

AGENDA
CITY COUNCIL MEETING
COUNCIL CHAMBERS – CITY HALL
513 MAIN STREET
September 2, 2025

1. Call the Meeting to Order – 5:30 p.m.
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 table in Council Chambers as well as on the City of Wayne website.

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. [Approval of Minutes – August 18, 2025](#)
4. [Approval of Claims](#)
5. [Ordinance 2025-13: Amending Wayne Municipal Code, Section 152.046 A-1 Agricultural District \(B\) Permitted Principal Uses and Structures and Section 152.046 A-1 Agricultural District \(D\) Exceptions \(Second Reading\)](#)
6. [Ordinance 2025-14: Authorizing the issuance of tax supported municipal improvement refunding bonds, Series 2025, in the principal amount of not to exceed \\$10,500,000 for the purposes of refunding all or a portion of \(A\) \\$4,950,000 outstanding principal amount of tax supported municipal improvement bonds, Series 2023, dated October 5, 2034; and \(B\) \\$4,995,000 outstanding principal amount of tax supported municipal improvement bonds, Series 2024, dated February 15, 2024](#)

Background: Andy Forney with D.A. Davidson & Co. will be present to review the long-term financing of the Series 2023 and 2024 tax supported municipal improvement bonds. Mr. Forney may ask that the required three readings be waived on this ordinance.

7. [Ordinance 2025-15: Approving and authorizing the execution of an energy management and market participation support agreement with Tenaska Power Services Co.](#)

Background: The Council decided to start negotiating a contract with Tenaska a few months ago for energy management and SPP market participation assistance. The City reached out to David Levy with Baird Holm to review and negotiate this contract with the assistance of Dave Peterson with JEO. The consultants, as do staff, feel this contract gets the City to where it needs to be for success in the energy market while able to use City generation as its capacity and additional future generation to its benefit as well.

8. [Update on the Electronics Recycling Event to be held on Saturday, September 6, 2025, at the new location: FNBO parking lot located at 1100 E. 10th Street](#)

Background: With the City Hall/PD's move away from 306 Pearl, conversations started about moving the electronic recycling so the City would not have to close any streets. Staff looked at Prairie Park parking area as well as the FNBO site as options. FNBO was chosen for the large, paved parking lot and the ease in and out of the property.

9. [Action on Change Order No. 2 in the amount of \\$102,533.00 \(Lighting\) for the "Wayne 7th Street Trail Project" – Roger Protzman, Engineer with JEO Consulting Group, Inc.](#)

Background: This change order is for the street lights going west on Highway 35 for the "Wayne 7th Street Trail Project." Council gave the go ahead with this at their budget work session.

10. [Action on Contractor's Application for Payment No. 3 in the amount of \\$42,182.05 to Gehring Construction and Ready Mix Co., Inc., for the "Wayne 7th Street Trail Project" - Roger Protzman, Engineer with JEO Consulting Group, Inc.](#)

Background: This is for work completed and approved by the Project Engineer.

11. [Resolution 2025-51: Adopting the Local Hazard Mitigation Plan Update prepared by the Lower Elkhorn Natural Resources District & Lewis and Clark Natural Resource District](#)

Background: The Lower Elkhorn Natural Resource District has updated the 2020 Multi-Jurisdictional Hazard Mitigation Plan (HMP). A HMP is a community guided document that identifies vulnerability to natural and man-made hazards and mitigation measures to reduce or eliminate this vulnerability. Having an approved and updated HMP in place is a requirement of FEMA for communities, counties, school districts and other groups to be eligible for pre- and post-disaster mitigation grants, which are available on an annual basis as appropriated by Congress. These federal grants allow for up to 75% cost-share for a wide variety of projects listed in the plan. The Lower Elkhorn NRD's previous HMP was approved by FEMA in 2020, and FEMA requires that the HMP must be updated and approved every five years. The LENRD has prepared the plan, and the same has been reviewed and approved by the State and FEMA, and it is now time for the entities in our jurisdiction to adopt the plan locally.

12. [Resolution 2025-52: Maintaining Uniform Service Surcharge for Enhanced Emergency E911 Telephone Communication System](#)

Background: By Statute, we are required to establish the amount of the 911 surcharge each year by September 1st, with changes effective on or after January 1st. The surcharge of \$1.00 has been in effect since 2001. This was brought to our attention by a Tax Research Analyst firm and then more research done by staff.

13. Action to direct the Mayor to solicit members to appoint to a "Downtown Improvement & Safety Committee"

Background: After discussion at the agenda meeting, Mayor Brodersen would like Council to consider directing her to solicit members of the downtown business area, as well as a couple of City staff and a couple of Councilmembers to be on this “Downtown Improvement & Safety Committee” to walk the downtown sidewalks, etc., and provide feedback or ideas to make improvements for the safety of the community.

14. Action to set Mini-Retreat date for Monday, September 29, 2025, at 5:30 p.m. at the Wayne Fire Hall
15. Adjourn

**MINUTES
CITY COUNCIL MEETING
August 18, 2025**

The Wayne City Council met in regular session at City Hall on August 18, 2025, at 5:30 o'clock P.M.

