENIOR CENTER FOOD SERVICE	50.12
HILAND DAIRY	SENIOR CENTER FOOD SERVICE	49.37
HIX, PHYLLIS	UTILITY REFUND	7.00
HTM SALES INC	PRESSURE TRANSDUCER	881.03
HYDRO OPTIMIZATION	HOA TECH/LABOR/MILEAGE	509.25
ICMA RETIREMENT-FIRST NATL BANK -MARYLAND	PAYROLL RETIREMENT	9,783.27
INGRAM LIBRARY SERVICES	BOOKS	1,056.59
INTERSTATE BATTERY SYSTEM	BATTERIES	245.90
JONES, LEONARD	DRIVEWAY BOND REFUND	500.00
JUHLIN, MARTINA	UTILITY REFUND	46.15
JURGENSMEIER, LOGAN	UTILITY REFUND	111.80
KATHLEEN A LAUGHLIN, CHAPTER 13 TRUSTEE	PAYROLL DEDUCTION	243.00
LANGE, MADISON	UTILITY REFUND	124.58
LEIBEL, MIKAYLA	UTILITY REFUND	104.86
LINEWEBER, BRADLEY	UTILITY REFUND	153.17
LOPEZ, MADAY	UTILITY REFUND	10.83
LUTT OIL	GASOLINE	5,103.43
M & T FIRE AND SAFETY	LIFT STRUTS	2,500.00
MARCO INC	COPIER LEASE	126.36
MATHESON-LINWELD	OXYGEN	39.00
MCCAIN, RAY	UTILITY REFUND	85.00
MSC INDUSTRIAL	RUNNING LIGHTS	59.12
NATP	MEMBERSHIP RENEWAL	105.00
NESPOR, KYLIE	UTILITY REFUND	50.52
NEUHAUS, CONNOR	UTILITY REFUND	161.95
NEXTERA ENERGY	WIND ENERGY	15,297.23
NORFOLK DAILY NEWS	POLICE OFFICER ADS	266.00
NORTHEAST NE ECONOMIC DEV DIST	MEMBERSHIP DUES	7,192.01
NORTHEAST NE RC&D	HHW EVENT	50.00
NORTHEAST POWER	ELECTRICITY	4,891.77

Vendor	Payable Description	Payment Total
ODEYS INC	CHALK/CLAY/INFIELD CONDITIONER	911.00
ONE CALL CONCEPTS, INC	DIGGERS HOTLINE	88.20
PAC N SAVE	SENIOR CENTER NOON MEAL SUPPLIES	517.35
PELC, AUSTIN	UTILITY REFUND	187.84
PENGUIN RANDOM HOUSE LLC	CD'S	86.25
PLAGGE, TIFFANY	UTILITY REFUND	82.09
PLUNKETT'S PEST CONTROL	PEST CONTROL 5/18-4/19 WT/AUDIT/CH/SR/LIB/FH	1,151.03
QUALITY FOOD CENTER	SENIOR CENTER NOON MEAL SUPPLIES	320.65
RAMOS, MARTIN	UTILITY REFUND	75.87
RECH, NATALIE	UTILITY REFUND	71.31
RESCO	JUNCTION STRAP	866.29
RICHLING, BENJAMIN	UTILITY REFUND	96.56
RIEDMANN, DILLON	UTILITY REFUND	43.96
ROBERTS, WAYNE	UTILITY REFUND	51.16
RUPP, DEVON	UTILITY REFUND	91.15
RUSS URBANEC	ENERGY INCENTIVE	500.00
SCHNECKENBERGER, LOGAN	UTILITY REFUND	65.17
SCHULTZ, FAITH	UTILITY REFUND	115.64
SCHUMACHER, TAYLOR	UTILITY REFUND	208.55
SD MYERS, LLC	ANNUAL SUBSTATION OIL TESTING	2,650.00
SHANE, CODY	UTILITY REFUND	81.03
SHOPKO	DVD/JANITORIAL SUPPLIES	108.08
SILA, CAITLIN	UTILITY REFUND	86.23
SKARSHAUG TESTING LAB INC	CLEAN & TEST GLOVES	476.03
STADIUM SPORTING GOODS	EMBROIDERY	54.00
STAPLES, INC	OFFICE SUPPLIES	39.98
STATE NEBRASKA BANK-PETTY CASH	POOL STARTING CASH	100.00
STROTHERS, ALEXIS	UTILITY REFUND	124.19
SULLIVAN, LAYNE	UTILITY REFUND	69.59
THETA PHI ALPHA	AUDITORIUM DEPOSIT REFUND	150.00
TOM'S BODY & PAINT SHOP	REPLACE GLASS	100.00
TRI AIR TESTING	AIR ANALYSIS	271.80
TYLER TECHNOLOGIES	UTILITY BILLING ONLINE	200.00
US BANK	LODGING/MEMBERSHIP/MEALS/PROGRAM SUPPLIES	4,178.67
US FOODSERVICE, INC.	SENIOR CENTER FOOD SERVICE	536.05
VENTURA, HENRICKSON	A/R OVERPAYMEMT REFUND	30.84
VERIZON WIRELESS SERVICES LLC	CELL PHONES	317.53
WASTE CONNECTIONS	SB COMPLEX SANITATION SERVICE	98.25
WAYNE HERALD	ADS AND NOTICES	1,279.13
WAYNE HERALD	ENERGY WISE ADS	105.00
WAYNE HERALD	CAC ADS	429.00
WAYNE VETERINARY CLINIC	DOG IMPOUND	28.00
WESTERN AREA POWER ADMIN	ELECTRICITY	18,447.78
WIESE, TONI	UTILITY REFUND	123.13
WIGMAN COMPANY	TOILET REPAIR KIT	150.10
WISNER WEST	FD-GASOLINE	35.02

Vendor	Payable Description	Payment Total
WSC MEN'S SOCCER CLUB	REC SOCCER PROGRAM DONATION	500.00
WSC SOCCER FOUNDATION	REC SOCCER PROGRAM DONATION	1,000.00
ZACH HEATING & COOLING	COMPRESSOR/CONTROL BOARD REPAIR	1,745.00
ZACH, ELLIOT	UTILITY REFUND	37.94
ZIMCO SUPPLY	FERTILIZER	409.00
	Grand Total:	**110,873.61**

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ORDINANCE NO. 2018-9

AN ORDINANCE AMENDING WAYNE MUNICIPAL CODE TITLE VII TRAFFIC CODE, SECTION 78-96 LOCATION RESERVED FOR HANDICAPPED PARKING; 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 Title VII Traffic Code, Section 78-96 of the Wayne Municipal Code is amended to read as follows:

§ 78-96 Location Reserved for Handicapped Parking.

(A) The following parking spaces shall be designated handicapped parking areas:

Number of Spaces	***Location***
1 parking space	At the intersection of 3rd and Main Streets on the northeast corner of 3rd Street
1 parking space	At the intersection of 3rd and Main Streets on the southwest corner of 3rd Street
1 parking space	At the intersection of 3rd and Pearl Streets on the northeast corner of 3rd Street
1 parking space	At the intersection of 2nd and Main Streets on the northeast corner of 2nd Street
1 parking space	At the intersection of 2nd and Main Streets on the southwest corner of 2nd Street
1 parking space	At the intersection of 4th and Main Streets on the northeast corner of 4th Street
1 parking space	At the intersection of 2nd and Pearl Streets on the northeast corner of 2nd Street
~~1~~ 2 parking spaces	Between 3rd and 4th Streets on the east side of Lincoln Street
1 parking space	At the intersection of 1st Street and Main Street on the northwest corner of 1st Street
2 parking spaces	Between Pearl and Lincoln Streets on the south side of 3rd Street

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

(2002 Code, § 78-96) (Ord. 2002-2, passed 2-26-2002; Ord. 2002-9, passed 4-9-2002; Ord. 2004-19, passed 1-11-2005; Ord. 2005-3, passed 2-22-2005; Ord. 2005-27, passed 9-13-2005; Ord. 2008-2, passed 2-19-2008; Ord. 2009-24, passed 1-5-2010; Ord. 2015-36, passed 8-4-2015)

Section 2. All Ordinances or parts of Ordinances in conflict herewith are repealed.

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

PASSED AND APPROVED this 15th day of May, 2018.

THE CITY OF WAYNE, NEBRASKA,

By _____
Mayor

ATTEST:

_____
City Clerk

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ORDINANCE NO. 2018-10

AN ORDINANCE TO AMEND WAYNE MUNICIPAL CODE TITLE IX GENERAL REGULATIONS, CHAPTER 91 STREETS, SIDEWALKS AND OTHER PUBLIC PLACES, SECTION 91.030 CONSTRUCTION BY OWNER; 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 Title IX, Chapter 91, Section 91.030 of the Municipal Code of Wayne, is hereby amended as follows:

§ 91.030 CONSTRUCTION BY OWNER.

(A) Any person desiring to construct or cause to be constructed any sidewalk shall do so only as provided in this section. It shall be unlawful for any person to construct any sidewalk without first having obtained a **Right-of-Way** permit **from the Street Superintendent**. **City employees performing their duties as public employees and contractors hired by the City shall be exempt from obtaining a Right-of-Way permit for City projects.**

(B) The owner **or contractor** shall make application in writing for a **Right-of-Way** permit and file such application in the office of the City Clerk. The permit shall give a description of the lot or piece of land along which the sidewalk is to be constructed. ~~**Before any permit is issued by the Street Superintendent, the applicant shall deposit with the City Clerk a cash deposit in an amount set by the Council and on file in the office of the City Clerk. The deposit shall be retained by the City Clerk until construction is completed to the satisfaction of the Street Superintendent.**~~ The ~~**City Administrator or his or her agent**~~ **Street Superintendent** shall issue the desired permit unless good cause shall appear why the permit should be denied. If it is desired to construct the sidewalk at any other place than the regularly prescribed location, grade or elevation, the ~~**City Administrator or his or her agent**~~ **Street Superintendent** shall submit the application to the Council, who shall determine whether the permit should be granted or denied. It shall be unlawful for any person to construct or cause to be constructed the sidewalk at any other location, grade or elevation than so designated by the city. All sidewalks shall be built and constructed on the established grade or elevation and, if there is no established grade, then on the grade or elevation indicated by the ~~**City Administrator or his or her agent**~~ **Street Superintendent**.
(2002 Code, § 70-48) Penalty, see § 91.999
Statutory reference:
Construction and repair of sidewalks in municipalities, see Neb. RS 16-661 through 16-665

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 15th day of May, 2018.

THE CITY OF WAYNE, NEBRASKA

By_____
Mayor

ATTEST:

_____
City Clerk

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ORDINANCE NO. 2018-11

AN ORDINANCE TO AMEND WAYNE MUNICIPAL CODE TITLE IX GENERAL REGULATIONS, CHAPTER 91 STREETS, SIDEWALKS AND OTHER PUBLIC PLACES, SECTION 91.052 DRIVEWAY 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 Title IX, Chapter 91, Section 91.052 of the Municipal Code of Wayne, is hereby amended as follows:

§ 91.052 DRIVEWAYS ~~PERMITS~~.

(A) It shall be unlawful for any person to construct or cause to be constructed any driveway or other parking area in the right-of-way of the city without acquiring a written **Right-of-Way** permit from the Street Superintendent. Before any person shall obtain such permit, such person shall inform the Street Superintendent of the place where the driveway is to be located, and it shall be the Street Superintendent's duty to cause an inspection of the place of entry into the streets and avenues. When the construction of a driveway or other parking area is permitted, it shall be the duty of the party so constructing or causing to be constructed such driveway or other parking area to do the work in such a manner and under such rules and regulations as may be prescribed by the City Council. Before any permit is issued by the Street Superintendent, the applicant shall **submit a surety bond or a cash** deposit **along with a certificate of insurance naming the City as an additional insured to** ~~**with**~~ the City Clerk ~~**a cash deposit**~~ in an amount set by the Council and on file in the office of the City Clerk. The deposit shall be retained by the City Clerk until construction is completed to the satisfaction of the Street Superintendent. **City employees performing their duties as public employees and contractors hired by the City shall be exempt from obtaining a Right-of-Way permit for City projects.**

(B) The applicant shall obey all of the laws of the city and the requirements under which the permit is issued in doing such work and will save the city harmless from any damages which may occur as a result of such construction.
(2002 Code, § 70-94) Penalty, see § 91.999

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 15th day of May, 2018.

THE CITY OF WAYNE, NEBRASKA

By_____
Mayor

ATTEST:

_____
City Clerk

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ORDINANCE NO. 2018-12

AN ORDINANCE TO AMEND WAYNE MUNICIPAL CODE TITLE IX GENERAL REGULATIONS, CHAPTER 91 STREETS, SIDEWALKS AND OTHER PUBLIC PLACES, SECTION 91.076 PERMIT REQUIRED; 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 Title IX, Chapter 91, Section 91.076 of the Municipal Code of Wayne, is hereby amended as follows:

§ 91.076 PERMIT REQUIRED.

(A) Should it become necessary for any purpose to excavate in any right-of-way, street or alley; to cut through or into any street pavement; or to break, cut or remove any curbing or gutter on any public street or alley in the city for whatever purpose, the person by whom such excavation, cutting or breaking is desired shall secure a **Right-of-Way** permit for such work from the Street Superintendent. **If the work involves an emergency repair of an underground utility, the work shall proceed until the repair is completed. At that time, work shall cease until the Right-of-Way permit is obtained and the previous work is approved by the City. City employees performing their duties as public employees and contractors hired by the City shall be exempt from obtaining a Right-of-Way permit for City projects.**

(B) The Street Superintendent shall require that applicants for such permits shall furnish the following information:

(1) Name of street or avenue on which work is to be commenced;

(2) The street address of the property for which such work is required;

~~**(3) The name of the owner of such property;**~~

(4) The purpose for which such work is required;

(5) A statement of the ~~**size or area of pavement to be torn out or the linear feet of curb or gutter to be torn out, the dimensions to be given in feet as nearly correctly as is possible to estimate the size or area**~~ **area to be impacted**; and

~~**(6) The names and addresses of any agents, employees or contractors of the applicant.**~~

(C) **Before any permit is issued by the Street Superintendent, the applicant shall submit a surety bond or a cash deposit, along with a certificate of insurance naming the City as an additional insured to** ~~**with**~~ **the City Clerk** ~~**a cash deposit**~~ **in an amount set by the Council and on file in the office of the City Clerk. The deposit shall be retained by the City Clerk until construction is completed to the satisfaction of the Street Superintendent.** ~~**When such permit is issued by the Street Superintendent to the applicant, the applicant shall, in no event, permit the permit to be used by any person for the purpose of having the work, repair, replacement or improvement made unless such person to whom such permit is given shall previously have filed with the City Clerk an approved surety bond or $500 deposit as required in § 91.080 of this chapter.**~~
(2002 Code, § 70-144) Penalty, see § 91.999

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 15th day of May, 2018.

THE CITY OF WAYNE, NEBRASKA

By_____
Mayor

ATTEST:

_____
City Clerk

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ORDINANCE NO. 2018-13

AN ORDINANCE TO AMEND WAYNE MUNICIPAL CODE TITLE IX GENERAL REGULATIONS, CHAPTER 91 STREETS, SIDEWALKS AND OTHER PUBLIC PLACES, SECTION 91.078 DIGGING IN STREET; 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 Title IX, Chapter 91, Section 91.078 of the Municipal Code of Wayne, is hereby amended as follows:

§ 91.078 DIGGING IN STREET.

(A) It shall be unlawful for any person to dig up, excavate or remove any dirt in any street, alley or other public right-of-way within the city or in any part of such street, alley or public right-of-way or in any manner to obstruct or injure any such street, alley or public right-of-way without first having obtained a **Right-of-Way** permit. It shall further be unlawful for any officer or employee of the city, or for any other person, either to give away or to receive any dirt given away for any street, alley or right-of-way within the city; and it shall be unlawful for any officer or employee of the city, or for any other person, to sell or purchase any dirt from any street, alley or public right-of-way within the city, except by direction and authorization of the Council. **City employees performing their duties as public employees and contractors hired by the City shall be exempt from obtaining a Right-of-Way permit for City projects. If the work involves an emergency repair of an underground utility, the work shall proceed until the repair is completed. At that time, work shall cease until a Right-of-Way permit is obtained and the previous work by the City.**

(B) Anyone installing, in conformance with City Ordinances, mailboxes, lawn sprinkler systems, plants, and landscaping materials shall be exempt from obtaining a Right-of-Way permit. If landscaping activities include the removal or addition of more than one foot of dirt or other material, the work shall require a Right-of-Way permit and require approval of the City Council.

~~**(B) It shall be deemed a violation of this subchapter if more pavement or curbing shall be torn out or more excavation is made than the amount stated in the permit for such work.**~~
(2002 Code, § 70-146) Penalty, see § 91.999

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 15th day of May, 2018.

THE CITY OF WAYNE, NEBRASKA

By_____
Mayor

ATTEST:

_____
City Clerk

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ORDINANCE NO. 2018-14

AN ORDINANCE TO AMEND WAYNE MUNICIPAL CODE TITLE IX GENERAL REGULATIONS, CHAPTER 91 STREETS, SIDEWALKS AND OTHER PUBLIC PLACES, SECTION 91.080 SURETY BOND; 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 Title IX, Chapter 91, Section 91.080 of the Municipal Code of Wayne, is hereby amended as follows:

§ 91.080 SURETY BOND.

The applicant for each **Right-of-Way** permit required by this subchapter**, except for permits to only construct sidewalks,** shall file with the City Clerk a performance bond, with sureties to be approved by the City Administrator in the sum of the currently required amount, to be in the form as required by the City Administrator. The bond shall be conditioned upon the proper indemnifying and holding the city harmless from any suits, damage, claims, liens or other actions that may arise from, grow out of or, in any way, be connected with the work covered by such permit with any corporate surety, to be in the currently required amount. In lieu of bond, applicant may provide a ~~$500~~ **cash** deposit **in an amount set by the Council and on file in the office of the City Clerk. The deposit shall be retained by the City Clerk until construction is completed to the satisfaction of the Street Superintendent.**
(2002 Code, § 70-148)

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 15th day of May, 2018.

THE CITY OF WAYNE, NEBRASKA

By_____
Mayor

ATTEST:

_____
City Clerk

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RESOLUTION NO. 2018-26

A RESOLUTION AUTHORIZING THE SALE OF THE EAST 19.97 FEET OF THE NORTH 25 FEET OF LOT 11, SOUTHVIEW ADDITION TO THE CITY OF WAYNE, WAYNE COUNTY, NEBRASKA, TO BRENDON L. PICK.

WHEREAS, the City of Wayne is the owner of the following described property, to-wit:

The East 19.97 feet of the North 25 feet of Lot 11, Southview Addition to the City of Wayne, Wayne County, Nebraska; and

WHEREAS, there are no current delinquent real estate taxes or special assessments payable to Wayne County, Nebraska.

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and the Council of the City of Wayne, Nebraska, that the City Clerk is directed to prepare an ordinance directing the sale of a tract of land legally described as follows:

The East 19.97 feet of the North 25 feet of Lot 11, Southview Addition to the City of Wayne, Wayne County, Nebraska,

to Brendon L. Pick for the sum of $1.00 and other valuable consideration.

PASSED AND APPROVED this 15th day of May, 2018.

THE CITY OF WAYNE, NEBRASKA

By_____
Mayor

ATTEST:

_____
City Clerk

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ORDINANCE NO. 2018-16

AN ORDINANCE DIRECTING THE SALE OF THE EAST 19.97 FEET OF THE NORTH 25 FEET OF LOT 11, SOUTHVIEW ADDITION TO THE CITY OF WAYNE, WAYNE COUNTY, NEBRASKA, TO BRENDON L. PICK.

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

Section 1. The Mayor and City Council are directed to convey by Quitclaim Deed to Brendon L. Pick a tract of land legally described as:

The East 19.97 feet of the North 25 feet of Lot 11, Southview Addition to the City of Wayne, Wayne County, Nebraska,

for the sum of $1.00 and other valuable consideration.

Section 2. Notice of the sale and the terms contained in Section 1 shall be published for three consecutive weeks in the Wayne Herald, provided that if a remonstrance against said sale signed by legal electors thereof equal in number to 30% of the electors of the City voting at the last regular municipal election held therein, be filed with the governing body within thirty days of the passage and publication of this ordinance, said property shall not then, nor within one year thereafter, be sold.

Section 3. This ordinance shall take effect and be in full force from and after its passage, approval, and publication according to law.

PASSED AND APPROVED this 15th day of day of May, 2018.

THE CITY OF WAYNE, NEBRASKA

By_____
Mayor

ATTEST:

_____
City Clerk

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RESOLUTION NO. 2018-27

A RESOLUTION APPROVING INTERLOCAL AGREEMENT TO SHARE LAW ENFORCEMENT RESOURCES BETWEEN THE CITY OF WAYNE AND THE BOARD OF TRUSTEES OF THE NEBRASKA STATE COLLEGES, D/B/A WAYNE STATE COLLEGE.

WHEREAS, the City of Wayne is desirous to enter into an Interlocal Agreement with the Board of Trustees of the Nebraska State Colleges, d/b/a Wayne State College, to share law enforcement resources; and

WHEREAS, a copy of the proposed Interlocal Agreement is attached hereto and incorporated herein by reference.

NOW, THEREFORE BE IT RESOLVED, by the Mayor and City Council of the City of Wayne, Nebraska, that the Interlocal Agreement to Share Law Enforcement Resources between the City of Wayne and the Board of Trustees of the Nebraska State Colleges, d/b/a Wayne State College, is hereby approved and the Mayor and City Clerk are hereby authorized to execute the same.

PASSED AND APPROVED this 15th day of May, 2018.

THE CITY OF WAYNE, NEBRASKA,

By_____
Mayor

ATTEST:

_____
City Clerk

AN INTERLOCAL AGREEMENT
TO SHARE LAW ENFORCEMENT RESOURCES
BETWEEN THE CITY OF WAYNE AND
THE BOARD OF TRUSTEES OF THE NEBRASKA STATE COLLEGES
dba WAYNE STATE COLLEGE

THIS AGREEMENT ("Agreement") is made and entered into by and between the governmental entities which are The City of Wayne, hereinafter called the "City" and the Board of Trustees of the Nebraska State Colleges dba Wayne State College, hereinafter called the "College" which on its effective date are, or become signatories hereto:

WITNESSETH THAT:

WHEREAS, it is the recognized responsibility of general purpose political subdivisions to provide and maintain a certain basic level of public services for their residents, including the areas of health and public safety; and

WHEREAS, it is the recognized responsibility of the College to provide and maintain a certain basic level of public services for its student population, including the areas of health and public safety, and

WHEREAS, it is recognized that the provisions of said basic services are sometimes best accomplished jointly because of certain hardships which might be experienced if undertaken singularly, and

WHEREAS, it is recognized that certified, sworn law enforcement officers can enhance the level of protection provided to the students by civilian security officers, and

WHEREAS, it is the desire of the parties hereto signed to participate in the joint use of the city's law enforcement personnel and resources.

NOW, THEREFORE, BE IT RESOLVED, that the City of Wayne and the College do hereby agree to the following:

1. **Authority and Purpose**

    a. Article XV, Section 18 of the Constitution of the State of Nebraska and the Interlocal Cooperation Act of the State of Nebraska, Neb. Rev. Stat. 13-801 et *et seq.*, (the "Act"), authorize any two or more public agencies to enter into agreements for joint or cooperative exercise of any power, privilege or authority exercised or capable of exercise individually by such public agencies. College and the City are public agencies within the meaning of the Act.

b. The City has the authority to provide law enforcement services and the College has the authority to ensure safety services on the Wayne State College campus (the "Campus"), and to enter into any contracts to effectuate this authority and responsibility.

c. It is the purpose of this Agreement for the College and the City to make the most efficient use of their powers by cooperating with each other on the basis of mutual advantage and timely providing services as identified in this Agreement and in any addendum to this Agreement.

2. Administration of Agreement

a. The City and the College will jointly administer and monitor all aspects, terms, and conditions of this Agreement. The Vice President for Student Affairs of the College, or his/her identified designee, will be the College's contact person for the purpose of this Agreement.

b. Any personal property shall be acquired, held, and disposed as set forth in this Agreement; or any amendment hereto.

c. No separate legal or administrative entity is created under this Agreement.

3. Law Enforcement Services To Be Provided By The City

The City will provide on the Campus the following law enforcement services:

a. City will assign a certified police officer, hereafter called the "School Resource Officer," to the Campus for eighteen (18) hours per week when regular classes are in session and beginning two (2) weeks prior to the start of the fall semester and ending the day before graduation of the spring semester. The City will be allowed to schedule the School Resource Officer to two (2) non-consecutive weeks per school year for Police Department specific training without backfilling the position. Training specific to or on behalf of the College will not be counted against the above described (2) two training weeks. The College will be notified as soon as possible prior to any training to allow them to adjust their normal staffing schedules. The Police Department will respond to calls for service on Campus with their regularly scheduled officers during these periods;

b. The City will be allowed to provide the School Resource Officer with two (2) sick days per semester without backfilling the position. The Police Department will respond to calls for service on Campus with their regularly scheduled officers during these periods;

c. The School Resource Officer will patrol the Campus, in a Police vehicle, on foot, or on a patrol bicycle; enforce traffic and criminal laws of the State of Nebraska and/or the City of Wayne; conduct criminal investigations; respond to calls for service, perform community policing duties, and be a positive presence on Campus. The School Resource Officer will respond to Police calls off-campus for emergencies, backup assistance for other City Police officers and to handle calls for service if an on-duty City Police officer has two (2) or more calls for service backed up or is unable to respond to a crime in progress report, or a traffic accident. The College recognizes that the City's ability to respond to police calls off-campus, as needed, will maximize the Police Department's ability to respond to citizen calls for service received while maintaining the spirit of this Agreement. The Wayne Police Department will make efforts to make up missed hours if the School Resource Officer is called off-campus. When the School Resource Officer responds to Police calls for service off-campus the Police dispatcher will notify Campus Security of this change in status in a timely manner;

d. The Wayne Police Department will run requests for vehicle registration information as long as that information is requested through and in conjunction with a Wayne Police Officer's involvement on campus.

4. <u>Criminal Investigation</u>

a. The City will investigate all property crimes reported on the Campus where the loss value is $100 or greater or involves the theft of any identification or financial transaction device. All property crime reports will be communicated to the School Resource Officer. If the loss value of any reported property crime is less than $100 the School Resource Officer may refer the case to Campus Security for follow up.

b. The City will investigate all crimes against persons reported on the Campus, except for reports of sexual violence or sex harassment which may be investigated by the College or by the College and the City.
    i. Individuals who report an incident of sexual violence or sex harassment to the College will be advised to report the incident to law enforcement, however, students are not required to notify law enforcement authorities regarding a report of sexual violence or sex harassment.

c. Investigations by the City will be conducted independent of Campus Security unless their assistance is required or requested by the City. If the Police Department does not have an officer immediately available to respond to a crime reported on Campus, Campus Security will gather preliminary information, e.g. victim's name, witnesses' names, date, time and location of offense, for the School Resource Officer. For the purpose

of this Agreement preliminary information does not include obtaining written statements, conducting any type of crime scene investigation, taking photographs, etc.

d. The Police Department will provide Campus Security with reports of all crimes investigated on Campus containing sufficient information for the completion of legally mandated reporting requirements. To prevent duplication of work the School Resource Officer will complete only the Police Department's investigative report. A copy of these investigative reports will be provided to Campus Security for data entry purposes. Except that the Police Department will use its discretion, on a case by case basis, as to when to provide full or partial investigative reports to Campus Security, depending on the case.

e. When any criminal investigation conducted by the Police Department involves a College residence hall or includes an apparent conflict between students, the Director of Residence Life and/or the Vice President for Student Affairs will also be provided investigatory reports. The Police Department will use its discretion, on a case by case basis, as to when to provide full or partial investigative reports to Campus Security, depending on the case.

f. The Police Department will refer all property crimes reported on the Campus, and which they investigate, to the College judicial process, however;
   (1) Any crime victim, including the College, may request criminal charges;
   (2) Crimes may be referred for prosecution before the College judicial process begins;
   (3) Both the College disciplinary process and criminal prosecution may happen concurrently;
   (4) Police Officers will appear for College disciplinary hearings as needed.

g. The Police Department will refer all crimes against persons to the Wayne County Attorney's Office for prosecution.

h. To facilitate investigative follow up the School Resource Officer will be provided access to any Campus surveillance camera recordings and/or allowable student information currently maintained in hard copy or electronically in the Campus Security Office.

5. Community Policing & Crime Prevention

a. The College and the City recognize that positive interaction between the School Resource Officer, students, faculty and staff is beneficial to both

parties. It is further recognized that crime prevention efforts on Campus should reflect those of the community as well.

b. The School Resource Officer will be given an opportunity to co-present at crime prevention and/or education programs given by Campus Security, or upon the request of other Campus entities. To ensure adequate planning for any presentation, the School Resource Officer will be provided a minimum of five (5) days written notice. Said notice shall include the topic, date, time, and location of the presentation. The decision to participate in any on-campus crime prevention and/or education presentation will be left to the discretion of the School Resource Officer and/or the Vice President for Student Affairs. If an officer participates he or she will be given a minimum of 15 minutes participation per hour of scheduled presentation.

c. To provide a community policing presence, the School Resource Officer will attend College meetings and activities as part of his/her assigned duties, as requested by the College and as he/she is available.

d. The City will not provide overtime pay for the School Resource Officer to attend these meetings. Any extra shift time spent at these or similar meetings will be taken off before or after the officer's regularly assigned Campus shift.

e. The School Resource Officer will meet regularly with the Residence Life Staff in each housing unit.

f. The School Resource Officer will respond to fire alarms on Campus and, in the absence of Campus Security personnel, will reset the fire alarm panels.

g. The Campus Security Manager will provide training specific to the fire alarm systems to the School Resource Officer before the start of the school year. A laminated flip chart of alarm procedures for each building will be placed in each alarm box as a ready reference.

6. <u>Security Responsibilities</u>

a. The following duties will be performed solely by College Campus Security personnel and not by the City:
   (1) Fueling vehicles for the College motor pool

b. Campus Security will be the first to respond to calls for service on the Wayne State College campus. If the Campus Security Officer is occupied with Security Department business and a call for service is received, the

School Resource Officer may be asked to help with the following types of calls:

(1) Helping to lock and unlock Campus facilities;
(2) Respond to calls for service and fire alarm panels.

7. **Use of Equipment**

a. The Police Department will provide the School Resource Officer with all uniforms, equipment, leather, firearms, and continuing education at all times relevant to this Agreement.

b. The Police Department will provide a multi-channel portable radio programmed with the Campus Security frequency. The priority frequency will be that of the Wayne Police Department but the Campus Security frequency will be monitored.

c. The City will provide a vehicle for the School Resource Officer to use.

8. **Training Provided by College**

a. Fire Alarm Panels – School Resource Officers will receive training specific to the fire alarm panels of each College building. Quick reference laminated charts will be provided to the School Resource Officer and/or Police Department and placed at each alarm panel.

b. School Resource Officers will attend Residence Life staff training.

c. Written training defining the College student disciplinary procedures.

d. Training on procedures for notification of campus staff for after-hours assistance, including when, who, and how to request assistance.

e. When possible all training will be done beginning two (2) weeks prior to the start of each fall semester.

f. It is recognized that the School Resource Officer's schedule will be modified during the training period to facilitate attendance at some orientations.

g. A current roster of Residence Life staff and contact information will be provided to the School Resource Officer each semester.

h. Monthly Campus Security work schedules, and updates, will be provided to the School Resource Officer and Wayne Police dispatch, including a contact person(s) in the event no one answers the Campus Security number.

9. **Direct Oversight of the Agreement to Provide Police Coverage on Campus**

Certified Police Officers are employees of the City of Wayne Police Department and as such must be under the direct supervision of the Chief of Police or his designee. Campus Security employees shall remain under the direct supervision of the College.

The City of Wayne Police Department shall control the manner in which law enforcement services are performed; however, the Agreement shall specify the nature of the services to be performed. The School Resource Officer is not to be deemed an employee of the College and has no authority to make any binding commitments or obligations on behalf of the College except as expressly provided herein. Liability and all other insurance coverage as well as Workers Compensation coverage for the School Resource Officer is the responsibility of the City of Wayne.

The Chief of Police will meet monthly with the Vice President for Student Affairs and the Campus Security Manager to review and evaluate the provisions of this Agreement.

Three (3) Wayne State College student representatives selected by Student Senate will meet jointly with the Police Chief, the School Resource Officer and any Campus Security official at least two (2) times per year to review the student perspective of this Agreement, one (1) during the fall semester, and one (1) during the spring semester. These meetings may be scheduled by either party with not less than thirty (30) days' notice. Only those representatives designated in this paragraph, or a designee thereof, shall attend the meeting.

10. **Dispatch Services**

The City agrees to provide the following dispatch services to the Campus:

a. Answer Campus Security telephone after hours and refer calls to Campus Security Staff and assign police officers to crimes reported;

b. Respond to campus fire alarm notifications and dispatch fire trucks as needed. Police Dispatch staff will also coordinate with the Director of Facility Services and his staff to prevent unwarranted fire alarm responses.

11. **Fees for Service**

The total charge to the College by the City for the above defined law enforcement services shall be a total of $30,000.00 per year to be paid in twelve (12) monthly installments.

12. Agreement Duration

The term of this Agreement will be effective beginning July 1, 2018 and shall be in effect until June 30, 2019 except that either the City or the College may execute a written sixty (60) day notice to quit or withdraw from the Agreement.

13. Agreement Amendments

This Agreement may be amended at any time by the written agreement of both parties.

14. Indemnification

To the maximum extent permitted by law, each party agrees to indemnify and defend the other party against, and to hold it harmless from, all claims, suits, liability, expense or damage (including reasonable attorneys' fees and court costs) for damage to property, injury to persons (including death) and any other claims, suits, or liability resulting from the negligence of such party or any of its employees or agents; provided however, the indemnification under this Section 14 shall not apply if such claims, suits, liability, expense or damage is the direct result of the willful misconduct or gross negligence of either party. In no event shall either party be liable for any punitive, consequential, or special damages or lost profits incurred or alleged to have been incurred.

15. New Employee Work Eligibility Status.

☐ Employee Work Eligibility Status. The City is required and hereby agrees to use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program authorized by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. 1324a, known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee.

The City understands and agrees that lawful presence in the United States is required and the City may be disqualified or the Agreement terminated if such lawful presence cannot be verified as required by Neb. Rev. Stat. §4-108.

16. Liability Insurance Requirements

The City is required to carry liability insurance in the amount of one (1) million dollars per occurrence with a four (4) million dollar umbrella. The City's insurance policy shall be primary and non-contributory. The College shall be named as an additional insured party on the policy and the certificate of insurance shall reflect that the policy waives its right of subrogation against the College. A copy of the certificate shall be provided to the College.

17. Designated College Representative

The designated College representative for purposes of monitoring and oversight of this Agreement is the Vice President for Student Affairs.

_____	(402) 375-7213	_____
Name	Telephone	E-mail

This Agreement is hereby executed by the City of Wayne and the Board of Trustees of the Nebraska State Colleges dba Wayne State College upon the respective dates set forth following the executory signature attached to this Agreement.

AND BE IT FURTHER RESOLVED that the Board of Trustees of the Nebraska State Colleges dba Wayne State College and the City of Wayne each declares itself to be a participant in the joint efforts to provide law enforcement services on the Wayne State College Campus.

Passed and approved this 19th day of June, 2018.

CITY OF WAYNE		**THE BOARD OF TRUSTEES OF THE NEBRASKA STATE COLLEGES**	
By:	_____	By:	_____
Name:	Jill Brodersen	Name:	Gary Bieganski
Title:	Mayor	Title:	Chair, Board of Trustees
Attested By:	_____ City Clerk		
Date:	_____	Date:	_____

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RESOLUTION NO. 2018-28

A RESOLUTION APPROVING INTERLOCAL COOPERATION AGREEMENT AND SPECIAL OPERATION AND MAINTENANCE AGREEMENT BETWEEN THE CITY OF WAYNE AND THE LOWER ELKHORN NATURAL RESOURCE DISTRICT (LENRD) FOR THE "WAYNE VERSACOURT PLAY AREA PROJECT."

WHEREAS, the City of Wayne, Nebraska, has been informed that its application for funding through the LENRD's Recreation Area Development Program for the "Wayne Versacourt Play Area Project" has been approved; and

WHEREAS, the City of Wayne wishes to enter into an Interlocal Cooperation Agreement and Special Operation and Maintenance Agreement with the LENRD for the "Wayne Versacourt Play Area Project."

NOW, THEREFORE BE IT RESOLVED, by the Mayor and City Council of the City of Wayne, Nebraska, that the Interlocal Cooperation Agreement and Special Operation and Maintenance Agreement with the LENRD for the "Wayne Versacourt Play Area Project," copies of which are attached hereto and incorporated herein by reference, be and the same are hereby approved as written, and that the City Administrator and/or Mayor are authorized and directed to execute said Agreements on behalf of the City.

PASSED AND APPROVED this 15th day of May, 2018.

THE CITY OF WAYNE, NEBRASKA,

By_____
Mayor

ATTEST:

_____
City Clerk

INTERLOCAL COOPERATION AGREEMENT

Comes now the Lower Elkhorn Natural Resources District, hereinafter referred to as the "LENRD", and the City of Wayne described on Exhibit "A" attached hereto and made a part hereof, hereinafter described as the Versacourt Play Area and pursuant to the Nebraska Interlocal Cooperation Act, hereby agree as follows:

1. It is in the best interests of the LENRD and City of Wayne to enter into this agreement to provide certain services and other benefits to the parties to this agreement, for the duration and purposes set forth on such Exhibit "A".

2. The manner of financing this undertaking and a budget for the same is as set forth on Exhibit "A", as agreed to by the parties herein.