Mayor Jill Brodersen called the meeting to order, followed by the Pledge of Allegiance, with the following in attendance: Councilmembers Austyn Houser, Parker Bolte, Dwaine Spieker, Brittany Webber, Clayton Bratcher, Jason Karsky, Dallas Dorey and Matt Eischeid; City Administrator Wes Blecke; City Clerk Betty McGuire; and City Attorney Amy Miller. Absent: Councilmember Parker Bolte.

Notice of the convening meeting was given in advance thereof by publication in the Wayne Herald, Wayne, Nebraska, the designated method of giving notice, as shown by Affidavit of Publication. In addition, notice was given to the Mayor and all members of the City Council, and a copy of their acknowledgement of receipt of notice and agenda is on file with the City Clerk. Availability of the agenda was communicated in the advance notice and in the notice to the Mayor and Council of this meeting. 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 table in Council Chambers, as well as on the City of Wayne website 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.

Councilmember Spieker made a motion, which was seconded by Councilmember Bratcher, to approve the minutes of the meeting of August 4, 2025, and to waive the reading thereof. Mayor Brodersen stated the motion, and the result of roll call being all Yeas, with the exception of Councilmember Bolte 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: ACE HARDWARE & HOME, SU, 681.74; AMERITAS, SE, 3297.34; AMERITAS, SE, 35.00; AMERITAS, SE, 72.00; AMERITAS, SE, 197.87; APPEARA, SE, 304.29; AUTOMATIC SYSTEMS, SU, 1066.92; BACON & VINTON, SE, 30500.00; BAIRD HOLM, SE, 897.00; BLACK HILLS