3. In the event no separate legal entity to conduct the joint or cooperative undertaking contemplated by this agreement is created herein, then the administrator or joint board responsible for administering such undertaking is as set forth on Exhibit "A".

4. In the event real and personal property is used in such undertaking, the manner of acquiring, holding and disposing of the same is as set forth on Exhibit "A" attached hereto.

5. Time is of the essence of this agreement.

6. This agreement shall be binding upon the parties hereto and interpreted under Nebraska Law.

Dated this _____ day of _____, 2018.

LOWER ELKHORN NATURAL RESOURCES DISTRICT

BY_____
Chairman of the Lower Elkhorn NRD Board

_____
City of Wayne

EXHIBIT "A"

1. Public Agency: City of Wayne

2. Duration of this Agreement: is for three years (Expires June 30, 2022)

3. This agreement forms no separate entity.

    A. Lower Elkhorn NRD administers the Recreation Area Development Program.
    B. City of Wayne is responsible for acquisition of any necessary property by deed or easement from landowners and will terminate such easements when no longer needed.

4. This agreement sets forth the terms under which Lower Elkhorn NRD and City of Wayne will cooperate on:

    A. Acquisition, planning, and development of public recreation areas which are agreed to by both parties.

5. Financing and budget: Lower Elkhorn NRD and City of Wayne each agree:

    A. Lower Elkhorn NRD will reimburse City of Wayne 50% of their eligible costs up to a limit of $30,000.00 on approved projects.

6. Termination: Either party to this agreement may terminate the same upon completion of the same or a violation of the agreement by the other party.

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

All easements shall terminate as provided by law.

LOWER ELKHORN NATURAL RESOURCE DISTRICT
Recreation Area Development Program

Special Operation and Maintenance Agreement

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

It is agreed that, if the District furnishes financial aid to the Sponsor for the Project, in consideration thereof: $30,000.00.

1. The Sponsor warrants that it now has, or can obtain the resources, ability, and authority, and will obtain the additional funds, permits, services, materials, and land rights necessary to complete the Project, without additional cost to the District.

2. The Sponsor shall operate, maintain, and repair the Project after completion in accordance with accepted engineering standards and practices, without additional cost to the District. If the Project is either removed or improperly maintained within a period of ten (10) years following completion, the Sponsor will upon request of the District refund all, or a portion, of the District's cost share funds.

3. The Sponsor shall indemnify and hold the District harmless from and against all liability and damages resulting from the design, construction, operation, or maintenance of the Project, and against all demands, causes of action, and claims arising therefrom, except as may be caused by negligence of the District, its agents, representatives, or employees.

The effective date of this Agreement shall be April 26, 2018.

SPONSOR:

_____ Attest: _____

By: _____

Date: _____

LOWER ELKHORN NATURAL RESOURCES DISTRICT

By: _____ Attest: _____

Date: _____

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RESOLUTION NO. 2018-29

A RESOLUTION ACCEPTING BID AND AWARDING CONTRACT ON THE PURCHASE OF A 4X4 CAB AND CHASSIS TRUCK WITH DUMP BOX.

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

WHEREAS, 5 bids were received for a 4x4 cab and chassis truck with dump box; and

WHEREAS, staff has reviewed the bids and recommends that the bid, as submitted by the following bidder/vendor, is the most responsible and best bid/price received as follows:

Name and Address	Amount of Base Bid
Freightliner Truck Center 2801 S 13th Street Norfolk NE 68701	$107,775.00

BE IT RESOLVED that the bid, as above set forth, filed with the City Clerk in accordance with the terms of the published notice calling for the proposal of a 4x4 cab and chassis truck with dump box be, and the same is hereby accepted.

BE IT FURTHER RESOLVED that documents by and between the City and the bidder/vendor necessary to order and procure the 4x4 cab and chassis truck with dump box be executed within fifteen (15) days of the Notice of Award.

PASSED AND APPROVED this 15th day of May, 2018.

THE CITY OF WAYNE, NEBRASKA,

By_____
Mayor

ATTEST:

_____
City Clerk

CITY OF WAYNE	
4x4 Cab and Chassis Truck with Dump Box	
Bid Opening: May 9, 2018	
BIDDER NAME	**AMOUNT**
Cornhusker International	$112,275.01
Freightliner Truck Center	**$107,010.00**
Freightliner Truck Center	$109,519.00
Peterbuilt of Norfolk	$112,039.00
Wick's Trucks	$108,265.00

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RESOLUTION NO. 2018-30

A RESOLUTION APPROVING THE SPECIFICATIONS AND AUTHORIZING THE PURCHASE OF A 2018 FORD POLICE UTILITY INTERCEPTOR THROUGH THE STATE BID SYSTEM AS PER THE BID PROPOSAL RECEIVED FROM ARNIE'S FORD.

WHEREAS, the Police Chief has prepared specifications for a new police utility interceptor and related equipment; and

WHEREAS, the Police Chief's recommendation is to go through the State Bid system and purchase said vehicle from Arnie's Ford for the sum of $31,121.00, which is considered the base bid and includes all items called for in the specifications, unless otherwise noted.

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and Council of the City of Wayne, Nebraska, as follows:

1. That the specifications for the police utility interceptor and related equipment be and the same is hereby approved.

2. That the cost for said police utility interceptor and related equipment be and the same is hereby approved.

PASSED AND APPROVED this 15th day of May, 2018.

THE CITY OF WAYNE, NEBRASKA,

By_____
Mayor

ATTEST:

_____
City Clerk

May 4, 2018

City of Wayne
Wayne Police Dept.
306 N Pearl St.
Wayne, NE 68787

Dear Chief of Police and City Council,

Thank you for your consideration of a Ford Police Utility from Arnie's Ford. Below are the specs for a 2018 Police Utility Interceptor.

PUV AWD 5 Passenger
3.7L V6 Engine
Cloth Bucket Seats/Vinyl Rear Seats
Courtesy Lamp Inoperable
Rubber or Vinyl Floor Covering
Under Hood Light
100W Siren Speaker-Code 3
Setina PB 400 Push Bumper
Front/Rear/Tail Lamp Solutions
Heated Mirrors
Full Face Wheel Covers
LED Driver Side Spot Light
Remote Keyless Entry Fob
Nebraska Contract Price **$31,121.00**

Thank you for your consideration. Please call if you have any further questions.

Ken Kwapnioski
Arnie's Ford

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RESOLUTION NO. 2018-31

A RESOLUTION ADOPTING THE DRUG AND ALCOHOL TESTING POLICIES FOR BOTH ZERO TOLERANCE AND SECOND CHANCE AS RECOMMENDED BY THE NEBRASKA DEPARTMENT OF TRANSPORTATION.

WHEREAS, the Nebraska Department of Transportation (NDOT) has informed the City of Wayne that Federal drug and alcohol regulations have recently changed; and

WHEREAS, the NDOT is recommending that the Drug and Alcohol Testing Policies for both Zero Tolerance and Second Chance be amended to conform to the new regulations.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of Wayne, Nebraska, that the "Drug and Alcohol Testing Policies for both Zero Tolerance and Second Chance," which are attached hereto and incorporated herein by reference, are hereby approved, and shall be effective upon the passage of this Resolution.

APPROVED AND ADOPTED this 15th day of May, 2018.

THE CITY OF WAYNE, NEBRASKA,

By_____
Mayor

ATTEST:

_____
City Clerk

01/2018

DRUG AND ALCOHOL TESTING POLICY
City of Wayne
Adopted as of May 15, 2018

A. PURPOSE

1) The City of Wayne provides public transit and paratransit services for the residents of Wayne. Part of our mission is to ensure that this service is delivered safely, efficiently, and effectively by establishing a drug and alcohol-free work environment, and to ensure that the workplace remains free from the effects of drugs and alcohol in order to promote the health and safety of employees and the general public. In keeping with this mission, the City of Wayne declares that the unlawful manufacture, distribution, dispense, possession, or use of controlled substances or misuse of alcohol is prohibited for all employees.

2) Additionally, the purpose of this policy is to establish guidelines to maintain a drug and alcohol-free workplace in compliance with the Drug-Free Workplace Act of 1988, and the Omnibus Transportation Employee Testing Act of 1991. This policy is intended to comply with all applicable Federal regulations governing workplace anti-drug and alcohol programs in the transit industry. Specifically, the Federal Transit Administration (FTA) of the U.S. Department of Transportation has published 49 CFR Part 655, as amended, that mandates urine drug testing and breath alcohol testing for safety-sensitive positions, and prohibits performance of safety-sensitive functions when there is a positive test result, or a refusal to test. The U. S. Department of Transportation (USDOT) has also published 49 CFR Part 40, as amended, that sets standards for the collection and testing of urine and breath specimens.

3) Any provisions set forth in this policy that are included under the sole authority of the City of Wayne and <u>are not</u> provided under the authority of the above named Federal regulations are underlined. Tests conducted under the sole authority of the City of Wayne will be performed on non-USDOT forms and will be separate from USDOT testing in all respects.

B. APPLICABILITY

This Drug and Alcohol Testing Policy applies to all safety-sensitive employees (full- or part-time) when performing safety sensitive duties. See Attachment A for a list of employees and the authority under which they are included.

A safety-sensitive function is operation of public transit service including the operation of a revenue service vehicle (whether or not the vehicle is in revenue service), maintenance of a revenue service vehicle or equipment used in revenue service, security personnel who carry firearms, dispatchers or persons controlling the movement of revenue service vehicles and any transit employee who operates a vehicle that requires a Commercial Driver's License to operate. Maintenance functions include the repair, overhaul, and rebuild of engines, vehicles and/or equipment used in revenue

service. A list of safety-sensitive positions who perform one or more of the above mentioned duties is provided in Attachment A. Supervisors are only safety sensitive if they perform one of the above functions. Volunteers are considered safety sensitive and subject to testing if they are required to hold a CDL, or receive remuneration for service in excess of actual expense.

C. DEFINITIONS

Accident: An occurrence associated with the operation of a vehicle even when not in revenue service, if as a result:

a. An individual dies;
b. An individual suffers a bodily injury and immediately receives medical treatment away from the scene of the accident; or,
c. One or more vehicles incur disabling damage as the result of the occurrence and is transported away from the scene by a tow truck or other vehicle. For purposes of this definition, *disabling damage* means damage which precludes departure of any vehicle from the scene of the occurrence in its usual manner in daylight after simple repairs. Disabling damage includes damage to vehicles that could have been operated but would have been further damaged if so operated, but does not include damage which can be remedied temporarily at the scene of the occurrence without special tools or parts, tire disablement without other damage even if no spare tire is available, or damage to headlights, taillights, turn signals, horn, or windshield wipers that makes them inoperative.

Adulterated specimen: A specimen that has been altered, as evidence by test results showing either a substance that is not a normal constituent for that type of specimen or showing an abnormal concentration of an endogenous substance.

Alcohol: The intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols contained in any beverage, mixture, mouthwash, candy, food, preparation or medication.

Alcohol Concentration: Expressed in terms of grams of alcohol per 210 liters of breath as indicated by a breath test under 49 CFR Part 40.

Aliquot: A fractional part of a specimen used for testing, It is taken as a sample representing the whole specimen.

Canceled Test: A drug or alcohol test that has a problem identified that cannot be or has not been corrected, or which is cancelled. A canceled test is neither positive nor negative.

Confirmatory Drug Test: A second analytical procedure performed on a different aliquot of the original specimen to identify and quantify the presence of a specific drug or metabolite.

Confirmatory Validity Test: A second test performed on a different aliquot of the original urine specimen to further support a validity test result.

Covered Employee Under FTA Authority: An employee who performs a safety-sensitive function including an applicant or transferee who is being considered for hire into a safety-sensitive function (See Attachment A for a list of covered employees).

Designated Employer Representative (DER): An employee authorized by the employer to take immediate action to remove employees from safety-sensitive duties and to make required decisions in testing. The DER also receives test results and other communications for the employer, consistent with the requirements of 49 CFR Parts 40 and 655.

DOT, The Department, DOT Agency: These terms encompass all DOT agencies, including, but not limited to, the Federal Aviation Administration 9FAA), the Federal Railroad Administration (FRA), the Federal Motor Carrier Safety Administration (FMCSA), the Federal Transit Administration (FTA), the National Highway Traffic Safety Administration (NHTSA), the Pipeline and Hazardous Materials Safety Administration (PHMSA), and the Office of the Secretary (OST). For purposes of 49 CFR Part 40, the United States Coast Guard (USCG), in the Department of Homeland Security, is considered to be a DOT agency for drug testing purposes. These terms include any designee of a DOT agency.

Dilute specimen: A urine specimen with creatinine and specific gravity values that are lower than expected for human urine.

Disabling damage: Damage which precludes departure of any vehicle from the scene of the occurrence in its usual manner in daylight after simple repairs. Disabling damage includes damage to vehicles that could have been operated but would have been further damaged if so operated, but does not include damage which can be remedied temporarily at the scene of the occurrence without special tools or parts, tire disablement without other damage even if no spare tire is available, or damage to headlights, taillights, turn signals, horn, or windshield wipers that makes them inoperative.

Evidentiary Breath Testing Device (EBT): A device approved by the NHTSA for the evidential testing of breath at the 0.02 and the 0.04 alcohol concentrations, and appears on ODAPC's Web page for "Approved Evidential Breath Measurement Devices" because it conforms with the model specifications available from NHTSA.

Initial Drug Test: (Screening Drug Test) The test used to differentiate a negative specimen from one that requires further testing for drugs or drug metabolites.

Initial Specimen Validity Test: The first test used to determine if a urine specimen is adulterated, diluted, substituted, or invalid

Invalid Result: The result reported by an HHS-certified laboratory in accordance with the criteria established by the HHS Mandatory Guidelines when a positive, negative,

adulterated, or substituted result cannot be established for a specific drug or specimen validity test.

Laboratory: Any U.S. laboratory certified by HHS under the National Laboratory Certification program as meeting standards of Subpart C of the HHS Mandatory Guidelines for Federal Workplace Drug Testing Programs; or, in the case of foreign laboratories, a laboratory approved for participation by DOT under this part.

Limit of Detection (LOD): The lowest concentration at which a measurand can be identified, but (for quantitative assays) the concentration cannot be accurately calculated.

Limit of Quantitation: For quantitative assays, the lowest concentration at which the identity and concentration of the measurand can be accurately established.

Medical Review Officer (MRO): A licensed physician (medical doctor or doctor of osteopathy) responsible for receiving laboratory results generated by the drug testing program who has knowledge of substance abuse disorders, and has appropriate medical training to interpret and evaluate an individual's confirmed positive test result, together with his/her medical history, and any other relevant bio-medical information.

Negative Dilute: A drug test result which is negative for the five drug/drug metabolites but has a specific gravity value lower than expected for human urine.

Negative result: The result reported by an HHS-certified laboratory to an MRO when a specimen contains no drug or the concentration of the drug is less than the cutoff concentration for the drug or drug class and the specimen is a valid specimen. An alcohol concentration of less than 0.02 BAC is a negative test result.

Non-negative test result: A urine specimen that is reported as adulterated, substituted, invalid, or positive for drug/drug metabolites.

Oxidizing Adulterant: A substance that acts alone or in combination with other substances to oxidize drugs or drug metabolites to prevent the detection of the drug or metabolites, or affects the reagents in either the initial or confirmatory drug test.

Performing (a safety-sensitive function): A covered employee is considered to be performing a safety-sensitive function and includes any period in which he or she is actually performing, ready to perform, or immediately available to perform such functions.

Positive result: The result reported by an HHS- Certified laboratory when a specimen contains a drug or drug metabolite equal or greater to the cutoff concentrations.

Prohibited drug: Identified as marijuana, cocaine, opioids, amphetamines, or phencyclidine at levels above the minimum thresholds specified in 49 CFR Part 40, as amended.

Reconfirmed: The result reported for a split specimen when the second laboratory is able to corroborate the original result reported for the primary specimen.

Rejected for Testing: The result reported by an HHS- Certified laboratory when no tests are performed for specimen because of a fatal flaw or a correctable flaw that has not been corrected.

Revenue Service Vehicles: All transit vehicles that are used for passenger transportation service.

Safety-sensitive functions: Employee duties identified as:

(1) The operation of a transit revenue service vehicle even when the vehicle is not in revenue service.
(2) The operation of a non-revenue service vehicle by an employee when the operation of such a vehicle requires the driver to hold a Commercial Drivers License (CDL).
(3) Maintaining a revenue service vehicle or equipment used in revenue service.
(4) Controlling the movement of a revenue service vehicle and
(5) Carrying a firearm for security purposes.

Split Specimen Collection: A collection in which the urine collected is divided into two separate bottles, the primary specimen (Bottle A) and the split specimen (Bottle B).

Substance Abuse Professional (SAP): A licensed physician (medical doctor or doctor of osteopathy) or licensed or certified psychologist, social worker, employee assistance professional, state-licensed or certified marriage and family therapist, or drug and alcohol counselor (certified by an organization listed at https://www.transportation.gov/odapc/sap) with knowledge of and clinical experience in the diagnosis and treatment of drug and alcohol related disorders.

Substituted specimen: A urine specimen with creatinine and specific gravity values that are so diminished or so divergent that they are not consistent with normal human urine.

Test Refusal: The following are considered a refusal to test if the employee:

(1) Fail to appear for any test (except a pre-employment test) within a reasonable time, as determined by the employer.
(2) Fail to remain at the testing site until the testing process is complete. An employee who leaves the testing site before the testing process commences for a pre-employment test has not refused to test.
(3) Fail to attempt to provide a breath or urine specimen. An employee who does not provide a urine or breath specimen because he or she has left the testing site before the testing process commenced for a pre-employment test has not refused to test.
(4) In the case of a directly-observed or monitored urine drug collection, fail to permit monitoring or observation of your provision of a specimen.
(5) Fail to provide a sufficient quantity of urine or breath without a valid medical explanation.

(6) Fail or decline to take a second test as directed by the collector or the employer for drug testing.
(7) Fail to undergo a medical evaluation as required by the MRO or the employer's Designated Employer Representative (DER).
(8) Fail to cooperate with any part of the testing process.
(9) Fail to follow an observer's instructions to raise and lower clothing and turn around during a directly-observed test.
(10) Possess or wear a prosthetic or other device used to tamper with the collection process.
(11) Admit to the adulteration or substitution of a specimen to the collector or MRO.
(12) Refuse to sign the certification at Step 2 of the Alcohol Testing Form (ATF).
(13) Fail to remain readily available following an accident.
(14) As a covered employee, if the MRO reports that you have a verified adulterated or substituted test result, you have refused to take a drug test.

Vehicle: A bus, electric bus, van, automobile, rail car, trolley car, trolley bus, or vessel. A public transit vehicle is a vehicle used for public transportation or for ancillary services.

Verified negative test: A drug test result reviewed by a medical review officer and determined to have no evidence of prohibited drug use above the minimum cutoff levels established by the Department of Health and Human Services (HHS).

Verified positive test: A drug test result reviewed by a medical review officer and determined to have evidence of prohibited drug use above the minimum cutoff levels specified in 49 CFR Part 40 as revised.