ENERGY, SE, 639.87; BLADES GROUP, SU, 2064.00; BLUE CROSS BLUE SHIELD, SE, 59701.62; BOILLING, JEFF, RE, 500.00; BORDER STATES INDUSTRIES, SU, 641.24; BSN SPORTS, SU, 730.41; CALIBRASKA ARTS INITIATIVE, FE, 560.00; CERTIFIED TESTING SERVICES, SE, 4922.00; CHASE PAYMENTECH, SE, 6287.30; CHASE PAYMENTECH, SE, 651.12; CHASE PAYMENTECH, SE, 14.25; CITY EMPLOYEE, RE, 125.72; CITY EMPLOYEE, RE, 91.23; CITY EMPLOYEE, RE, 345.50; CITY EMPLOYEE, RE, 234.88; CITY EMPLOYEE, RE, 54.50; CITY EMPLOYEE, RE, 42.80; CITY EMPLOYEE, RE, 652.61; CITY EMPLOYEE, RE, 2897.94; CITY OF WAYNE, PY, 145890.85; CITY OF WAYNE, RE, 811.93; CUSIP SERVICE BUREAU, SE, 91.00; EAKES OFFICE PLUS, SE, 122.01; ED M. FELD EQUIPMENT, SE, 2140.00; ED M. FELD EQUIPMENT, SU, 30.00; EGAN SUPPLY, SE, 7471.50; ELECTRIC PUMP, SE, 3658.10; EVOQUA WATER TECHNOLOGIES, SU, 748.47; FAITH REGIONAL PHYSICIAN SERV, SE, 170.00; FAST PIK, SU, 8735.38; FIREMAN, RE, 50.00; FIRST CONCORD GROUP, SE, 4481.12; FLOOR MAINTENANCE, SU, 607.14; FOUNDATION WORKS, RE, 500.00; GACC, FE, 150.00; GEHRING CONSTRUCTION & READY MIX, SE, 201445.79; GERHOLD CONCRETE, SU, 1962.57; GLOBAL PAYMENTS INTEGRATED, SE, 1989.09; GROSSENBURG IMPLEMENT, SE, 750.00; GUARDIAN, SE, 1783.20; HASEMANN FUNERAL HOME, RE, 200.00; HAWKINS, SU, 4094.56; HOMETOWN LEASING, SE, 375.26; ICMA, SE, 272.00; ICMA, SE, 148.60; ICMA, SE, 584.44; ICMA, SE, 11217.14; ICMA, SE, 2500.04; ICMA, SE, 214.81; ICMA, SE, 42.62; ICMA, SE, 270.84; ICMA, SE, 170.50; ICMA, SE, 158.98; ICMA, SE, 623.47; ICMA, SE, 369.23; ICMA, SE, 170.50; INGRAM LIBRARY SERVICES, SU, 118.05; IOWA PUMP WORKS, SE, 118.00; IRS, TX, 5624.02; IRS, TX, 24048.16; IRS, TX, 15146.42; JEFF'S RPM SERVICE, SE, 262.50; JEO CONSULTING GROUP, SE, 10345.50; JOHN'S WELDING AND TOOL, SU, 314.60; KAY PARK REC CORP, SU, 4907.80; KTCH, SE, 170.00; LEAGUE OF NEBRASKA MUNICIPALITIES, FE, 16323.00; LOVE SIGNS, SE, 522.75; MAJOR REFRIGERATION, SE, 151.25; MICHAEL TODD INDUSTRIAL SUPPLY, SU, 409.59; MIDWEST LABORATORIES, SE, 204.57; MIDWEST TAPE, SU, 73.97; MILLER LAW, SE, 6343.75; MUNICIPAL SUPPLY, SU, 4397.97; MUTUAL OF OMAHA, SE, -14.40; MUTUAL OF OMAHA, SE, 14.40; NE DEPT OF REVENUE, TX, 7218.14; NE LIBRARY ASSOCIATION, FE, 75.00; NPPD, SE, 8250.24; NNEDD, SE, 270.00; NORTHEAST POWER, SE, 7543.00; NORTHWEST ELECTRIC, SU, 76.88; OMAHA WINWATER, SU, 3052.43; ONE CALL CONCEPTS, SE, 86.13; ONE OFFICE SOLUTION, SU, 660.00; OPTK NETWORKS, SE, 488.32; O'REILLY AUTOMOTIVE STORES, SU, 367.63; OVERDRIVE, SU, 850.84; OVERHEAD DOOR, SU, 2698.00; PAC N SAVE, SU, 3.49; PAC N SAVE, SU, 1145.64; PATRIOT YOUTH FUND, FE, 50.00; PLUNKETT'S PEST CONTROL, SE, 120.00; PLUNKETT'S PEST CONTROL, SE, 118.28; QUADIANT, SU, 217.55; QUALITY FOOD CENTER, SU, 13.69; RECREONICS, SE, 352.50; REHAB SYSTEMS, SE, 24912.60; SIEVERS, TERRAN, RE, 187.22; SKARSHAUG TESTING LAB, SE, 292.01; STADIUM SPORTING GOODS, SU, 40.00; STATE NEBRASKA BANK & TRUST, SE, 74.00; STATE NEBRASKA BANK-PETTY CASH, RE, 95.84; THE MAJESTIC THEATER, FE, 225.00; UL LLC, SE, 3175.00; US BANK, SU, 19100.41; US FOODSERVICE, SU, 3094.22; UTILITIES SECTION, FE, 3918.00; WASTE CONNECTIONS, SE, 46.50; WAYNE AUTO PARTS, SU, 458.99; WAYNE HERALD, SE, 190.00; WAYNE HERALD, SE, 941.00; WAYNE HERALD, SE, 1443.54; WAYNE VETERINARY CLINIC, SE, 126.00; WESCO, SU, 26182.90; WAPA, SE, 26337.10; WISNER WEST, SU, 57.52; ZACH HEATING & COOLING, SE, 548.28; BAKER & TAYLOR BOOKS, SU, 688.03; BIG RIVERS ELECTRIC CORPORATION, SE, 295048.83; BLUE VALLEY PUBLIC SAFETY, SE, 3757.10; CHESTERMAN, SU, 97.25; CITIZENS STATE BANK, RE, 7899.92; CITY EMPLOYEE, RE, 883.84; CITY EMPLOYEE, RE, 50.00; CITY EMPLOYEE, RE, 293.52; CITY EMPLOYEE, RE, 1111.58; CITY OF NORFOLK, SE, 130.48; CITY OF WAYNE, RE, 287.72; COTTONWOOD WIND PROJECT, SE, 11714.98; GEOCOMM, SE, 3598.00; GERHOLD CONCRETE, SU, 1247.33; GRAINLAND ESTATES, RE, 1399.49; HAWKINS, SU, 4162.20; HILAND DAIRY, SU, 26.95; HILAND DAIRY, SU, 100.96; KONE, SE, 3231.00; KTCH, SE, 500.00; MIDWEST TAPE, SU, 34.49; NERC, SE, 1274.44; NNEDD, SE, 2070.00; O'REILLY AUTOMOTIVE STORES, SU, 41.88; STAPLES, SU, 89.58; T & R ELECTRIC, SU, 1653.87; WESCO, SU, 30589.16

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

Ivan Heise and Kris Loberg were present regarding their request for Council to consider selling to them the small triangular piece of property (approx. 9,000 sq. ft.) behind their home at 1904 Claycomb Road. They maintain the property now.

Administrator Blecke advised the Council that nothing could be built on that property, and the City would retain an easement for utilities.

After discussion, Councilmember Eiseheid made a motion, which was seconded by Councilmember Webber, directing city staff to establish a purchase price and to have conversations with the property owners on an agreement that is agreeable between all parties. Mayor Brodersen stated the motion, and the result of roll call being all Yeas, with the exception of Councilmember Bolte who was absent, the Mayor declared the motion carried.

Administrator Blecke, on behalf of Carlson West Povondra Architects, presented Application and Certificate of Payment No. 10 from Otte Construction Company, LLC, in the amount of \$87,239.00 for the “Wayne Parks & Rec Maintenance Building Project.”

Keith Moje, representing Otte Construction Company, LLC, was present and updated Council on the project. He addressed the concern with the concrete floor.

Before the final pay app is requested, Council would like the engineer at the meeting, in person.

After discussion, Councilmember Houser made a motion, which was seconded by Councilmember Bratcher, approving Application and Certificate of Payment No. 10 in the amount of \$87,239.00 to Otte Construction Company, LLC, for the “Wayne Parks & Rec Maintenance Building Project.” Mayor Brodersen stated the motion, and the result of roll call being all Yeas, with the exception of Councilmember Bolte who was absent, the Mayor declared the motion carried.

Administrator Blecke, on behalf of Olsson, presented Certificate of Payment No. 2 in the amount of \$45,862.67 to Robert Woehler & Sons Construction, Inc., for the “Wayne Prairie Park Phase 4 – East Ditch Storm Sewer Project.” In addition, he updated the Council on the project.

Councilmember Eischeid made a motion, which was seconded by Councilmember Houser, approving Certificate of Payment No. 2 for \$45,862.67 to Robert Woehler & Sons Construction, Inc., for the “Wayne Prairie Park Phase 4 – East Ditch Storm Sewer Project.” Mayor Brodersen stated the motion, and the result of roll call being all Yeas, with the exception of Councilmember Bolte who was absent, the Mayor declared the motion carried.

Councilmember Eischeid introduced Ordinance No. 2025-12, and moved for approval of the third and final reading thereof; Councilmember Webber seconded.

ORDINANCE NO. 2025-12

AN ORDINANCE AMENDING TITLE XV LAND USAGE, CHAPTER 152 ZONING, SECTION 152.111 SFP FLOODPLAIN DISTRICT; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING A TIME WHEN THIS ORDINANCE SHALL BE IN FULL FORCE AND EFFECT; AND TO PROVIDE THAT SAID ORDINANCE BE PUBLISHED IN PAMPHLET FORM.

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

Mayor Brodersen declared the time was at hand for the public hearing to consider the Planning Commission’s recommendation regarding a request to amend the zoning text, specifically Section 152.046 A-1 Agricultural District (B) Permitted Principal Uses and Structures and Section 152.046 A-1 Agricultural District (D) Exceptions. Rod Lutt is the Applicant.

Joel Hansen, Zoning Administrator, stated the Planning Commission met on July 28th regarding a request from Rod Lutt to consider amending zoning text in Section 152.046 (B) Permitted Principal Uses and Structures and Section 152.046 (D) Exceptions, more specifically to add “transportation warehousing” and “car/truck wash establishments” to (B) and move “repair garages, automobile service stations, and major body repair” from (D) to (B). They approved the request (6-1) with the findings of fact being

consistency with the current and future land use maps, the Comprehensive Plan, and staff's recommendation.

Rod Lutt and Noah Lutt were present to answer questions. They plan on moving Lutt Trucking and Northeast Tire out to a location south on Highway 15. They will have a truck wash to wash out their trucks.

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

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

Councilmember Spieker introduced Ordinance No. 2025-13 and moved for its approval; Councilmember Webber seconded.

ORDINANCE NO. 2025-13

AN ORDINANCE TO AMEND WAYNE MUNICIPAL CODE TITLE XV LAND USAGE, CHAPTER 152 ZONING, SECTION 152.046 — A-1 AGRICULTURAL DISTRICT; TO PROVIDE FOR THE REPEAL OF CONFLICTING ORDINANCES AND SECTIONS; TO PROVIDE FOR AN EFFECTIVE DATE; AND TO PROVIDE FOR PUBLICATION IN PAMPHLET FORM.

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

The following Municipal Annual Certification of Program Compliance Form 2025 and Resolution replaces the annual filing of the One and Six Year Plan or Program and the former standardized system of annual reporting with the Nebraska Board of Public Roads Classification and Standards. This must be adopted and returned to the Nebraska Department of Transportation (NDOT) by October 31, 2025.

Councilmember Eischeid introduced Resolution No. 2025-50 and moved for its approval, Councilmember Karsky seconded.

RESOLUTION NO. 2025-50

A RESOLUTION AUTHORIZING THE SIGNING OF THE MUNICIPAL ANNUAL CERTIFICATION OF PROGRAM COMPLIANCE FORM 2025.

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

Joel Hansen, Street and Planning Director, stated the Wayne National Functional Classification Map is a map that is used in obtaining STP funds for projects. Staff is talking about applying for funds to do 4th Street and East 21st Street and Centennial Road. In his discussion with the Nebraska Department of Transportation, they advised him if those streets/roads were higher priority streets like collector and arterial instead of just a local road, you would probably have a better argument for why you needed funding for those projects.

Wayne County has approved this map without any changes. If this Council is in agreement that they would like to see some changes, we will have to go to the County Board and ask them to also approve those changes.

Staff suggestion was for Council to review the map, along with the City's engineer, and if there are certain things they would like to see changed, get the information to Mr. Hansen and then staff will bring this back for your approval, keeping in mind the County will also need to approve the same.

The second budget work session then took place in the lower level conference room.

Administrator Blecke talked first about the 7th Street lighting project. The engineer's lighting analysis shows we need 7 lights along the stretch of the 7th Street trail project. The lights must be alternated on both sides of the highway (per the NDOT). This would be about a \$102,000 project. After discussion, the consensus was to have the engineer prepare a change order for this lighting project.