Validity testing: The evaluation of the specimen to determine if it is consistent with normal human urine. Specimen validity testing will be conducted on all urine specimens provided for testing under DOT authority. The purpose of validity testing is to determine whether certain adulterants or foreign substances were added to the urine, if the urine was diluted, or if the specimen was substituted.

D. EDUCATION AND TRAINING

1) Every covered employee will receive a copy of this policy and will have ready access to the corresponding federal regulations including 49 CFR Parts 655 and 40, as amended. In addition, all covered employees will undergo a minimum of 60 minutes of training on the signs and symptoms of drug use including the effects and consequences of drug use on personal health, safety, and the work environment. The training also includes manifestations and behavioral cues that may indicate prohibited drug use.

2) All supervisory personnel or company officials who are in a position to determine employee fitness for duty will receive 60 minutes of reasonable suspicion training on the physical, behavioral, and performance indicators of probable drug use and 60 minutes of additional reasonable suspicion training on the physical, behavioral, speech, and performance indicators of probable alcohol misuse.

E. PROHIBITED SUBSTANCES

1) Prohibited substances addressed by this policy include the following.

   a. Illegally Used Controlled Substance or Drugs Under the Drug-Free Workplace Act of 1988 any drug or any substance identified in Schedule I through V of Section 202 of the Controlled Substance Act (21 U.S.C. 812), and as further defined by 21 CFR 1300.11 through 1300.15 is prohibited at all times in the workplace unless a legal prescription has been written for the substance. This includes, but is not limited to: marijuana, amphetamines, opioids, phencyclidine (PCP), and cocaine, as well as any drug not approved for medical use by the U.S. Drug Enforcement Administration or the U.S. Food and Drug Administration. Illegal use includes use of any illegal drug, misuse of legally prescribed drugs, and use of illegally obtained prescription drugs. Also, the medical use of marijuana, or the use of hemp related products, which cause drug or drug metabolites to be present in the body above the minimum thresholds is a violation of this policy

      Federal Transit Administration drug testing regulations (49 CFR Part 655) require that all employees covered under FTA authority be tested for marijuana, cocaine, amphetamines, opioids, and phencyclidine as described in Section H of this policy. Illegal use of these five drugs is prohibited at all times and thus, covered employees may be tested for these drugs anytime that they are on duty.

   b. Legal Drugs: The appropriate use of legally prescribed drugs and non-prescription medications is not prohibited. However, the use of any substance which carries a warning label that indicates that mental functioning, motor skills, or judgment may be adversely affected must be reported to a City of Wayne supervisor and the employee is required to provide a written release from his/her doctor or pharmacist indicating that the employee can perform his/her safety-sensitive functions.

   c. Alcohol: The use of beverages containing alcohol (including any mouthwash, medication, food, candy) or any other substances such that alcohol is present in the body while performing safety-sensitive job functions is prohibited.

F. PROHIBITED CONDUCT

1) All covered employees are prohibited from reporting for duty or remaining on duty any time there is a quantifiable presence of a prohibited drug in the body above the minimum thresholds defined in 49 CFR Part 40, as amended.

2) Each covered employee is prohibited from consuming alcohol while performing safety-sensitive job functions or while on-call to perform safety-sensitive job functions. If an on-call employee has consumed alcohol, they must acknowledge the use of alcohol at the time that they are called to report for duty. The covered

employee will subsequently be relieved of his/her on-call responsibilities and subject to discipline for not fulfilling his/her on-call responsibilities.

3) The Transit Department shall not permit any covered employee to perform or continue to perform safety-sensitive functions if it has actual knowledge that the employee is using alcohol

4) Each covered employee is prohibited from reporting to work or remaining on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.04 or greater regardless of when the alcohol was consumed.

    a. An employee with a breath alcohol concentration which measures 0.02-0.039 is not considered to have violated the USDOT-FTA drug and alcohol regulations, provided the employee hasn't consumed the alcohol within four (4) hours of performing a safety-sensitive duty. However, if a safety-sensitive employee has a breath alcohol concentration of 0.02-0.039, USDOT-FTA regulations require the employee to be removed from the performance of safety-sensitive duties until:
        i. The employee's alcohol concentration measures less than 0.02; or
        ii. The start of the employee's next regularly scheduled duty period, but not less than eight hours following administration of the test.

5) No covered employee shall consume alcohol for eight (8) hours following involvement in an accident or until he/she submits to the post-accident drug/alcohol test, whichever occurs first.

6) No covered employee shall consume alcohol within four (4) hours prior to the performance of safety-sensitive job functions.

7) The City of Wayne, under its own authority, also prohibits the consumption of alcohol at all times the employee is on duty, or anytime the employee is in uniform.

8) Consistent with the Drug-free Workplace Act of 1988, all City of Wayne employees are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of prohibited substances in the work place including transit system premises and transit vehicles.

G. DRUG STATUTE CONVICTION

Consistent with the Drug Free Workplace Act of 1998, all employees are required to notify the City of Wayne management of any criminal drug statute conviction for a violation occurring in the workplace within five days after such conviction. Failure to comply with this provision shall result in disciplinary action as defined in Section Q of this policy.

H. TESTING REQUIREMENTS

1) Analytical urine drug testing and breath testing for alcohol will be conducted as required by 49 CFR Part 40 as amended. All employees covered under FTA authority shall be subject to testing prior to performing safety-sensitive duty, for reasonable suspicion, following an accident, and random as defined in Section K, L, M, and N of this policy, and return to duty/follow-up.

2) A drug test can be performed any time a covered employee is on duty. A reasonable suspicion or random alcohol test can only be performed just before, during, or after the performance of a safety-sensitive job function. Under the City of Wayne authority, a non-DOT alcohol test can be performed any time a covered employee is on duty.

3) All covered employees will be subject to urine drug testing and breath alcohol testing as a condition of ongoing employment with the City of Wayne. Any safety-sensitive employee who refuses to comply with a request for testing shall be removed from duty and subject to discipline as defined in Section Q of this policy.

I. DRUG TESTING PROCEDURES

1) Testing shall be conducted in a manner to assure a high degree of accuracy and reliability and using techniques, equipment, and laboratory facilities which have been approved by the U.S. Department of Health and Human Service (HHS). All testing will be conducted consistent with the procedures set forth in 49 CFR Part 40, as amended. The procedures will be performed in a private, confidential manner and every effort will be made to protect the employee, the integrity of the drug testing procedure, and the validity of the test result.

2) The drugs that will be tested for include marijuana, cocaine, opioids, amphetamines, and phencyclidine. After the identity of the donor is checked using picture identification, a urine specimen will be collected using the split specimen collection method described in 49 CFR Part 40, as amended. Each specimen will be accompanied by a DOT Custody and Control Form and identified using a unique identification number that attributes the specimen to the correct individual. The specimen analysis will be conducted at a HHS certified laboratory. An initial drug screen and validity test will be conducted on the primary urine specimen. For those specimens that are not negative, a confirmatory Gas Chromatography/Mass Spectrometry (GC/MS) test will be performed. The test will be considered positive if the amounts of the drug(s) and/or its metabolites identified by the GC/MS test are above the minimum thresholds established in 49 CFR Part 40, as amended.

3) The test results from the HHS certified laboratory will be reported to a Medical Review Officer. A Medical Review Officer (MRO) is a licensed physician with

detailed knowledge of substance abuse disorders and drug testing. The MRO will review the test results to ensure the scientific validity of the test and to determine whether there is a legitimate medical explanation for a confirmed positive, substitute, or adulterated test result. The MRO will attempt to contact the employee to notify the employee of the non-negative laboratory result, and provide the employee with an opportunity to explain the confirmed laboratory test result. The MRO will subsequently review the employee's medical history/medical records as appropriate to determine whether there is a legitimate medical explanation for a non-negative laboratory result. If no legitimate medical explanation is found, the test will be verified positive or refusal to test and reported to the City of Wayne. If a legitimate explanation is found, the MRO will report the test result as negative.

4) If the test is invalid without a medical explanation, a retest will be conducted under direct observation. Employees do not have access to a test of their split specimen following an invalid result.

5) Any covered employee who questions the results of a required drug test under paragraphs L through P of this policy may request that the split sample be tested. The split sample test must be conducted at a second HHS-certified laboratory. The test must be conducted on the split sample that was provided by the employee at the same time as the primary sample. The method of collecting, storing, and testing the split sample will be consistent with the procedures set forth in 49 CFR Part 40, as amended. The employee's request for a split sample test must be made to the Medical Review Officer within 72 hours of notice of the original sample verified test result. Requests after 72 hours will only be accepted at the discretion of the MRO if the delay was due to documentable facts that were beyond the control of the employee. The City of Wayne will ensure that the cost for the split specimen analysis is covered in order for a timely analysis of the sample, however the City of Wayne will seek reimbursement for the split sample test from the employee.

6) If the analysis of the split specimen fails to confirm the presence of the drug(s) detected in the primary specimen, if the split specimen is not able to be analyzed, or if the results of the split specimen are not scientifically adequate, the MRO will declare the original test to be canceled.

7) The split specimen will be stored at the initial laboratory until the analysis of the primary specimen is completed. If the primary specimen is negative, the split will be discarded. If the primary specimen is positive, it will be retained in frozen storage for one year and the split specimen will also be retained for one year. If the primary is positive, the primary and the split will be retained for longer than one year for testing if so requested by the employee through the Medical Review Officer, or by the employer, by the MRO, or by the relevant DOT agency.

8) Observed collections

a. Consistent with 49 CFR Part 40, as amended, collection under direct observation (by a person of the same gender) with no advance notice will occur if:

   i. The laboratory reports to the MRO that a specimen is invalid, and the MRO reports to the City of Wayne that there was not an adequate medical explanation for the result;

   ii. The MRO reports to the City of Wayne that the original positive, adulterated, or substituted test result had to be cancelled because the test of the split specimen could not be performed;

   iii. The laboratory reported to the MRO that the specimen was negative-dilute with a creatinine concentration greater than or equal to 2 mg/dL but less than or equal to 5 mg/dL, and the MRO reported the specimen as negative-dilute and that a second collection must take place under direct observation (see §40.197(b)(1)).

   iv. The collector observes materials brought to the collection site or the employee's conduct clearly indicates an attempt to tamper with a specimen;

   v. The temperature on the original specimen was out of range;

   vi. Anytime the employee is directed to provide another specimen because the original specimen appeared to have been tampered with.

   vii. All follow-up-tests; or

   viii. All return-to-duty tests

J. ALCOHOL TESTING PROCEDURES

1) Tests for breath alcohol concentration will be conducted utilizing a National Highway Traffic Safety Administration (NHTSA)-approved Evidential Breath Testing device (EBT) operated by a trained Breath Alcohol Technician (BAT). A list of approved EBTs can be found on ODAPC's Web page for "Approved Evidential Breath Measurement Devices". Alcohol screening tests may be performed using a non-evidential testing device (alcohol screening device (ASD)) which is also approved by NHTSA. A list of approved ASDs can be found on ODAPC's Web page for "Approved Screening Devices to Measure Alcohol in Bodily Fluids". If the initial test indicates an alcohol concentration of 0.02 or greater, a second test will be performed to confirm the results of the initial test. The confirmatory test must occur on an EBT. The confirmatory test will be conducted no sooner than fifteen minutes after the completion of the initial test.

The confirmatory test will be performed using a NHTSA-approved EBT operated by a trained BAT. The EBT will identify each test by a unique sequential identification number. This number, time, and unit identifier will be provided on each EBT printout. The EBT printout, along with an approved alcohol testing form, will be used to document the test, the subsequent results, and to attribute the test to the correct employee. The test will be performed in a private, confidential manner as required by 49 CFR Part 40, as amended. The procedure will be followed as prescribed to protect the employee and to maintain the integrity of the alcohol testing procedures and validity of the test result.

2) A confirmed alcohol concentration of 0.04 or greater will be considered a positive alcohol test and in violation of this policy. The consequences of a positive alcohol test are described in Section Q. of this policy. Even though an employee who has a confirmed alcohol concentration of 0.02 to 0.039 is not considered positive, the employee shall still be removed from duty for at least eight hours or for the duration of the work day whichever is longer and will be subject to the consequences described in Section Q of this policy. An alcohol concentration of less than 0.02 will be considered a negative test.

3) The City of Wayne affirms the need to protect individual dignity, privacy, and confidentiality throughout the testing process. If at any time the integrity of the testing procedures or the validity of the test results is compromised, the test will be canceled. Minor inconsistencies or procedural flaws that do not impact the test result will not result in a cancelled test.

4) The alcohol testing form (ATF) required by 49 CFR Part 40 as amended, shall be used for all FTA required testing. Failure of an employee to sign step 2 of the ATF will be considered a refusal to submit to testing.

K. PRE-EMPLOYMENT TESTING

1) All applicants for covered transit positions shall undergo urine drug testing prior to performance of a safety-sensitive function.

   a. All offers of employment for covered positions shall be extended conditional upon the applicant passing a drug test. An applicant will not be allowed to perform safety-sensitive functions unless the applicant takes a drug test with verified negative results.

   b. An employee shall not be placed, transferred or promoted into a position covered under FTA authority or company authority until the employee takes a drug test with verified negative results.

   c. If an applicant fails a pre-employment drug test, the conditional offer of employment shall be rescinded and the applicant will be provided with a list of at least two (2) USDOT qualified Substance Abuse Professionals. Failure of a pre-employment drug test will disqualify an applicant for

employment for a period of at least one year. Before being considered for future employment the applicant must provide the employer proof of having successfully completed a referral, evaluation and treatment plan as described in section 655.62 of subpart G. The cost for the assessment and any subsequent treatment will be the sole responsibility of the applicant.

d. When an employee being placed, transferred, or promoted from a non-covered position to a position covered under FTA authority or company authority submits a drug test with a verified positive result, the employee shall be subject to disciplinary action in accordance with Section Q herein.

e. If a pre-employment test is canceled, the City of Wayne will require the applicant to take and pass another pre-employment drug test.

f. In instances where a FTA covered employee does not perform a safety-sensitive function for a period of 90 consecutive days or more regardless of reason, and during that period is not in the random testing pool the employee will be required to take a pre-employment drug test under 49 CFR Part 655 and have negative test results prior to the conduct of safety-sensitive job functions.

g. Following a negative dilute the employee will be required to undergo another test. Should this second test result in a negative dilute result, the test will be considered a negative and no additional testing will be required unless directed to do so by the MRO.

h. Applicants are required (even if ultimately not hired) to provide the City of Wayne with signed written releases requesting USDOT drug and alcohol records from all previous, USDOT-covered, employers that the applicant has worked for within the last two years. Failure to do so will result in the employment offer being rescinded. The City of Wayne is required to ask all applicants (even if ultimately not hired) if they have tested positive or refused to test on a pre-employment test for a USDOT covered employer within the last two years. If the applicant has tested positive or refused to test on a pre-employment test for a USDOT covered employer, the applicant must provide the City of Wayne proof of having successfully completed a referral, evaluation and treatment plan as described in section 655.62 of subpart G.

L. REASONABLE SUSPICION TESTING

1) All City of Wayne FTA covered employees will be subject to a reasonable suspicion drug and/or alcohol test when the employer has reasonable suspicion to believe that the covered employee has used a prohibited drug and/or engaged in alcohol misuse. Reasonable suspicion shall mean that there is objective

evidence, based upon specific, contemporaneous, articulable observations of the employee's appearance, behavior, speech or body odor that are consistent with possible drug use and/or alcohol misuse. Reasonable suspicion referrals must be made by one or more supervisors who are trained to detect the signs and symptoms of drug and alcohol use, and who reasonably concludes that an employee may be adversely affected or impaired in his/her work performance due to possible prohibited substance abuse or alcohol misuse. A reasonable suspicion alcohol test can only be conducted just before, during, or just after the performance of a safety-sensitive job function. However, under the City of Wayne's authority, a non-DOT reasonable suspicion alcohol test may be performed any time the covered employee is on duty. A reasonable suspicion drug test can be performed any time the covered employee is on duty.

2) The City of Wayne shall be responsible for transporting the employee to the testing site. Supervisors should avoid placing themselves and/or others into a situation which might endanger the physical safety of those present. The employee shall be placed on administrative leave pending disciplinary action described in Section Q of this policy. An employee who refuses an instruction to submit to a drug/alcohol test shall not be permitted to finish his or her shift and shall immediately be placed on administrative leave pending disciplinary action as specified in Section Q of this policy.

3) A written record of the observations which led to a drug/alcohol test based on reasonable suspicion shall be prepared and signed by the supervisor making the observation. This written record shall be submitted to the City of Wayne.

4) When there are no specific, contemporaneous, articulable objective facts that indicate current drug or alcohol use, but the employee (who is not already a participant in a treatment program) admits the abuse of alcohol or other substances to a supervisor in his/her chain of command, the employee shall be referred for assessment and treatment consistent with Section Q of this policy. The City of Wayne shall place the employee on administrative leave in accordance with the provisions set forth under Section Q of this policy. Testing in this circumstance would be performed under the direct authority of the City of Wayne. **Since the employee self-referred to management, testing under this circumstance would not be considered a violation of this policy or a positive test result under Federal authority.** However, self-referral does not exempt the covered employee from testing under Federal authority as specified in Sections L through N of this policy or the associated consequences as specified in Section Q.

M. POST-ACCIDENT TESTING

1) FATAL ACCIDENTS – A covered employee will be required to undergo urine and breath testing if they are involved in an accident with a transit vehicle, whether or not the vehicle is in revenue service at the time of the accident, that results in a fatality. This includes all surviving covered employees that are operating the

vehicle at the time of the accident and any other whose performance could have contributed to the accident, as determined by the employer using the best information available at the time of the decision.

2) NON-FATAL ACCIDENTS - A post-accident test of the employee operating the public transportation vehicle will be conducted if an accident occurs and at least one of the following conditions is met:

   a. The accident results in injuries requiring immediate medical treatment away from the scene, and the covered employee may have contributed to the accident.
   b. One or more vehicles incurs disabling damage as a result of the occurrence and must be transported away from the scene, and the covered employee may have contributed to the accident

   In addition, any other covered employee whose performance could have contributed to the accident, as determined by the employer using the best information available at the time of the decision, will be tested.

As soon as practicable following an accident, as defined in this policy, the transit supervisor investigating the accident will notify the transit employee operating the transit vehicle and all other covered employees whose performance could have contributed to the accident of the need for the test. The supervisor will make the determination using the best information available at the time of the decision.

The appropriate transit supervisor shall ensure that an employee, required to be tested under this section, is tested as soon as practicable, but no longer than eight (8) hours of the accident for alcohol, and no longer than 32 hours for drugs. If an alcohol test is not performed within two hours of the accident, the Supervisor will document the reason(s) for the delay. If the alcohol test is not conducted within (8) eight hours, or the drug test within 32 hours, attempts to conduct the test must cease and the reasons for the failure to test documented.

Any covered employee involved in an accident must refrain from alcohol use for eight (8) hours following the accident, or until he/she undergoes a post-accident alcohol test.

An employee who is subject to post-accident testing who fails to remain readily available for such testing, including notifying a supervisor of his or her location if he or she leaves the scene of the accident prior to submission to such test, may be deemed to have refused to submit to testing.

Nothing in this section shall be construed to require the delay of necessary medical attention for the injured following an accident, or to prohibit an employee from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident, or to obtain necessary emergency medical care.

In the rare event that the City of Wayne is unable to perform an FTA drug and alcohol test (i.e., employee is unconscious, employee is detained by law enforcement agency),

the City of Wayne may use drug and alcohol post-accident test results administered by local law enforcement officials in lieu of the FTA test. The local law enforcement officials must have independent authority for the test and the employer must obtain the results in conformance with local law.

N. RANDOM TESTING

1) All covered employees will be subjected to random, unannounced testing. The selection of employees shall be made by a scientifically valid method of randomly generating an employee identifier from the appropriate pool of safety-sensitive employees. Employees who may be covered under company authority will be selected from a pool of non-DOT-covered employees.

2) The dates for administering unannounced testing of randomly selected employees shall be spread reasonably throughout the calendar year, day of the week and hours of the day.

3) The number of employees randomly selected for drug/alcohol testing during the calendar year shall be not less than the percentage rates set each year by the FTA administrator. The current year testing rates can be viewed online at https://www.transportation.gov/odapc/random-testing-rates.

4) Each covered employee shall be in a pool from which the random selection is made. Each covered employee in the pool shall have an equal chance of selection each time the selections are made. Employees will remain in the pool and subject to selection, whether or not the employee has been previously tested. There is no discretion on the part of management in the selection.

5) Covered transit employees that fall under the Federal Transit Administration regulations will be included in one random pool maintained separately from the testing pool of non-safety-sensitive employees that are included solely under the City of Wayne's authority.

6) Random tests can be conducted at any time during an employee's shift for drug testing. Alcohol random tests can only be performed just before, during, or just after the performance of a safety sensitive duty. However, under the City of Wayne's authority, a non-DOT random alcohol test may be performed any time the covered employee is on duty. Testing can occur during the beginning, middle, or end of an employee's shift.

7) Employees are required to proceed immediately to the collection site upon notification of their random selection.

O. RETURN-TO-DUTY TESTING

The City of Wayne will terminate the employment of any employee that tests positive or refuses a test as specified in section Q of this policy. However, in the rare event an employee is reinstated with court order or other action beyond the control of the transit system, the employee must complete the return-to-duty process prior to the performance of safety-sensitive functions. All covered employees who previously tested positive on a drug or alcohol test or refused a test, must test negative for drugs, alcohol (below 0.02 for alcohol), or both and be evaluated and released by the Substance Abuse Professional before returning to work. For an initial positive drug test a Return-to-Duty drug test is required and an alcohol test is allowed. For an initial positive alcohol test a Return-to-Duty alcohol test is required and a drug test is allowed. Following the initial assessment, the SAP will recommend a course of rehabilitation unique to the individual. The SAP will recommend the return-to-duty test only when the employee has successfully completed the treatment requirement and is known to be drug and alcohol-free and there are no undue concerns for public safety.

P. FOLLOW-UP TESTING

Covered employees that have returned to duty following a positive or refused test will be required to undergo frequent, unannounced drug and/or alcohol testing following their return-to-duty test. The follow-up testing will be performed for a period of one to five years with a minimum of six tests to be performed the first year. The frequency and duration of the follow-up tests (beyond the minimums) will be determined by the SAP reflecting the SAP's assessment of the employee's unique situation and recovery progress. Follow-up testing should be frequent enough to deter and/or detect a relapse. Follow-up testing is separate and in addition to the random, post-accident, reasonable suspicion and return-to-duty testing.

In the instance of a self-referral or a management referral, the employee will be subject to non-USDOT follow-up tests and follow-up testing plans modeled using the process described in 49 CFR Part 40. However, all non-USDOT follow-up tests and all paperwork associated with an employee's return-to-work agreement that was not precipitated by a positive test result (or refusal to test) does not constitute a violation of the Federal regulations will be conducted under company authority and will be performed using non-DOT testing forms.

Q. RESULT OF DRUG/ALCOHOL TEST

1) Any covered employee that has a verified positive drug or alcohol test, or test refusal, will be removed from his/her safety-sensitive position, informed of educational and rehabilitation programs available, and will be provided with a list of at least two (2) USDOT qualified Substance Abuse Professionals (SAP) for assessment, and will be terminated.

2) Following a negative dilute the employee will be required to undergo another test. Should this second test result in a negative dilute result, the test will be

considered a negative and no additional testing will be required unless directed to do so by the MRO.

3) Refusal to submit to a drug/alcohol test shall be considered equivalent to a positive test result and a direct act of insubordination and shall result in termination and referral to a list of USDOT qualified SAPs. A test refusal includes the following circumstances:
    a. Fail to appear for any test (except a pre-employment test) within a reasonable time, as determined by the employer.
    b. Fail to remain at the testing site until the testing process is complete. An employee who leaves the testing site before the testing process commences for a pre-employment test has not refused to test.
    c. Fail to attempt to provide a breath or urine specimen. An employee who does not provide a urine or breath specimen because he or she has left the testing site before the testing process commenced for a pre-employment test has not refused to test.
    d. In the case of a directly-observed or monitored urine drug collection, fail to permit monitoring or observation of your provision of a specimen.
    e. Fail to provide a sufficient quantity of urine or breath without a valid medical explanation.
    f. Fail or decline to take a second test as directed by the collector or the employer for drug testing.
    g. Fail to undergo a medical evaluation as required by the MRO or the employer's Designated Employer Representative (DER).
    h. Fail to cooperate with any part of the testing process.
    i. Fail to follow an observer's instructions to raise and lower clothing and turn around during a directly-observed test.
    j. Possess or wear a prosthetic or other device used to tamper with the collection process.
    k. Admit to the adulteration or substitution of a specimen to the collector or MRO.
    l. Refuse to sign the certification at Step 2 of the Alcohol Testing Form (ATF).
    m. Fail to remain readily available following an accident.

    As a covered employee, if the MRO reports that you have a verified adulterated or substituted test result, you have refused to take a drug test.

4) An alcohol test result of $\geq$0.02 to $\leq$ 0.039 BAC shall result in the removal of the employee from duty for eight hours or the remainder or the work day whichever is longer. The employee will not be allowed to return to safety-sensitive duty for his/her next shift until he/she submits to a NONDOT alcohol test with a result of less than 0.02 BAC.

5) In the instance of a self-referral or a management referral, disciplinary action against the employee shall include:

a. Mandatory referral for an assessment by an employer approved counseling professional for assessment, formulation of a treatment plan, and execution of a return to work agreement;
b. Failure to execute, or remain compliant with the return-to-work agreement shall result in termination from the City of Wayne employment.
    i. Compliance with the return-to-work agreement means that the employee has submitted to a drug/alcohol test immediately prior to returning to work; the result of that test is negative; the employee is cooperating with his/her recommended treatment program; and, the employee has agreed to periodic unannounced follow-up testing as described in Section P of this policy; however, all follow-up testing performed as part of a return-to-work agreement required under section Q of this policy is under the sole authority of the City of Wayne and will be performed using non-DOT testing forms.
c. Refusal to submit to a periodic unannounced follow-up drug/alcohol test shall be considered a direct act of insubordination and shall result in termination. **All tests conducted as part of the return to work agreement will be conducted under company authority and will be performed using non-DOT testing forms.**
d. **A self-referral or management referral to the employer's counseling professional that was not precipitated by a positive test result does not constitute a violation of the Federal regulations and will not be considered as a positive test result in relation to the progressive discipline defined in Section Q of this policy.**
e. Periodic unannounced follow-up drug/alcohol testing conducted as a result of a self-referral or management referral which results in a verified positive shall be considered a positive test result in relation to the progressive discipline defined in Section Q of this policy.
f. A Voluntary Referral does not shield an employee from disciplinary action or guarantee employment with the City of Wayne.
g. A Voluntary Referral does not shield an employee from the requirement to comply with drug and alcohol testing.

6) Failure of an employee to report within five days a criminal drug statute conviction for a violation occurring in the workplace shall result in termination.

R. GRIEVANCE AND APPEAL

The consequences specified by 49 CFR Part 40.149 (c) for a positive test or test refusal is not subject to arbitration.

S. PROPER APPLICATION OF THE POLICY

The City of Wayne is dedicated to assuring fair and equitable application of this substance abuse policy. Therefore, supervisors/managers are required to use and apply all aspects of this policy in an unbiased and impartial manner. Any supervisor/manager

who knowingly disregards the requirements of this policy, or who is found to deliberately misuse the policy in regard to subordinates, shall be subject to disciplinary action, up to and including termination.

T. INFORMATION DISCLOSURE

1) Drug/alcohol testing records shall be maintained by the City of Wayne Drug and Alcohol Program Manager and, except as provided below or by law, the results of any drug/alcohol test shall not be disclosed without express written consent of the tested employee.

2) The employee, upon written request, is entitled to obtain copies of any records pertaining to their use of prohibited drugs or misuse of alcohol including any drug or alcohol testing records. Covered employees have the right to gain access to any pertinent records such as equipment calibration records, and records of laboratory certifications. Employees may not have access to SAP follow-up testing plans.

3) Records of a verified positive drug/alcohol test result shall be released to the Drug and Alcohol Program Manager, and other transit system management personnel on a need to know basis.

4) Records will be released to a subsequent employer only upon receipt of a written request from the employee.

5) Records of an employee's drug/alcohol tests shall be released to the adjudicator in a grievance, lawsuit, or other proceeding initiated by or on behalf of the tested individual arising from the results of the drug/alcohol test. The records will be released to the decision maker in the proceeding.

6) Records will be released to the National Transportation Safety Board during an accident investigation.

7) Information will be released in a criminal or civil action resulting from an employee's performance of safety-sensitive duties, in which a court of competent jurisdiction determines that the drug or alcohol test information is relevant to the case and issues an order to the employer to release the information. The employer will release the information to the decision maker in the proceeding with a binding stipulation that it will only be released to parties of the proceeding.

8) Records will be released to the DOT or any DOT agency with regulatory authority over the employer or any of its employees.

9) Records will be released if requested by a Federal, state or local safety agency with regulatory authority over the City of Wayne or the employee.

10) If a party seeks a court order to release a specimen or part of a specimen contrary to any provision of Part 40 as amended, necessary legal steps to contest the issuance of the order will be taken

11) In cases of a contractor or sub-recipient of a state department of transportation, records will be released when requested by such agencies that must certify compliance with the regulation to the FTA.

This Policy was adopted by the Mayor and Council of the City of Wayne, Nebraska, on May 15, 2018.

PASSED AND APPROVED this 15th day of May, 2018.

THE CITY OF WAYNE, NEBRASKA,

By_____
Mayor

ATTEST:

_____
City Clerk

[APPLICABLE SIGNATURES]

Attachment A

Job Title	Job Duties	Testing Authority

Attachment B Contacts

Any questions regarding this policy or any other aspect of the substance abuse policy should be directed to the following individual(s).

City of Wayne Drug and Alcohol Program Manager
Name:
Title:
Address:
Telephone Number:

Medical Review Officer
Name:
Title:
Address:
Telephone Number:

Substance Abuse Professional
Name:
Title:
Address:
Telephone Number:

HHS Certified Laboratory Primary Specimen
Name:
Address:
Telephone Number:

HHS Certified Laboratory Split Specimen
Name:
Address:
Telephone Number:

01/2018

DRUG AND ALCOHOL TESTING POLICY
City of Wayne
Adopted as of May 15, 2018

A. PURPOSE

1) The City of Wayne provides public transit and paratransit services for the residents of Wayne. Part of our mission is to ensure that this service is delivered safely, efficiently, and effectively by establishing a drug and alcohol-free work environment, and to ensure that the workplace remains free from the effects of drugs and alcohol in order to promote the health and safety of employees and the general public. In keeping with this mission, the City of Wayne declares that the unlawful manufacture, distribution, dispense, possession, or use of controlled substances or misuse of alcohol is prohibited for all employees.

2) Additionally, the purpose of this policy is to establish guidelines to maintain a drug and alcohol-free workplace in compliance with the Drug-Free Workplace Act of 1988, and the Omnibus Transportation Employee Testing Act of 1991. This policy is intended to comply with all applicable Federal regulations governing workplace anti-drug and alcohol programs in the transit industry. Specifically, the Federal Transit Administration (FTA) of the U.S. Department of Transportation has published 49 CFR Part 655, as amended, that mandates urine drug testing and breath alcohol testing for safety-sensitive positions, and prohibits performance of safety-sensitive functions when there is a positive test result, or a refusal to test. The U. S. Department of Transportation (USDOT) has also published 49 CFR Part 40, as amended, that sets standards for the collection and testing of urine and breath specimens.

3) Any provisions set forth in this policy that are included under the sole authority of the City of Wayne and <u>are not</u> provided under the authority of the above named Federal regulations are underlined. Tests conducted under the sole authority of the City of Wayne will be performed on non-USDOT forms and will be separate from USDOT testing in all respects.

B. APPLICABILITY

This Drug and Alcohol Testing Policy applies to all safety-sensitive employees (full- or part-time) when performing safety sensitive duties. See Attachment A for a list of employees and the authority under which they are included.

A safety-sensitive function is operation of public transit service including the operation of a revenue service vehicle (whether or not the vehicle is in revenue service), maintenance of a revenue service vehicle or equipment used in revenue service, security personnel who carry firearms, dispatchers or persons controlling the movement of revenue service vehicles and any transit employee who operates a vehicle that requires a Commercial Driver's License to operate. Maintenance functions include the repair, overhaul, and rebuild of engines, vehicles and/or equipment used in revenue service. A list of safety-sensitive positions who perform one or more of the above

mentioned duties is provided in Attachment A. Supervisors are only safety sensitive if they perform one of the above functions. Volunteers are considered safety sensitive and subject to testing if they are required to hold a CDL, or receive remuneration for service in excess of actual expense.

C. DEFINITIONS

Accident: An occurrence associated with the operation of a vehicle even when not in revenue service, if as a result:

a. An individual dies;
b. An individual suffers a bodily injury and immediately receives medical treatment away from the scene of the accident; or,
c. One or more vehicles incur disabling damage as the result of the occurrence and is transported away from the scene by a tow truck or other vehicle. For purposes of this definition, *disabling damage* means damage which precludes departure of any vehicle from the scene of the occurrence in its usual manner in daylight after simple repairs. Disabling damage includes damage to vehicles that could have been operated but would have been further damaged if so operated, but does not include damage which can be remedied temporarily at the scene of the occurrence without special tools or parts, tire disablement without other damage even if no spare tire is available, or damage to headlights, taillights, turn signals, horn, or windshield wipers that makes them inoperative.

Adulterated specimen: A specimen that has been altered, as evidence by test results showing either a substance that is not a normal constituent for that type of specimen or showing an abnormal concentration of an endogenous substance.

Alcohol: The intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols contained in any beverage, mixture, mouthwash, candy, food, preparation or medication.

Alcohol Concentration: Expressed in terms of grams of alcohol per 210 liters of breath as indicated by a breath test under 49 CFR Part 40.

Aliquot: A fractional part of a specimen used for testing, It is taken as a sample representing the whole specimen.

Canceled Test: A drug or alcohol test that has a problem identified that cannot be or has not been corrected, or which is cancelled. A canceled test is neither positive nor negative.

Confirmatory Drug Test: A second analytical procedure performed on a different aliquot of the original specimen to identify and quantify the presence of a specific drug or metabolite.

Confirmatory Validity Test: A second test performed on a different aliquot of the original urine specimen to further support a validity test result.

Covered Employee Under FTA Authority: An employee who performs a safety-sensitive function including an applicant or transferee who is being considered for hire into a safety-sensitive function (See Attachment A for a list of covered employees).

Designated Employer Representative (DER): An employee authorized by the employer to take immediate action to remove employees from safety-sensitive duties and to make required decisions in testing. The DER also receives test results and other communications for the employer, consistent with the requirements of 49 CFR Parts 40 and 655.

DOT, The Department, DOT Agency: These terms encompass all DOT agencies, including, but not limited to, the Federal Aviation Administration 9FAA), the Federal Railroad Administration (FRA), the Federal Motor Carrier Safety Administration (FMCSA), the Federal Transit Administration (FTA), the National Highway Traffic Safety Administration (NHTSA), the Pipeline and Hazardous Materials Safety Administration (PHMSA), and the Office of the Secretary (OST). For purposes of 49 CFR Part 40, the United States Coast Guard (USCG), in the Department of Homeland Security, is considered to be a DOT agency for drug testing purposes. These terms include any designee of a DOT agency.

Dilute specimen: A urine specimen with creatinine and specific gravity values that are lower than expected for human urine.

Disabling damage: Damage which precludes departure of any vehicle from the scene of the occurrence in its usual manner in daylight after simple repairs. Disabling damage includes damage to vehicles that could have been operated but would have been further damaged if so operated, but does not include damage which can be remedied temporarily at the scene of the occurrence without special tools or parts, tire disablement without other damage even if no spare tire is available, or damage to headlights, taillights, turn signals, horn, or windshield wipers that makes them inoperative.

Evidentiary Breath Testing Device (EBT): A device approved by the NHTSA for the evidential testing of breath at the 0.02 and the 0.04 alcohol concentrations, and appears on ODAPC's Web page for "Approved Evidential Breath Measurement Devices" because it conforms with the model specifications available from NHTSA.

Initial Drug Test: (Screening Drug Test) The test used to differentiate a negative specimen from one that requires further testing for drugs or drug metabolites.

Initial Specimen Validity Test: The first test used to determine if a urine specimen is adulterated, diluted, substituted, or invalid

Invalid Result: The result reported by an HHS-certified laboratory in accordance with the criteria established by the HHS Mandatory Guidelines when a positive, negative,

adulterated, or substituted result cannot be established for a specific drug or specimen validity test.

Laboratory: Any U.S. laboratory certified by HHS under the National Laboratory Certification program as meeting standards of Subpart C of the HHS Mandatory Guidelines for Federal Workplace Drug Testing Programs; or, in the case of foreign laboratories, a laboratory approved for participation by DOT under this part.

Limit of Detection (LOD): The lowest concentration at which a measurand can be identified, but (for quantitative assays) the concentration cannot be accurately calculated.

Limit of Quantitation: For quantitative assays, the lowest concentration at which the identity and concentration of the measurand can be accurately established.

Medical Review Officer (MRO): A licensed physician (medical doctor or doctor of osteopathy) responsible for receiving laboratory results generated by the drug testing program who has knowledge of substance abuse disorders, and has appropriate medical training to interpret and evaluate an individual's confirmed positive test result, together with his/her medical history, and any other relevant bio-medical information.

Negative Dilute: A drug test result which is negative for the five drug/drug metabolites but has a specific gravity value lower than expected for human urine.

Negative result: The result reported by an HHS-certified laboratory to an MRO when a specimen contains no drug or the concentration of the drug is less than the cutoff concentration for the drug or drug class and the specimen is a valid specimen. An alcohol concentration of less than 0.02 BAC is a negative test result.