Beth Porter, Finance Director, updated the Council on the valuation information she received from the County Assessor. The valuations went up 9.34% - \$396,525,712. She presented several different scenarios regarding the levy with the new valuation numbers:

1. Scenario #1- Keep the dollar amount the same as proposed in the initial budget;
2. Scenario #2- Keep the levy amount the same as proposed in the initial budget (this would increase the general fund by approximately \$30,000);
3. Scenario #3A- Keep the general levy the same; Increase debt service ask \$107,500 to account for 25% of the City Hall portion of municipal improvement bond debt payment – \$.43;

1. Scenario #3B- Keep the general levy the same; Increase debt service ask \$215,000 to account for 50% of the City Hall portion of municipal improvement bond debt payment - \$.46; or
2. Scenario #3C- Keep the general levy the same; Increase debt service ask \$322,500 to account for 75% of the City Hall portion of municipal improvement bond debt payment - \$.49.

After discussion, Council consensus was to go with Scenario #3A.

Discussion then took place regarding the request from the Art Committee. They would like to increase their budget from \$20,000 to \$95,000 to be able to get a permanent artwork piece at the Prairie Park roundabout. Mayor Brodersen and Councilmember Spieker were going to take some of Council suggestions back to the Committee (e.g. setting aside Keno funds (1/2 thereof) for a few years for the project).

Mayor Brodersen reiterated her request for \$25,000 from the Keno fund for business façade improvement grants.

Other ideas for Keno/Sales Tax Funds were:

- Security cameras
- Welcome to Wayne signs (one per year)
- Park signs

The following Departments reviewed their budgets with Council:

- Library
- Police
- Parks and Rec
- Public Works

There being no further business to come before the meeting, Mayor Brodersen declared the meeting adjourned at 8:41 p.m.



City of Wayne, NE

Council Approval Listing

Payment Date Range: 08/19/2025 - 08/27/2025

Council Approved 8/18/25

| | | |
|---|---|----------------------|
| Otte Construction | Park & Rec Maintenance Building | 87,239.00 |
| Robert Woehler & Sons | Prairie Park East Ditch Storm Sewer | 45,862.67 |
| | | |
| Vendor | Payable Description | Payment Total |
| A TO Z VAC N SEW LLC. | VACUUM BAGS | 57.90 |
| ACES | WIND ENERGY SERVICE AGREEMENT | 1,161.39 |
| ADVANCED CONSULTING ENGINEERING SERVICES | LOT ON SOUTH MAIN | 157.08 |
| AMERITAS LIFE INSURANCE | AMERITAS ROTH | 197.87 |
| AMERITAS LIFE INSURANCE | AMERITAS ROTH | 35.00 |
| AMERITAS LIFE INSURANCE | POLICE RETIREMENT 457 AMOUNT | 72.00 |
| AMERITAS LIFE INSURANCE | POLICE RETIREMENT | 3,127.60 |
| APPEARA | MAT SERVICE | 120.92 |
| AUTOMATIC SYSTEMS CO | AIR CONDITIONING UNIT | 15,342.38 |
| BC VOLLEYBALL | REC VOLLEYBALL TOURNAMENT FEE | 200.00 |
| BC VOLLEYBALL | REC VOLLEYBALL TOURNAMENT FEE | 100.00 |
| BOMGAARS | WATER | 79.80 |
| CARLSON WEST POVONDRA ARCHITECTS | PARKS & REC MAINTENANCE BUILDING DESIGN | 549.27 |
| CHESTERMAN CO | CAC POP | 1,787.81 |
| CITIZENS STATE BANK | TIF INTEREST | 1,606.49 |
| CITIZENS STATE BANK | TIF PRINCIPAL/INTEREST | -7,899.92 |
| CITY EMPLOYEE | MEDICAL REIMBURSEMENT | 2,392.89 |
| CITY EMPLOYEE | VISION REIMBURSEMENT | 120.90 |
| CITY OF WAYNE | PAYROLL | 150,325.30 |
| CITY OF WAYNE | UTILITY REFUNDS | 442.39 |
| COLONIAL RESEARCH | TIGHT SPOT LUBRICANT | 277.03 |
| COMMUNITY REDEVELOPMENT AUTHORITY | LINE OF CREDIT DRAW | 10,000.00 |
| DAVIS FORD | CABIN AIR FILTER | 49.47 |
| DGR & ASSOCIATES CO | GENERATION PLANT/ENGINEERING SERVICES FOR FAULT CURRENT | 2,408.50 |
| EAKES OFFICE PLUS | POLICE COPY CHARGES | 279.94 |
| ELKINS PORTABLE RESTROOMS, LLC | PORTABLE RESTROOMS | 300.00 |
| FASTWYRE BROADBAND | TELEPHONE CHARGES | 835.29 |
| FLOOR MAINTENANCE | JANITORIAL SUPPLIES | 32.86 |
| GROSSENBURG IMPLEMENT INC | COUPLER/PLUG | 121.67 |
| GUARDIAN | GUARDIAN LIFE INSURANCE PREMIUMS | 878.70 |
| HILAND DAIRY | SENIOR CENTER FOOD SERVICE | 84.00 |
| HILAND DAIRY | SENIOR CENTER FOOD SERVICE | 185.80 |
| ICMA RETIREMENT-FIRST NATL BANK -MARYLAND | ICMA RETIREMENT | 2,500.04 |
| ICMA RETIREMENT-FIRST NATL BANK -MARYLAND | PAYROLL RETIREMENT | 11,223.74 |
| ICMA RETIREMENT-FIRST NATL BANK -MARYLAND | PAYROLL RETIREMENT | 214.81 |
| ICMA RETIREMENT-FIRST NATL BANK -MARYLAND | ROTH ICMA | 623.47 |
| ICMA RETIREMENT-FIRST NATL BANK -MARYLAND | ROTH IRA - ICMA | 369.23 |
| ICMA RETIREMENT-FIRST NATL BANK -MARYLAND | ROTH IRA-ICMA | 270.84 |
| ICMA RETIREMENT-FIRST NATL BANK -MARYLAND | ROTH IRA -ICMA | 148.60 |