Non-negative test result: A urine specimen that is reported as adulterated, substituted, invalid, or positive for drug/drug metabolites.

Oxidizing Adulterant: A substance that acts alone or in combination with other substances to oxidize drugs or drug metabolites to prevent the detection of the drug or metabolites, or affects the reagents in either the initial or confirmatory drug test.

Performing (a safety-sensitive function): A covered employee is considered to be performing a safety-sensitive function and includes any period in which he or she is actually performing, ready to perform, or immediately available to perform such functions.

Positive result: The result reported by an HHS- Certified laboratory when a specimen contains a drug or drug metabolite equal or greater to the cutoff concentrations.

Prohibited drug: Identified as marijuana, cocaine, opioids, amphetamines, or phencyclidine at levels above the minimum thresholds specified in 49 CFR Part 40, as amended.

Reconfirmed: The result reported for a split specimen when the second laboratory is able to corroborate the original result reported for the primary specimen.

Rejected for Testing: The result reported by an HHS- Certified laboratory when no tests are performed for specimen because of a fatal flaw or a correctable flaw that has not been corrected.

Revenue Service Vehicles: All transit vehicles that are used for passenger transportation service.

Safety-sensitive functions: Employee duties identified as:

(1) The operation of a transit revenue service vehicle even when the vehicle is not in revenue service.
(2) The operation of a non-revenue service vehicle by an employee when the operation of such a vehicle requires the driver to hold a Commercial Drivers License (CDL).
(3) Maintaining a revenue service vehicle or equipment used in revenue service.
(4) Controlling the movement of a revenue service vehicle and
(5) Carrying a firearm for security purposes.

Split Specimen Collection: A collection in which the urine collected is divided into two separate bottles, the primary specimen (Bottle A) and the split specimen (Bottle B).

Substance Abuse Professional (SAP): A licensed physician (medical doctor or doctor of osteopathy) or licensed or certified psychologist, social worker, employee assistance professional, state-licensed or certified marriage and family therapist, or drug and alcohol counselor (certified by an organization listed at https://www.transportation.gov/odapc/sap) with knowledge of and clinical experience in the diagnosis and treatment of drug and alcohol related disorders.

Substituted specimen: A urine specimen with creatinine and specific gravity values that are so diminished or so divergent that they are not consistent with normal human urine.

Test Refusal: The following are considered a refusal to test if the employee:

(1) Fail to appear for any test (except a pre-employment test) within a reasonable time, as determined by the employer.
(2) Fail to remain at the testing site until the testing process is complete. An employee who leaves the testing site before the testing process commences for a pre-employment test has not refused to test.
(3) Fail to attempt to provide a breath or urine specimen. An employee who does not provide a urine or breath specimen because he or she has left the testing site before the testing process commenced for a pre-employment test has not refused to test.
(4) In the case of a directly-observed or monitored urine drug collection, fail to permit monitoring or observation of your provision of a specimen.
(5) Fail to provide a sufficient quantity of urine or breath without a valid medical explanation.

(6) Fail or decline to take a second test as directed by the collector or the employer for drug testing.
(7) Fail to undergo a medical evaluation as required by the MRO or the employer's Designated Employer Representative (DER).
(8) Fail to cooperate with any part of the testing process.
(9) Fail to follow an observer's instructions to raise and lower clothing and turn around during a directly-observed test.
(10) Possess or wear a prosthetic or other device used to tamper with the collection process.
(11) Admit to the adulteration or substitution of a specimen to the collector or MRO.
(12) Refuse to sign the certification at Step 2 of the Alcohol Testing Form (ATF).
(13) Fail to remain readily available following an accident.
(14) As a covered employee, if the MRO reports that you have a verified adulterated or substituted test result, you have refused to take a drug test.

Vehicle: A bus, electric bus, van, automobile, rail car, trolley car, trolley bus, or vessel. A public transit vehicle is a vehicle used for public transportation or for ancillary services.

Verified negative test: A drug test result reviewed by a medical review officer and determined to have no evidence of prohibited drug use above the minimum cutoff levels established by the Department of Health and Human Services (HHS).

Verified positive test: A drug test result reviewed by a medical review officer and determined to have evidence of prohibited drug use above the minimum cutoff levels specified in 49 CFR Part 40 as revised.

Validity testing: The evaluation of the specimen to determine if it is consistent with normal human urine. Specimen validity testing will be conducted on all urine specimens provided for testing under DOT authority. The purpose of validity testing is to determine whether certain adulterants or foreign substances were added to the urine, if the urine was diluted, or if the specimen was substituted.

D. EDUCATION AND TRAINING

1) Every covered employee will receive a copy of this policy and will have ready access to the corresponding federal regulations including 49 CFR Parts 655 and 40, as amended. In addition, all covered employees will undergo a minimum of 60 minutes of training on the signs and symptoms of drug use including the effects and consequences of drug use on personal health, safety, and the work environment. The training also includes manifestations and behavioral cues that may indicate prohibited drug use.

2) All supervisory personnel or company officials who are in a position to determine employee fitness for duty will receive 60 minutes of reasonable suspicion training on the physical, behavioral, and performance indicators of probable drug use and 60 minutes of additional reasonable suspicion training on the physical, behavioral, speech, and performance indicators of probable alcohol misuse.

E. PROHIBITED SUBSTANCES

1) Prohibited substances addressed by this policy include the following.

   a. Illegally Used Controlled Substance or Drugs Under the Drug-Free Workplace Act of 1988 any drug or any substance identified in Schedule I through V of Section 202 of the Controlled Substance Act (21 U.S.C. 812), and as further defined by 21 CFR 1300.11 through 1300.15 is prohibited at all times in the workplace unless a legal prescription has been written for the substance. This includes, but is not limited to: marijuana, amphetamines, opioids, phencyclidine (PCP), and cocaine, as well as any drug not approved for medical use by the U.S. Drug Enforcement Administration or the U.S. Food and Drug Administration. Illegal use includes use of any illegal drug, misuse of legally prescribed drugs, and use of illegally obtained prescription drugs. Also, the medical use of marijuana, or the use of hemp related products, which cause drug or drug metabolites to be present in the body above the minimum thresholds is a violation of this policy

      Federal Transit Administration drug testing regulations (49 CFR Part 655) require that all employees covered under FTA authority be tested for marijuana, cocaine, amphetamines, opioids, and phencyclidine as described in Section H of this policy. Illegal use of these five drugs is prohibited at all times and thus, covered employees may be tested for these drugs anytime that they are on duty.

   b. Legal Drugs: The appropriate use of legally prescribed drugs and non-prescription medications is not prohibited. However, the use of any substance which carries a warning label that indicates that mental functioning, motor skills, or judgment may be adversely affected must be reported to a City of Wayne supervisor and the employee is required to provide a written release from his/her doctor or pharmacist indicating that the employee can perform his/her safety-sensitive functions.

   c. Alcohol: The use of beverages containing alcohol (including any mouthwash, medication, food, candy) or any other substances such that alcohol is present in the body while performing safety-sensitive job functions is prohibited.

F. PROHIBITED CONDUCT

1) All covered employees are prohibited from reporting for duty or remaining on duty any time there is a quantifiable presence of a prohibited drug in the body above the minimum thresholds defined in 49 CFR Part 40, as amended.

2) Each covered employee is prohibited from consuming alcohol while performing safety-sensitive job functions or while on-call to perform safety-sensitive job functions. If an on-call employee has consumed alcohol, they must acknowledge the use of alcohol at the time that they are called to report for duty. The covered

employee will subsequently be relieved of his/her on-call responsibilities and subject to discipline for not fulfilling his/her on-call responsibilities.

3) The Transit Department shall not permit any covered employee to perform or continue to perform safety-sensitive functions if it has actual knowledge that the employee is using alcohol

4) Each covered employee is prohibited from reporting to work or remaining on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.04 or greater regardless of when the alcohol was consumed.

    a. An employee with a breath alcohol concentration which measures 0.02-0.039 is not considered to have violated the USDOT-FTA drug and alcohol regulations, provided the employee hasn't consumed the alcohol within four (4) hours of performing a safety-sensitive duty. However, if a safety-sensitive employee has a breath alcohol concentration of 0.02-0.039, USDOT-FTA regulations require the employee to be removed from the performance of safety-sensitive duties until:
        i. The employee's alcohol concentration measures less than 0.02; or
        ii. The start of the employee's next regularly scheduled duty period, but not less than eight hours following administration of the test.

5) No covered employee shall consume alcohol for eight (8) hours following involvement in an accident or until he/she submits to the post-accident drug/alcohol test, whichever occurs first.

6) No covered employee shall consume alcohol within four (4) hours prior to the performance of safety-sensitive job functions.

7) The City of Wayne, under its own authority, also prohibits the consumption of alcohol at all times the employee is on duty, or anytime the employee is in uniform.

8) Consistent with the Drug-free Workplace Act of 1988, all City of Wayne employees are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of prohibited substances in the work place including transit system premises and transit vehicles.

G. DRUG STATUTE CONVICTION

Consistent with the Drug Free Workplace Act of 1998, all employees are required to notify the City of Wayne management of any criminal drug statute conviction for a violation occurring in the workplace within five days after such conviction. Failure to comply with this provision shall result in disciplinary action as defined in Section Q of this policy.

H. TESTING REQUIREMENTS

1) Analytical urine drug testing and breath testing for alcohol will be conducted as required by 49 CFR Part 40 as amended. All employees covered under FTA authority shall be subject to testing prior to performing safety-sensitive duty, for reasonable suspicion, following an accident, and random as defined in Section K, L, M, and N of this policy, and return to duty/follow-up.

2) A drug test can be performed any time a covered employee is on duty. A reasonable suspicion or random alcohol test can only be performed just before, during, or after the performance of a safety-sensitive job function. Under the City of Wayne authority, a non-DOT alcohol test can be performed any time a covered employee is on duty.

3) All covered employees will be subject to urine drug testing and breath alcohol testing as a condition of ongoing employment with the City of Wayne. Any safety-sensitive employee who refuses to comply with a request for testing shall be removed from duty and subject to discipline as defined in Section Q of this policy.

I. DRUG TESTING PROCEDURES

1) Testing shall be conducted in a manner to assure a high degree of accuracy and reliability and using techniques, equipment, and laboratory facilities which have been approved by the U.S. Department of Health and Human Service (HHS). All testing will be conducted consistent with the procedures set forth in 49 CFR Part 40, as amended. The procedures will be performed in a private, confidential manner and every effort will be made to protect the employee, the integrity of the drug testing procedure, and the validity of the test result.

2) The drugs that will be tested for include marijuana, cocaine, opioids, amphetamines, and phencyclidine. After the identity of the donor is checked using picture identification, a urine specimen will be collected using the split specimen collection method described in 49 CFR Part 40, as amended. Each specimen will be accompanied by a DOT Custody and Control Form and identified using a unique identification number that attributes the specimen to the correct individual. The specimen analysis will be conducted at a HHS certified laboratory. An initial drug screen and validity test will be conducted on the primary urine specimen. For those specimens that are not negative, a confirmatory Gas Chromatography/Mass Spectrometry (GC/MS) test will be performed. The test will be considered positive if the amounts of the drug(s) and/or its metabolites identified by the GC/MS test are above the minimum thresholds established in 49 CFR Part 40, as amended.

3) The test results from the HHS certified laboratory will be reported to a Medical Review Officer. A Medical Review Officer (MRO) is a licensed physician with

detailed knowledge of substance abuse disorders and drug testing. The MRO will review the test results to ensure the scientific validity of the test and to determine whether there is a legitimate medical explanation for a confirmed positive, substitute, or adulterated test result. The MRO will attempt to contact the employee to notify the employee of the non-negative laboratory result, and provide the employee with an opportunity to explain the confirmed laboratory test result. The MRO will subsequently review the employee's medical history/medical records as appropriate to determine whether there is a legitimate medical explanation for a non-negative laboratory result. If no legitimate medical explanation is found, the test will be verified positive or refusal to test and reported to the City of Wayne. If a legitimate explanation is found, the MRO will report the test result as negative.

4) If the test is invalid without a medical explanation, a retest will be conducted under direct observation. Employees do not have access to a test of their split specimen following an invalid result.

5) Any covered employee who questions the results of a required drug test under paragraphs L through P of this policy may request that the split sample be tested. The split sample test must be conducted at a second HHS-certified laboratory. The test must be conducted on the split sample that was provided by the employee at the same time as the primary sample. The method of collecting, storing, and testing the split sample will be consistent with the procedures set forth in 49 CFR Part 40, as amended. The employee's request for a split sample test must be made to the Medical Review Officer within 72 hours of notice of the original sample verified test result. Requests after 72 hours will only be accepted at the discretion of the MRO if the delay was due to documentable facts that were beyond the control of the employee. The City of Wayne will ensure that the cost for the split specimen analysis is covered in order for a timely analysis of the sample, however the City of Wayne will seek reimbursement for the split sample test from the employee.

6) If the analysis of the split specimen fails to confirm the presence of the drug(s) detected in the primary specimen, if the split specimen is not able to be analyzed, or if the results of the split specimen are not scientifically adequate, the MRO will declare the original test to be canceled.

7) The split specimen will be stored at the initial laboratory until the analysis of the primary specimen is completed. If the primary specimen is negative, the split will be discarded. If the primary specimen is positive, it will be retained in frozen storage for one year and the split specimen will also be retained for one year. If the primary is positive, the primary and the split will be retained for longer than one year for testing if so requested by the employee through the Medical Review Officer, or by the employer, by the MRO, or by the relevant DOT agency.

8) Observed collections

a. Consistent with 49 CFR Part 40, as amended, collection under direct observation (by a person of the same gender) with no advance notice will occur if:

   i. The laboratory reports to the MRO that a specimen is invalid, and the MRO reports to the City of Wayne that there was not an adequate medical explanation for the result;

   ii. The MRO reports to the City of Wayne that the original positive, adulterated, or substituted test result had to be cancelled because the test of the split specimen could not be performed;

   iii. The laboratory reported to the MRO that the specimen was negative-dilute with a creatinine concentration greater than or equal to 2 mg/dL but less than or equal to 5 mg/dL, and the MRO reported the specimen as negative-dilute and that a second collection must take place under direct observation (see §40.197(b)(1)).

   iv. The collector observes materials brought to the collection site or the employee's conduct clearly indicates an attempt to tamper with a specimen;

   v. The temperature on the original specimen was out of range;

   vi. Anytime the employee is directed to provide another specimen because the original specimen appeared to have been tampered with.

   vii. All follow-up-tests; or

   viii. All return-to-duty tests

J. ALCOHOL TESTING PROCEDURES

1) Tests for breath alcohol concentration will be conducted utilizing a National Highway Traffic Safety Administration (NHTSA)-approved Evidential Breath Testing device (EBT) operated by a trained Breath Alcohol Technician (BAT). A list of approved EBTs can be found on ODAPC's Web page for "Approved Evidential Breath Measurement Devices". Alcohol screening tests may be performed using a non-evidential testing device (alcohol screening device (ASD)) which is also approved by NHTSA. A list of approved ASDs can be found on ODAPC's Web page for "Approved Screening Devices to Measure Alcohol in Bodily Fluids". If the initial test indicates an alcohol concentration of 0.02 or greater, a second test will be performed to confirm the results of the initial test. The confirmatory test must occur on an EBT. The confirmatory test will be conducted no sooner than fifteen minutes after the completion of the initial test.

The confirmatory test will be performed using a NHTSA-approved EBT operated by a trained BAT. The EBT will identify each test by a unique sequential identification number. This number, time, and unit identifier will be provided on each EBT printout. The EBT printout, along with an approved alcohol testing form, will be used to document the test, the subsequent results, and to attribute the test to the correct employee. The test will be performed in a private, confidential manner as required by 49 CFR Part 40, as amended. The procedure will be followed as prescribed to protect the employee and to maintain the integrity of the alcohol testing procedures and validity of the test result.

2) A confirmed alcohol concentration of 0.04 or greater will be considered a positive alcohol test and in violation of this policy. The consequences of a positive alcohol test are described in Section Q. of this policy. Even though an employee who has a confirmed alcohol concentration of 0.02 to 0.039 is not considered positive, the employee shall still be removed from duty for at least eight hours or for the duration of the work day whichever is longer and will be subject to the consequences described in Section Q of this policy. An alcohol concentration of less than 0.02 will be considered a negative test.

3) The City of Wayne affirms the need to protect individual dignity, privacy, and confidentiality throughout the testing process. If at any time the integrity of the testing procedures or the validity of the test results is compromised, the test will be canceled. Minor inconsistencies or procedural flaws that do not impact the test result will not result in a cancelled test.

4) The alcohol testing form (ATF) required by 49 CFR Part 40 as amended, shall be used for all FTA required testing. Failure of an employee to sign step 2 of the ATF will be considered a refusal to submit to testing.

K. PRE-EMPLOYMENT TESTING

1) All applicants for covered transit positions shall undergo urine drug testing prior to performance of a safety-sensitive function.

   a. All offers of employment for covered positions shall be extended conditional upon the applicant passing a drug test. An applicant will not be allowed to perform safety-sensitive functions unless the applicant takes a drug test with verified negative results.

   b. An employee shall not be placed, transferred or promoted into a position covered under FTA authority or company authority until the employee takes a drug test with verified negative results.

   c. If an applicant fails a pre-employment drug test, the conditional offer of employment shall be rescinded and the applicant will be provided with a list of at least two (2) USDOT qualified Substance Abuse Professionals. Failure of a pre-employment drug test will disqualify an applicant for

employment for a period of at least one year. Before being considered for future employment the applicant must provide the employer proof of having successfully completed a referral, evaluation and treatment plan as described in section 655.62 of subpart G. The cost for the assessment and any subsequent treatment will be the sole responsibility of the applicant.

d. When an employee being placed, transferred, or promoted from a non-covered position to a position covered under FTA authority or company authority submits a drug test with a verified positive result, the employee shall be subject to disciplinary action in accordance with Section Q herein.

e. If a pre-employment test is canceled, the City of Wayne will require the applicant to take and pass another pre-employment drug test.

f. In instances where a FTA covered employee does not perform a safety-sensitive function for a period of 90 consecutive days or more regardless of reason, and during that period is not in the random testing pool the employee will be required to take a pre-employment drug test under 49 CFR Part 655 and have negative test results prior to the conduct of safety-sensitive job functions.

g. Following a negative dilute the employee will be required to undergo another test. Should this second test result in a negative dilute result, the test will be considered a negative and no additional testing will be required unless directed to do so by the MRO.

h. Applicants are required (even if ultimately not hired) to provide the City of Wayne with signed written releases requesting1 USDOT drug and alcohol records from all previous, USDOT-covered, employers that the applicant has worked for within the last two years. Failure to do so will result in the employment offer being rescinded. The City of Wayne is required to ask all applicants (even if ultimately not hired) if they have tested positive or refused to test on a pre-employment test for a USDOT covered employer within the last two years. If the applicant has tested positive or refused to test on a pre-employment test for a USDOT covered employer, the applicant must provide the City of Wayne proof of having successfully completed a referral, evaluation and treatment plan as described in section 655.62 of subpart G.