| | | |
|---|--|-------------------|
| ICMA RETIREMENT-FIRST NATL BANK -MARYLAND | PAYROLL RETIREMENT | 272.00 |
| ICMA RETIREMENT-FIRST NATL BANK -MARYLAND | PAYROLL RETIREMENT | 584.44 |
| ICMA RETIREMENT-FIRST NATL BANK -MARYLAND | PAYROLL RETIREMENT | 42.62 |
| ICMA RETIREMENT-FIRST NATL BANK -MARYLAND | ROTH ICMA | 158.98 |
| IRS | MEDICARE WITHHOLDING | 5,715.48 |
| IRS | FEDERAL WITHHOLDING | 14,606.68 |
| IRS | FICA WITHHOLDING | 24,438.36 |
| ISLAND SPRINKLER SUPPLY CO | IRRIGATION SUPPLIES | 70.87 |
| JEO CONSULTING GROUP | MARKET PARTICIPANT ASSISTANCE/NEW WELL/SELLING REC'S | 11,890.44 |
| L.G. EVERIST | CRUSHED QUARTZITE | 630.57 |
| MAIN STREET GARAGE, LLC | TOWING CHARGES | 100.00 |
| MOTOROLA SOLUTIONS, INC | MILESTONE # 4 | 72,671.00 |
| NE DEPT OF REVENUE | STATE WITHHOLDING | 7,042.79 |
| NE NOTARY ASSOC | NOTARY STAMP-M CHINN | 180.79 |
| NE PUBLIC HEALTH ENVIRONMENTAL LAB | FLUORIDE/COLIFORM TESTING | 376.00 |
| NORTHEAST POWER | WHEELING CHARGES | 30,712.14 |
| OLSSON | PRAIRIE PARK PHASE 4 | 23,825.61 |
| O'REILLY AUTOMOTIVE STORES, INC. | STOP LIGHT SWITCH | 18.15 |
| PATRIOT YOUTH FUND | REC VOLLEYBALL TOURNAMENT FEE | 50.00 |
| POSTMASTER | POSTAGE ON UTILITY BILLS | 1,321.57 |
| QUADIENT FINANCE USA, INC | POSTAGE | 1,000.00 |
| THS YOUTH SPORTS | REC VOLLEYBALL TOURNAMENT FEES | 100.00 |
| USA BLUE BOOK | SUBMERSIBLE PUMP/VALVE ASSEMBLY/PH BUFFER SOLUTION | 1,040.49 |
| VERIZON WIRELESS SERVICES LLC | CELL PHONES | 639.69 |
| WALTERS, DANIELLE | FREEDOM PARK DEPOSIT REFUND | 150.00 |
| ZIMCO SUPPLY | FERTILIZER | 380.00 |
| | Grand Total: | 531,901.40 |

ORDINANCE NO. 2025-13

AN ORDINANCE TO AMEND WAYNE MUNICIPAL CODE TITLE XV LAND USAGE, CHAPTER 152 ZONING, SECTION 152.046 — A-1 AGRICULTURAL DISTRICT; TO PROVIDE FOR THE REPEAL OF CONFLICTING ORDINANCES AND SECTIONS; TO PROVIDE FOR AN EFFECTIVE DATE; AND TO PROVIDE FOR PUBLICATION IN PAMPHLET FORM.

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

Section 1. The Planning Commission held a public hearing on July 28, 2025, regarding a request to consider amending the zoning text, specifically the A-1 Agricultural District, Section 152.046 (B) Permitted Principal Uses and Structures and Section 152.046 (D) Exceptions, and have recommended approval thereof subject to the “Findings of Fact” being:

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

Section 2. That Title XV Land Usage, Chapter 152 Zoning, Section 152.046 – A-1 Agricultural District of the Municipal Code of Wayne, is hereby amended as follows:

§ 152.046 A-1 AGRICULTURAL DISTRICT.

(A) *Intent.* The A-1 District is intended primarily for application to those rural areas of the county where it is necessary and desirable to reserve for exclusive agricultural use appropriately located areas suitable for the raising of crops or livestock because of high quality of soils, scenic characteristics, existing or potential irrigation or exclusive agricultural character of the area.