L. REASONABLE SUSPICION TESTING

1) All City of Wayne FTA covered employees will be subject to a reasonable suspicion drug and/or alcohol test when the employer has reasonable suspicion to believe that the covered employee has used a prohibited drug and/or engaged in alcohol misuse. Reasonable suspicion shall mean that there is objective

evidence, based upon specific, contemporaneous, articulable observations of the employee's appearance, behavior, speech or body odor that are consistent with possible drug use and/or alcohol misuse. Reasonable suspicion referrals must be made by one or more supervisors who are trained to detect the signs and symptoms of drug and alcohol use, and who reasonably concludes that an employee may be adversely affected or impaired in his/her work performance due to possible prohibited substance abuse or alcohol misuse. A reasonable suspicion alcohol test can only be conducted just before, during, or just after the performance of a safety-sensitive job function. However, under the City of Wayne's authority, a non-DOT reasonable suspicion alcohol test may be performed any time the covered employee is on duty. A reasonable suspicion drug test can be performed any time the covered employee is on duty.

2) The City of Wayne shall be responsible for transporting the employee to the testing site. Supervisors should avoid placing themselves and/or others into a situation which might endanger the physical safety of those present. The employee shall be placed on administrative leave pending disciplinary action described in Section Q of this policy. An employee who refuses an instruction to submit to a drug/alcohol test shall not be permitted to finish his or her shift and shall immediately be placed on administrative leave pending disciplinary action as specified in Section Q of this policy.

3) A written record of the observations which led to a drug/alcohol test based on reasonable suspicion shall be prepared and signed by the supervisor making the observation. This written record shall be submitted to the City of Wayne.

4) When there are no specific, contemporaneous, articulable objective facts that indicate current drug or alcohol use, but the employee (who is not already a participant in a treatment program) admits the abuse of alcohol or other substances to a supervisor in his/her chain of command, the employee shall be referred for assessment and treatment consistent with Section Q of this policy. The City of Wayne shall place the employee on administrative leave in accordance with the provisions set forth under Section Q of this policy. Testing in this circumstance would be performed under the direct authority of the City of Wayne. **Since the employee self-referred to management, testing under this circumstance would not be considered a violation of this policy or a positive test result under Federal authority.** However, self-referral does not exempt the covered employee from testing under Federal authority as specified in Sections L through N of this policy or the associated consequences as specified in Section Q.

M. POST-ACCIDENT TESTING

1) FATAL ACCIDENTS – A covered employee will be required to undergo urine and breath testing if they are involved in an accident with a transit vehicle, whether or not the vehicle is in revenue service at the time of the accident, that results in a

fatality. This includes all surviving covered employees that are operating the vehicle at the time of the accident and any other whose performance could have contributed to the accident, as determined by the employer using the best information available at the time of the decision.

2) NON-FATAL ACCIDENTS - A post-accident test of the employee operating the public transportation vehicle will be conducted if an accident occurs and at least one of the following conditions is met:

   a. The accident results in injuries requiring immediate medical treatment away from the scene, and the covered employee may have contributed to the accident.
   b. One or more vehicles incurs disabling damage as a result of the occurrence and must be transported away from the scene, and the covered employee may have contributed to the accident

   In addition, any other covered employee whose performance could have contributed to the accident, as determined by the employer using the best information available at the time of the decision, will be tested.

As soon as practicable following an accident, as defined in this policy, the transit supervisor investigating the accident will notify the transit employee operating the transit vehicle and all other covered employees whose performance could have contributed to the accident of the need for the test. The supervisor will make the determination using the best information available at the time of the decision.

The appropriate transit supervisor shall ensure that an employee, required to be tested under this section, is tested as soon as practicable, but no longer than eight (8) hours of the accident for alcohol, and no longer than 32 hours for drugs. If an alcohol test is not performed within two hours of the accident, the Supervisor will document the reason(s) for the delay. If the alcohol test is not conducted within (8) eight hours, or the drug test within 32 hours, attempts to conduct the test must cease and the reasons for the failure to test documented.

Any covered employee involved in an accident must refrain from alcohol use for eight (8) hours following the accident, or until he/she undergoes a post-accident alcohol test.

An employee who is subject to post-accident testing who fails to remain readily available for such testing, including notifying a supervisor of his or her location if he or she leaves the scene of the accident prior to submission to such test, may be deemed to have refused to submit to testing.

Nothing in this section shall be construed to require the delay of necessary medical attention for the injured following an accident, or to prohibit an employee from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident, or to obtain necessary emergency medical care.

In the rare event that the City of Wayne is unable to perform an FTA drug and alcohol test (i.e., employee is unconscious, employee is detained by law enforcement agency), the City of Wayne may use drug and alcohol post-accident test results administered by local law enforcement officials in lieu of the FTA test. The local law enforcement officials must have independent authority for the test and the employer must obtain the results in conformance with local law.

N. RANDOM TESTING

1) All covered employees will be subjected to random, unannounced testing. The selection of employees shall be made by a scientifically valid method of randomly generating an employee identifier from the appropriate pool of safety-sensitive employees. Employees who may be covered under company authority will be selected from a pool of non-DOT-covered employees.

2) The dates for administering unannounced testing of randomly selected employees shall be spread reasonably throughout the calendar year, day of the week and hours of the day.

3) The number of employees randomly selected for drug/alcohol testing during the calendar year shall be not less than the percentage rates set each year by the FTA administrator. The current year testing rates can be viewed online at https://www.transportation.gov/odapc/random-testing-rates.

4) Each covered employee shall be in a pool from which the random selection is made. Each covered employee in the pool shall have an equal chance of selection each time the selections are made. Employees will remain in the pool and subject to selection, whether or not the employee has been previously tested. There is no discretion on the part of management in the selection.

5) Covered transit employees that fall under the Federal Transit Administration regulations will be included in one random pool maintained separately from the testing pool of non-safety-sensitive employees that are included solely under the City of Wayne authority.

6) Random tests can be conducted at any time during an employee's shift for drug testing. Alcohol random tests can only be performed just before, during, or just after the performance of a safety sensitive duty. However, under the City of Wayne's authority, a non-DOT random alcohol test may be performed any time the covered employee is on duty. Testing can occur during the beginning, middle, or end of an employee's shift.

7) Employees are required to proceed immediately to the collection site upon notification of their random selection.

O. RETURN-TO-DUTY TESTING

All covered employees who previously tested positive on a drug or alcohol test or refused a test, must test negative for drugs, alcohol (below 0.02 for alcohol), or both and be evaluated and released by the Substance Abuse Professional before returning to work. For an initial positive drug test a Return-to-Duty drug test is required and an alcohol test is allowed. For an initial positive alcohol test a Return-to-Duty alcohol test is required and a drug test is allowed. Following the initial assessment, the SAP will recommend a course of rehabilitation unique to the individual. The SAP will recommend the return-to-duty test only when the employee has successfully completed the treatment requirement and is known to be drug and alcohol-free and there are no undue concerns for public safety.

P. FOLLOW-UP TESTING

Covered employees that have returned to duty following a positive or refused test will be required to undergo frequent, unannounced drug and/or alcohol testing following their return-to-duty test. The follow-up testing will be performed for a period of one to five years with a minimum of six tests to be performed the first year. The frequency and duration of the follow-up tests (beyond the minimums) will be determined by the SAP reflecting the SAP's assessment of the employee's unique situation and recovery progress. Follow-up testing should be frequent enough to deter and/or detect a relapse. Follow-up testing is separate and in addition to the random, post-accident, reasonable suspicion and return-to-duty testing.

In the instance of a self-referral or a management referral, the employee will be subject to non-USDOT follow-up tests and follow-up testing plans modeled using the process described in 49 CFR Part 40. However, all non-USDOT follow-up tests and all paperwork associated with an employee's return-to-work agreement that was not precipitated by a positive test result (or refusal to test) does not constitute a violation of the Federal regulations will be conducted under company authority and will be performed using non-DOT testing forms.

Q. RESULT OF DRUG/ALCOHOL TEST

1) Any covered employee that has a verified positive drug or alcohol test, or test refusal, will be removed from his/her safety-sensitive position, informed of educational and rehabilitation programs available, referred to a Substance Abuse Professional (SAP) for assessment. No employee will be allowed to return to duty requiring the performance of safety-sensitive job functions without the approval of the SAP and the employer.

2) Following a negative dilute the employee will be required to undergo another test. Should this second test result in a negative dilute result, the test will be considered a negative and no additional testing will be required unless directed to do so by the MRO.

3) Refusal to submit to a drug/alcohol test shall be considered equivalent to a positive test result and a direct act of insubordination and shall result in termination and referral to list of USDOT qualified SAPs. A test refusal includes the following circumstances:
   a) Fail to appear for any test (except a pre-employment test) within a reasonable time, as determined by the employer.
   b) Fail to remain at the testing site until the testing process is complete. An employee who leaves the testing site before the testing process commences for a pre-employment test has not refused to test.
   c) Fail to attempt to provide a breath or urine specimen. An employee who does not provide a urine or breath specimen because he or she has left the testing site before the testing process commenced for a pre-employment test has not refused to test.
   d) In the case of a directly-observed or monitored urine drug collection, fail to permit monitoring or observation of your provision of a specimen.
   e) Fail to provide a sufficient quantity of urine or breath without a valid medical explanation.
   f) Fail or decline to take a second test as directed by the collector or the employer for drug testing.
   g) Fail to undergo a medical evaluation as required by the MRO or the employer's Designated Employer Representative (DER).
   h) Fail to cooperate with any part of the testing process.
   i) Fail to follow an observer's instructions to raise and lower clothing and turn around during a directly-observed test.
   j) Possess or wear a prosthetic or other device used to tamper with the collection process.
   k) Admit to the adulteration or substitution of a specimen to the collector or MRO.
   l) Refuse to sign the certification at Step 2 of the Alcohol Testing Form (ATF).
   m) Fail to remain readily available following an accident.

   As a covered employee, if the MRO reports that you have a verified adulterated or substituted test result, you have refused to take a drug test.

4) For the first instance of a verified positive test from a sample submitted as the result of a random drug/alcohol test, disciplinary action against the employee shall include:
   a. Mandatory referral to Substance Abuse Professional for assessment, formulation of a treatment plan, and execution of a return to duty agreement;
   b. Failure to execute, or remain compliant with the return-to-duty agreement shall result in termination from the City of Wayne's employment.
      i. Compliance with the return-to-duty agreement means that the employee has submitted to a drug/alcohol test immediately prior to returning to work; the result of that test is negative; in the judgment of the SAP the employee is cooperating with his/her SAP recommended treatment program; and, the employee has

agreed to periodic unannounced follow-up testing as defined in Section P of this policy.

c. Refusal to submit to a periodic unannounced follow-up drug/alcohol test shall be considered a direct act of insubordination and shall result in termination.
d. A periodic unannounced follow-up drug/alcohol test which results in a verified positive shall result in termination from the City of Wayne's employment.

5) The first instance of a verified positive post-accident or reasonable suspicion drug and/or alcohol test shall result in termination.

6) The second instance of a verified positive drug or alcohol test result for any category of testing shall result in termination from the City of Wayne's employment.

7) An alcohol test result of ≥0.02 to ≤ 0.039 BAC shall result in the removal of the employee from duty for eight hours or the remainder or the work day whichever is longer. The employee will not be allowed to return to safety-sensitive duty for his/her next shift until he/she submits to a NON-DOT alcohol test with a result of less than 0.02 BAC.

8) In the instance of a self-referral or a management referral, disciplinary action against the employee shall include:

a. Mandatory referral for an assessment by an employer approved counseling professional for assessment, formulation of a treatment plan, and execution of a return to work agreement;
b. Failure to execute, or remain compliant with the return-to-work agreement shall result in termination from the City of Wayne's employment.
    i. Compliance with the return-to-work agreement means that the employee has submitted to a drug/alcohol test immediately prior to returning to work; the result of that test is negative; the employee is cooperating with his/her recommended treatment program; and, the employee has agreed to periodic unannounced follow-up testing as described in Section P of this policy; however, all follow-up testing performed as part of a return-to-work agreement required under section Q of this policy is under the sole authority of the City of Wayne and will be performed using non-DOT testing forms.
c. Refusal to submit to a periodic unannounced follow-up drug/alcohol test shall be considered a direct act of insubordination and shall result in termination. **All tests conducted as part of the return to work agreement will be conducted under company authority and will be performed using non-DOT testing forms.**
d. **A self-referral or management referral to the employer's counseling professional that was not precipitated by a positive test result does not constitute a violation of the Federal regulations and will not be**

considered as a positive test result in relation to the progressive discipline defined in Section Q of this policy.

e. Periodic unannounced follow-up drug/alcohol testing conducted as a result of a self-referral or management referral which results in a verified positive shall be considered a positive test result in relation to the progressive discipline defined in Section Q of this policy.

f. A Voluntary Referral does not shield an employee from disciplinary action or guarantee employment with the City of Wayne.

g. A Voluntary Referral does not shield an employee from the requirement to comply with drug and alcohol testing.

9) Failure of an employee to report within five days a criminal drug statute conviction for a violation occurring in the workplace shall result in termination.

R. GRIEVANCE AND APPEAL

The consequences specified by 49 CFR Part 40.149 (c) for a positive test or test refusal is not subject to arbitration.

S. PROPER APPLICATION OF THE POLICY

The City of Wayne is dedicated to assuring fair and equitable application of this substance abuse policy. Therefore, supervisors/managers are required to use and apply all aspects of this policy in an unbiased and impartial manner. Any supervisor/manager who knowingly disregards the requirements of this policy, or who is found to deliberately misuse the policy in regard to subordinates, shall be subject to disciplinary action, up to and including termination.

T. INFORMATION DISCLOSURE

1) Drug/alcohol testing records shall be maintained by the City of Wayne Drug and Alcohol Program Manager and, except as provided below or by law, the results of any drug/alcohol test shall not be disclosed without express written consent of the tested employee.

2) The employee, upon written request, is entitled to obtain copies of any records pertaining to their use of prohibited drugs or misuse of alcohol including any drug or alcohol testing records. Covered employees have the right to gain access to any pertinent records such as equipment calibration records, and records of laboratory certifications. Employees may not have access to SAP follow-up testing plans.

3) Records of a verified positive drug/alcohol test result shall be released to the Drug and Alcohol Program Manager, and other transit system management personnel on a need to know basis.

4) Records will be released to a subsequent employer only upon receipt of a written request from the employee.

5) Records of an employee's drug/alcohol tests shall be released to the adjudicator in a grievance, lawsuit, or other proceeding initiated by or on behalf of the tested individual arising from the results of the drug/alcohol test. The records will be released to the decision maker in the proceeding.

6) Records will be released to the National Transportation Safety Board during an accident investigation.

7) Information will be released in a criminal or civil action resulting from an employee's performance of safety-sensitive duties, in which a court of competent jurisdiction determines that the drug or alcohol test information is relevant to the case and issues an order to the employer to release the information. The employer will release the information to the decision maker in the proceeding with a binding stipulation that it will only be released to parties of the proceeding.

8) Records will be released to the DOT or any DOT agency with regulatory authority over the employer or any of its employees.

9) Records will be released if requested by a Federal, state or local safety agency with regulatory authority over the City of Wayne or the employee.

10) If a party seeks a court order to release a specimen or part of a specimen contrary to any provision of Part 40 as amended, necessary legal steps to contest the issuance of the order will be taken

11) In cases of a contractor or sub-recipient of a state department of transportation, records will be released when requested by such agencies that must certify compliance with the regulation to the FTA.

This Policy was adopted by the City of Wayne Council on May 15, 2018.

PASSED AND APPROVED this 15th day of May, 2018.

THE CITY OF WAYNE, NEBRASKA,

By_____
Mayor

ATTEST:

_____
City Clerk

[APPLICABLE SIGNATURES]

Attachment A

Job Title	Job Duties	Testing Authority

Attachment B Contacts

Any questions regarding this policy or any other aspect of the substance abuse policy should be directed to the following individual(s).

City of Wayne Drug and Alcohol Program Manager
Name:
Title:
Address:
Telephone Number:

Medical Review Officer
Name:
Title:
Address:
Telephone Number:

Substance Abuse Professional
Name:
Title:
Address:
Telephone Number:

HHS Certified Laboratory Primary Specimen
Name:
Address:
Telephone Number:

HHS Certified Laboratory Split Specimen
Name:
Address:
Telephone Number:

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OTTE CONSTRUCTION COMPANY OCC BUILDERS LLC

PROGRESS BILLING

TO (OWNER): City Of Wayne
306 Pearl Street
Wayne, Nebraska 68787

PROJECT: Wayne Golf & Country Club
Clubhouse Improvement Project

CONTRACTORS PROJECT NO.: 18-04
PERIOD THROUGH: May 1, 2018
APPLICATION DATE: May 1, 2018
APPLICATION NO.: #1

FROM (CONTRACTOR): OCC Builders, LLC.
521 South Centennial Road
Wayne, Nebraska 68787

Application is made for Payment, as shown below, in connection with the Contract. Cost Breakdown is attached.

1. ORIGINAL CONTRACT SUM			$ 569,000.00
2. NET CHANGE BY CHANGE ORDERS (see attached)			$ -50,785.00
3. CONTRACT SUM TO DATE (Line 1 +/- Line 2)			$ 518,215.00
4. WORK COMPLETED & STORED TO DATE (see attachment) TOTAL WORK COMPLETED & STORED (Column G on Cost Breakdown Sheet)			$ 33,827.00
5. RETAINAGE:			
a. 10% of Completed Work (Columns D-E on Cost Breakdown Sheet)	$ 3,383.00		
b. 10% of Stored Material (Column F on Cost Breakdown Sheet)	$ 0.00		
TOTAL RETAINAGE (Total in Column I on Cost Breakdown Sheet)			$ 3,383.00
6. TOTAL EARNED LESS RETAINAGE (Line 4 less Line 5 total)			$ 30,444.00
7. LESS PREVIOUS APPLICATIONS FOR PAYMENT			$ 0.00
8. CURRENT PAYMENT DUE			$ 30,444.00
9. BALANCE TO FINISH, PLUS RETAINAGE (Line 3 less Line 6)			$ 487,771.00

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information, and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due.
Application for Payment is to be received by the Architect no later than the last day of the month, and the Owner shall make payment to the Contractor no later than the last day of the following month.

CONTRACTOR: OCC Builders LLC.

By: _____ Date: 5/1/18

State of: Nebraska Nebraska
County of: Wayne

GENERAL NOTARY - State of Nebraska
MEGAN M RAULSTON
My Comm. Exp. October 11, 2021

Subscribed and sworn to before me this 1 day of May, 2018

Notary Public: Megan M Raulston
My Commission expires: 10-11-2018

In accordance with the Contract Documents, based on on-site observations and the data comprising this application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information, and belief, the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the
AMOUNT CERTIFIED $ _____
(Attach explanation if amount certified differs from the amount applied for.)

ARCHITECT:

By: _____ Date: _____

- [x] OWNER
- [ ] ARCHITECT
- [ ] CONTRACTOR

This certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.