(B) *Permitted principal uses and structures.* The following shall be permitted as uses by right in an A-1 District:

- (1) Ranch and farm dwellings;
- (2) Crop production;
- (3) Bulk grain storage, both publicly or privately owned or managed;
- (4) Irrigation and flood control projects;
- (5) Child care home;
- (6) Public parks and recreation areas;
- (7) Greenhouses and nurseries;
- (8) Animal clinics, animal hospitals and veterinarian services;
- (9) Car/truck wash establishments; and**
- (10) Repair garages, automobile service stations and major body repair.**

(C) *Permitted accessory uses and structures.* The following are permitted accessory uses and structures in an A-1 District:

- (1) Accessory uses and structures normally appurtenant to the permitted uses and structures;
- (2) Home occupations in conformance with § 152.144 of this chapter;
- (3) Residences, including mobile home for farm residence or adjacent to farm residence for relatives of consanguinity and marriage or farm workers; and
- (4) Roadside stands for the sale of agricultural produce.

(D) *Exceptions.* In accordance with §§ 152.195 through 152.202 of this chapter, the following exceptions are allowed in an A-1 District:

- (1) Airports and heliports, including crop dusting strips;
- (2) Agricultural service establishments primarily engaged in performing agricultural, animal husbandry or horticultural services;
- (3) Public utility and public service structures, including electric transmission lines and the distribution substations, gas regulator stations, communications equipment buildings, public service pumping stations and reservoirs;
- (4) Public and/or private schools;
- (4) Places of worship such as churches, synagogues and temples;
- (5) Publicly owned open recreational facilities, operated for profit or otherwise, including golf courses, golf driving ranges, archery ranges, swimming pools, riding academies, parks and community centers, but not including enclosed uses such as a bowling alley;
- (6) Libraries, police and fire stations;
- (7) Sewage treatment plants;
- (8) Gas and oil wells;
- (9) Exploration and extraction of mineral resources;
- (10) Cemeteries, crematories, mausoleums and columbaria;
- (11) Child care centers;
- (12) Radio and television towers and transmitters;
- (13) Campgrounds;
- (14) Wind generating systems;
- (15) Auto wrecking yards, salvage yards and junkyards in conformance with § 152.199 of this chapter;

- (16) Kennels, in conformance with § 152.199 of this chapter, and stables;
- (17) Public and private charitable institutions;
- (18) Sanitary landfill operations and refuse deposit areas;
- (19) First class animal production;
- (20) Auto sales and services, including open air display of new or used vehicles;

~~(21) Repair garages, automobile service stations and major body repair.~~

(22) Industrial trades, including mechanical neat and air conditioning; carpenter shops, cabinet shops, plumbing shops and electrical shops; and light fabrication and equipment repair; (24) Heavy industry, provided that the use is not located within 1,000 feet of any existing residential structure; and

(23) Transportation warehousing

(E) *Conditions for granting exceptions.* Notwithstanding the requirements of §§ 152.195 through 152.202 of this chapter, the following regulations shall apply as minimum requirements for granting exceptions in the A-1 District.

(1) Airport sites shall be so situated that the Airport Hazard Area defined by the State Department of Aeronautics shall not include any existing obstruction regardless of public or private ownership of the airport.

(2) Any use involving a business, service or process not completely enclosed in a structure, when located on a site abutting on or across a street or an alley from any residential district shall be screened by a solid fence or masonry wall or a compact growth of natural plant materials not less than six feet in height if the Board of Adjustment finds the use to be unsightly.

(3) For first class animal production, there shall be no more than 999 animal units on any parcel, and any lagoon or confined feeding yard must be at least 1,000 feet from any residential dwelling located on another parcel.

(F) *Prohibited uses and structures.* All uses and structures which are not specifically permitted or not permissible as exceptions shall be prohibited from the A-1 District.(2002 Code, § 90-116)(G) *Minimum area requirements.* Minimum area requirements in an A-1 District are as follows:

| <i>Minimum Area Regulations</i> | |
|---|-----|
| Distance between residential structures (in feet) | 90 |
| Lot area (in acres) | 10 |
| Lot width (in feet) | 300 |
| Required front yard (in feet) | 50 |
| Required rear yard (in feet) | 50 |
| Required side yard (in feet) | 15 |

(H) *Maximum height.* The maximum height in an A-1 District is 35 feet; however, non-residential structures shall have no height limitations, except in conformance with the airport zoning regulations.

(I) *Sign regulations.* All signs in an A-1 District shall be in conformance with the provisions of § 152.142 of this chapter.

(J) *Parking regulations.* Parking in an A-1 District shall be in conformance with the provisions of § 152.139 of this chapter.

(K) *Permitted conditional uses.*

(1) A building or premises in an A-1 District may be used for the following in conformance with the prescribed conditions.