OTTE
CONSTRUCTION COMPANY
OCC BUILDERS LLC

COST BREAKDOWN SHEET

CITY OF WAYNE - CLUBHOUSE IMPROVEMENT PROJECT

CONTRACTORS PROJECT NO.: 18-04
PERIOD THROUGH: May 1, 2018
APPLICATION DATE: May 1, 2018
APPLICATION NO.: #1

APPLICATION AND CERTIFICATED FOR PAYMENT - Contractor's signed Certification is attached.

A	B	C	D	E	F	G		H	I
ITEM NO.	DESCRIPTION OF WORK	SCHEDULED VALUE	WORK COMPLETED FROM PREVIOUS APPLICATION	WORK COMPLETED THIS PERIOD	MATERIALS PRESENTLY STORED (NOT IN D OR E)	TOTAL COMPLETED AND STORED TO DATE (D+E+F)	% (G/C)	BALANCE TO FINISH (C-G)	RETAINAGE 10%
	General Conditions & Project Start-Up	16,800	0	6,537	0	6,537	39%	10,263	654
	Soils Testing	1,150	0	0	0	0	0%	1,150	0
	Concrete Foundations, Walls, & Waterproofing	24,800	0	24,800	0	24,800	100%	0	2,480
	Backfilling & Drain Tile	3,705	0	0	0	0	0%	3,705	0
	Rigid Insulation at Foundation Walls	2,070	0	0	0	0	0%	2,070	0
	Concrete Floor Slab	11,640	0	1,350	0	1,350	12%	10,290	135
	Concrete Stoop & Sidewalk Site Paving	23,000	0	0	0	0	0%	23,000	0
	Brick Masonry	5,730	0	0	0	0	0%	5,730	0
	Demolition, Rework, & Infill	26,720	0	1,140	0	1,140	4%	25,580	114
	Wall Framing & Sheathing	16,385	0	0	0	0	0%	16,385	0
	Floor Framing & Sheathing	23,380	0	0	0	0	0%	23,380	0
	Roof & Canopy Framing & Sheathing	33,510	0	0	0	0	0%	33,510	0
	Asphalt Shingle Roofing	10,600	0	0	0	0	0%	10,600	0
	Cement Board Soffit & Fascia	11,750	0	0	0	0	0%	11,750	0
	Foil Faced Insulation Sheathing	6,815	0	0	0	0	0%	6,815	0
	Cement Board Siding	19,460	0	0	0	0	0%	19,460	0
	Gutters & Downspouts	3,105	0	0	0	0	0%	3,105	0
	Treated Wood Deck	20,400	0	0	0	0	0%	20,400	0
	Insulation	6,600	0	0	0	0	0%	6,600	0
	Drywall	27,560	0	0	0	0	0%	27,560	0
	Aluminum Entries	18,650	0	0	0	0	0%	18,650	0
	Aluminum Windows	16,490	0	0	0	0	0%	16,490	0
	Basement Door, Frame, & Hardware	2,690	0	0	0	0	0%	2,690	0
	Interior Millwork (Doors, Hardware, Casing, Base, Borrowlites)	21,100	0	0	0	0	0%	21,100	0
	Cabinetry (Bar, Kitchen, Sinks, Etc.)	30,040	0	0	0	0	0%	30,040	0
	Painting, Staining, Joint Sealants	28,260	0	0	0	0	0%	28,260	0
	Finish Flooring	12,980	0	0	0	0	0%	12,980	0
	Toilet Partitions & Accessories	4,230	0	0	0	0	0%	4,230	0
	Electrical	90,695	0	0	0	0	0%	90,695	0
	Plumbing & Site Utilities	20,690	0	0	0	0	0%	20,690	0
	HVAC	27,995	0	0	0	0	0%	27,995	0
	ORIGINAL CONTRACT AMOUNT	569,000	0	33,827	0	33,827	6%	535,173	3,383
	CHANGE ORDERS								
OCO 1	(Items #1-#10)								
1	Credit Extterior & Interior Painting Labor Only	(12,240)	0	0	0	0	0%	(12,240)	0
2	Credit Shingle Roofing Labor Only	(3,530)	0	0	0	0	0%	(3,530)	0
3	Delete 1" Foil Faced Insulation at Perimeter	(6,815)	0	0	0	0	0%	(6,815)	0
4	Redesign Aluminum Entry Door Systems & Hardware Changes	(3,130)	0	0	0	0	0%	(3,130)	0
5	Change Siding to 7" Reveal in Lieu of 4" Reveal	(2,900)	0	0	0	0	0%	(2,900)	0
6	Delete Prarie Style Grids in Windows	(860)	0	0	0	0	0%	(860)	0
7	Delete Oak Ceiling Trims at Coffers	(4,510)	0	0	0	0	0%	(4,510)	0
8	Change 1x Oak Trims to Heritage Style Oak Trims	(1,750)	0	0	0	0	0%	(1,750)	0
9	Delete 2" Rigid Insulation at Poured Concrete Walls in Basement	(2,070)	0	0	0	0	0%	(2,070)	0
10	Delete Finish Flooring Material & Labor Throughout	(12,980)	0	0	0	0	0%	(12,980)	0
	SUB-TOTAL CHANGE ORDERS	(50,785)	0	0	0	0	0%	(50,785)	0
	ADJUSTED CONTRACT AMIOUNT PER CHANGE ORDERS	518,215	0	33,827	0	33,827	7%	484,388	3,383

OTTE
CONSTRUCTION COMPANY
OCC BUILDERS LLC

521 South Centennial Road
Wayne, NE 68787

Invoice

Date	Invoice #
5/1/2018	18-034

City of Wayne
Wayne Golf & Country Club
306 Pearl Street
Wayne, NE 68787

Terms
Net 10

Description	Rate	Amount
Clubhouse Improvement Project Progress Billing #1 - See Attached Cost Breakdown	30,444.00	30,444.00

Total $30,444.00

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RESOLUTION NO. 2018-32

A RESOLUTION ADOPTING EMPLOYMENT AGREEMENT.

WHEREAS, the City of Wayne, Nebraska, and Wes Blecke, City Administrator, have entered into an employment agreement.

NOW THEREFORE, BE IT RESOLVED by the Mayor and Council of the City of Wayne, Nebraska, as follows:

1. The attached Employment Agreement is approved and adopted.

2. The parties are directed to execute said Employment Agreement.

PASSED AND APPROVED this 15th day of May, 2018.

THE CITY OF WAYNE, NEBRASKA,

By_____
Mayor

ATTEST:

_____
City Clerk

WAYNE CITY ADMINISTRATOR
EMPLOYMENT AGREEMENT

This agreement entered into this 1st day of June, 2018, between the City of Wayne, Nebraska, a municipal corporation, hereinafter referred to as "City," and Wes Blecke, hereinafter referred to as "Employee."

WHEREAS, the City desires to employ the services of Wes Blecke as City Administrator of the City of Wayne, Nebraska, as provided by the Wayne Municipal Code; and

WHEREAS, the Employee desires to obtain employment as the City Administrator of the City under the terms and conditions as hereinafter set forth; and

WHEREAS, it is the desire of the City to provide certain benefits to establish certain conditions of employment, and to set working conditions of the Employee.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties hereto agree as follows:

SECTION I.
DUTIES

1.1. The Employee agrees to perform and have the following duties and responsibilities as an integral part of the position of City Administrator as follows:

A. Pursuant to law and the City Administrator's authority, execute all laws of the State of Nebraska applicable to city administrators and municipalities, and ordinances of the City, as are required to maintain the public health, safety, and welfare of inhabitants of the City.

B. Attend all necessary meetings of the governing body and make all necessary and proper recommendations for the proper functioning of the City.

C. Perform all duties required by the Administrator's office, as directed by the City.

D. Prepare and submit to the governing body all reports required by it and that the Employee may consider advisable and appropriate.

E. Keep the governing body fully advised of the City's financial condition.

F. Keep the governing body of the City advised of the City's future needs, based upon the goals of the City.

G. Prepare and submit to the City an annual budget.

H. Serve as City's purchasing agent.

I. Serve as City's general manager of utilities.

J. Recommend rules and regulations for the governing body and departments of the City that may be necessary for efficient, economic conduct of the business of the City.

K. Keep the City advised and informed of the needs and conditions of all agencies and employees under the Employee's direction and maintain continuous liaison with appropriate community groups, organizations, and individuals.

L. Perform all duties and obligations specified in the City Municipal Code and applicable Nebraska Statutes and perform such other legally permissible and proper duties and functions as the governing body may from time to time assign.

1.2. Employee shall be fully informed and current on local government and management and utility management, and except as otherwise set forth herein devote the Employee's full time to the services, employment, and requirements of the City.

1.3. The job description may be adjusted from time to time by the mutual agreement of the parties hereto, although at all times, such job description shall be consistent with and not contrary to the lawful authority given to city administrators by Statute and by local ordinances.

1.4. Subject to the foregoing, Employee may continue his work as athletic coaching, provided such work does not materially interfere with Employee's duties hereunder.

SECTION II.
BASE SALARY

2.1. The City agrees to pay Employee for his services rendered hereto based upon an annual base salary of $_____. Said annual base salary shall be payable in equal installments at the same time as other employees of the City are paid. After the first six months of employment, the governing body shall conduct a performance and salary review, and shall consider upward adjustments to the base salary of the Employee. Subsequent performance and salary reviews shall be conducted on an annual basis, in approximately May/June of each year, or at such other times as the governing body shall deem necessary or advisable. Salary increases are subject to a satisfactory performance evaluation and will be equal to or greater than those given to other management employees.

SECTION III.
BENEFITS

3.1. The City agrees to provide Employee with professional liability insurance for the actions of the Employee conducted within the scope of his employment with the City in an amount of not less than $1,000,000.00.

3.2. The City agrees to provide Employee, his spouse, and dependents, hospitalization, surgical, and comprehensive medical insurance, and to pay or contribute to the premiums thereon in a manner equal to and upon the same terms and conditions as provided from time to time for other City employees.

3.3. The City agrees to provide Employee with a term life insurance policy in an amount not less than Employee's annual salary. Employee shall have the right to name the beneficiaries, the right of conversion and continuation, and any face value shall belong to the Employee.

3.4. The City agrees to provide Employee with disability leave on the same basis as is provided to other City employees pursuant to the City personnel manual.

3.5. The City agrees to provide Employee with long-term disability insurance coverage equal to that provided to other City employees.

3.6. The Employee shall earn one hundred twenty (120) hours paid vacation leave and may carry over vacation leave up to a maximum of one hundred twenty hours (280) hours. At least once per year, the Employee shall take not less than forty (40) consecutive hours vacation. After being employed by the City for a total of ten years, said vacation leave shall be adjusted to 4 weeks, and after twenty years, it shall be adjusted proportionately thereafter in compliance with the City's vacation schedule.

3.7. The City shall provide Employee with time off for all Federal, State and local holidays as from time to time established for all City employees by the governing body.

3.8. The City, being a member of the ICMA Retirement Corporation Deferred Compensation Program, will match the Employee's contribution up to 6% of the employee's monthly salary or in an amount not less than that provided to other city employees, starting 180 days after employment.

3.9. The City will pay for professional dues and subscriptions of the employee necessary for his continuation and full participation in national, regional, state, and local associations and organizations necessary and desirable for his continued professional participation, growth, and advancement, and for the good of the City. These include such organizations as the International City Managers Association, Nebraska City Managers Association, American Public Works Association, Nebraska Planning & Zoning Association, and related subdivisions of these organizations. Conference attendance will be paid by the City, subject to budget consideration and council approval, to the Nebraska conference every year and ICMA conference every other year.

3.10. The City agrees to pay Employee a monthly vehicle allowance in the amount of $150.00 for the use of personal vehicle for City business, and in addition, to reimburse the Employee at the latest maximum IRS approved rate per mile for all use of his personal vehicle for travel on City business outside of the City. The Employee shall record and supply in support of all reimburses mileage, suitable records sufficient to establish the dates, details, and purposes of such travel. The Employee shall also maintain such other recordkeeping as to the use of his personal vehicle for City business, as shall be necessary in order for the City to prepare such reports or maintain such records as may from time to time be necessary or required for Federal or State income tax reporting purposes.

3.11. The City hereby agrees to budget and to pay travel and subsistence expenses of the Employee for professional and official travel, meetings, and occasions adequate to continue the professional development of the Employee, and adequately to pursue necessary official and other functions for the City, and for short courses, institutes, and seminars that are necessary for professional development and for the good of the City when deemed appropriate by the Employee and approved by the City.

3.12. The City recognizes the desirability of representation in and before local, civic, and other organizations, and the Employee is authorized to become a member of such civic clubs or organizations as he may deem appropriate, provided that City will pay membership dues for one such club selected by the Employee.

3.13. All provisions of City ordinances, regulations, and personnel rules of the City relating to vacation and sick leave, retirement and pension system contributions, holidays, and other employment benefits, as they now exist or hereafter may be amended, shall also apply to the Employee as they would other employees of the City, in addition to other benefits enumerated specifically herein for the benefit of the Employee, except if they are in conflict with the express provisions of this agreement, in which case this agreement shall supersede any conflicting provision.

SECTION IV.
HOURS OF WORK

4.1 It is contemplated that the Employee's duties compensated by the salary and benefits herein established may and will require the commitment of time above and beyond normal business hours, including evening and weekend hours, and that the Employee will be expected to devote more than a basic forty-hour work week to perform those duties. However, in relation to unusual demands upon the Employee's time, the Employee will be allowed to take a reasonable amount of compensatory time off as he shall deem appropriate, although not to the prejudice of his responsibilities as City Administrator.

SECTION V.
TERM OF AGREEMENT

5.1. The term of this agreement shall commence on the 1st day of June, 2018, and shall remain in effect through September 30, 2019, and may be terminated as provided herein. This agreement and any termination hereunder shall comply with all applicable Federal, State and local laws, codes and regulations, and rules. In the event this Agreement is not terminated as provided herein, the Agreement shall automatically renew for one (1) year from the expiration of this agreement (a "Renewal Term") and will automatically renew for successive Renewal Terms thereafter unless terminated as provided herein. This agreement shall supersede any previous or current employment agreement between Employee and City.

5.2. Nothing in this agreement shall prevent, limit, or otherwise interfere with the right of the City to terminate the services of the Employee at any time, with or without cause, and the parties acknowledge Employee will serve at the will of the City, subject to the provisions of Section VI of this Agreement.

5.3. Nothing in this agreement shall prevent, limit, or otherwise interfere with the right of the Employee to resign at any time from his position with the City, subject only to the provisions set forth in Section 6.2 of this agreement.

SECTION VI.
TERMINATION

6.1. Termination by City for Cause. During any Term, the Mayor may terminate Employee's employment and any and all rights or benefits of Employee or obligations of the City under this Agreement for Cause. Prior to doing so, the Mayor will seek the sense of the Council regarding such termination through a non-binding vote of the Council, but authority for termination shall ultimately reside with the Mayor.

(i) Definition of "Cause." For purposes of this Agreement, "Cause" shall be defined to include any of the following:

(1) Employee's conviction or plea of guilty or no contest to any felony or any crime involving moral turpitude, dishonesty or fraud;

(2) Breach of this Agreement; or

(3) Commission of any dischargeable offense as defined in the Personnel Rules of the City.

(4) Immoral conduct affecting the performance of Employee's duties; or

(5) Inefficiency or incompetence in office, which Employee has failed to correct after written notice.

6.2 Termination for Reasons Other Than Cause, and Consideration Given for Release of All Claims Against City. Either party may terminate this Agreement during any Term for any reason whatsoever upon sixty (60) days' written notice to the other party.

(i) Sense of Council. In the event the Mayor, during any Term under this Agreement, terminates Employee's employment for reasons other than Cause, prior to such termination, the Mayor will seek the sense of the Council regarding such termination through a non-binding vote of the Council, but authority for termination shall ultimately reside with the Mayor.

(ii) In the event of termination by the Mayor during any term for reasons other than Cause, the City agrees to pay Employee an amount equivalent to six (6) months of Employee's Base Salary and six (6) months of health insurance premiums at the level of coverage at the time of termination, but excluding the City's obligation for (1) retirement, (2) benefits other than as described above in this Section, and (3) any allowances for said six (6) month period. Such payment shall be made over the course of six (6) months, shall commence within thirty (30) days of termination of Employee's employment by the City, and shall be made on the City's regular paydays and pursuant to the City's regular payroll practices ("Severance").

(iii) Conditions of Severance Payment. As a condition to payment of any Severance to Employee, Employee does hereby waive and release the City, and its elected and appointed officials, managers, employees, attorneys, and agents, from any and all claims of any nature whatsoever which may arise by reason of such termination, including but not limited to, an alleged breach of this Agreement (or any other express or implied contract), or any federal law, state law, or local ordinance, or a constitutional due process claim that Employee's termination by the City deprived Employee of a property interest in continued employment with the City and/or of a liberty interest in Employee's good name and reputation, and will execute appropriate documentation demonstrating such waivers and releases as a condition of payment.

5. Employee, in accepting this Severance, agrees after termination of employment with the City that he will voluntarily participate and cooperate with the City in the defense of the City and its elected and appointed officials, managers, employees, attorneys, and agents, and the prosecution of any action or proceeding about which Employee has knowledge, including any litigation related to these actions. Such participation and cooperation includes, for example, agreeing to speak with the City's attorneys at mutually convenient times regarding the facts of the matter and agreeing to make himself available for a deposition and/or trial.

6.3 Termination by Reason of Employee's Death. If Employee dies during the Term of this Agreement, the City shall only be obligated to pay Employee his Base Salary and other compensation up to and including the date of Employee's death.

6.4 Termination by Reason of Employee's Disability. If Employee becomes Disabled during the Term of this Agreement, the City shall be obligated to pay Employee his Base Salary up to and including the date on which it is determined that Employee is Disabled. For purposes of this Agreement, Employee shall be deemed "Disabled" if a physical or mental condition or impairment renders Employee unable to perform Employee's normal and customary duties under this Agreement, with or without reasonable accommodation. If a dispute arises with respect to whether Employee is Disabled, the Disability of Employee shall be determined by a qualified medical doctor mutually selected by the City and Employee. In the event the parties cannot agree on the selection of a qualified medical doctor, each party shall select one qualified medical doctor and these two qualified medical doctors will mutually select a third qualified medical doctor who will then determine whether Employee is Disabled for purposes of this Agreement.

SECTION VII.
EMPLOYEE EVALUATION

7.1. The governing body and Employee shall establish a mutually acceptable procedure for evaluating the Employee's performance.

SECTION VIII.
INDEMNIFICATION

8.1. The City shall defend, hold harmless, and indemnify the Employee against any tort or professional liability claim or demand, or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of the Employee's duties as City Administrator. The City or its insurance carriers may compromise or settle any such claim or suit, and the City shall pay the amount of any settlement or judgment rendered thereon.

Executed in duplicate.

THE CITY OF WAYNE, NEBRASKA,

By _____
Mayor

Attest:

_____
City Clerk

_____
Employee