(2) Second class animal production:

(a) Where the parcel is adjacent to the city limits or any R District:

1. Two animal units per acre, not to exceed 40 animal units.
2. No more than four of those animal units may consist of turkeys, ducks and geese combined.
3. No more than four of those animal units may consist of chickens.
4. Any structure housing animals, or storing or composting manure, and any open area used for grazing, loafing, or spreading manure shall be at least 100 feet from any property line which borders the city limits or any R District, and at least 300 feet from a residential dwelling on another property.

(b) Where the parcel is not adjacent to the city limits or any R District, and is less than 40 acres in size:

1. Two animal units per acre, not to exceed 40 animal units.
2. No more than ten of those animal units may consist of turkeys, ducks and geese combined.
3. No more than ten of those animal units may consist of chickens.
4. Any structure housing animals, or storing or composting manure, and any open area used for grazing, loafing, or spreading manure shall be at least 100 feet from any property line which borders the city limits or any R District, and at least 300 feet from a residential dwelling on another property.

(c) Where the parcel is not adjacent to the city limits or any R District, and is at least 40 acres in size:

1. Two animal units per acre.

2. No more than 20 of those animal units may consist of turkeys, ducks and geese combined.

3. No more than 20 of those total animal units may consist of chickens.

4. Any structure housing animals, or storing or composting manure, and any open area used for grazing, loafing, or spreading manure shall be at least 100 feet from any property line which borders the city limits or any R District, and at least 300 feet from a residential dwelling on another property.

(3) Stables

(a) No more than two animals per acre allowed outside of an enclosed building at any given time, with a maximum limit of 40 animals.

(b) No structure housing animals, or storing or composting manure, or any open area used for grazing, loafing, or spreading manure within 100 feet of any property line which borders the city limits, any R District, or any A District.

(c) No structure housing animals, or storing or composting manure, or any open area used for grazing, loafing, or spreading manure within 300 feet of a residential dwelling on another property when there are more than 15 animals associated with the use as a stable.

(d) Whenever second class animal production exists as a use at the same time as a stable on any premise, the animal units allowed under the use as a stable shall be counted as part of, and not in addition to, the animal units allowed under second class animal production and be limited under those regulations as well.

Section 3. Any other ordinance or parts of ordinance in conflict herewith are repealed.

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

PASSED AND APPROVED this 2nd day of September, 2025.

THE CITY OF WAYNE, NEBRASKA

By _____
Mayor

ATTEST:

City Clerk

ORDINANCE NO. 2025-14

AN ORDINANCE AUTHORIZING THE ISSUANCE OF TAX SUPPORTED MUNICIPAL IMPROVEMENT REFUNDING BONDS, SERIES 2025, OF THE CITY OF WAYNE, NEBRASKA, IN THE PRINCIPAL AMOUNT OF NOT TO EXCEED TEN MILLION FIVE HUNDRED THOUSAND DOLLARS (\$10,500,000) FOR THE PURPOSE OF REFUNDING ALL OR A PORTION OF (A) \$4,950,000 OUTSTANDING PRINCIPAL AMOUNT OF TAX SUPPORTED MUNICIPAL IMPROVEMENT BONDS, SERIES 2023, DATED OCTOBER 5, 2023; AND (B) \$4,995,000 OUTSTANDING PRINCIPAL AMOUNT OF TAX SUPPORTED MUNICIPAL IMPROVEMENT BONDS, SERIES 2024, DATED FEBRUARY 15, 2024; PRESCRIBING THE FORM OF SAID BONDS; PLEDGING FUNDS TO BE RECEIVED BY A SALES AND USE TAX AND OTHER SOURCES OF FUNDS FOR THE PAYMENT OF SAID BONDS; PROVIDING FOR THE LEVY AND COLLECTION OF SAID TAXES TO PAY THE SAME; PROVIDING FOR THE SALE OF THE BONDS; AUTHORIZING THE DELIVERY OF THE BONDS TO THE PURCHASER; PROVIDING FOR THE DISPOSITION OF BOND PROCEEDS; AND ORDERING THE ORDINANCE PUBLISHED IN PAMPHLET FORM.

BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF WAYNE, NEBRASKA:

Section 1. The Mayor and City Council (the “Council”) of the City of Wayne, Nebraska (the “City”), hereby find and determine that:

- (a) The City imposes a sales and use tax in the amount of 1.50% (the “**1.5% Sales Tax**”) upon the same transactions within the City on which the State of Nebraska is authorized to impose a tax pursuant to the Local Option Revenue Act (Sections 77-27,142 to 77-27,148, R.R.S. Neb., as amended, the “**Act**”).
- (b) Pursuant to Ordinance No. 2023-1 of the City adopted on March 7, 2023, the Sales Tax has been continued until June 30, 2039, unless further extended, and when collected shall be deposited in the general fund of the City of Wayne, Nebraska, and divided as follows:
 - a. for the first 1.0%:
 - i. until July 1, 2024, three-fifths of one percent (0.6%) for general capital improvements over \$5,000.00 initial cost and having a useful life expectancy of more than seven years (such as fire trucks, swimming pool); two-fifths of one percent (0.4%) to fund economic activities under the Wayne Economic Development Program as described in its adopted Wayne Economic Development Plan; and
 - ii. from and after July 1, 2024, eighty-five hundredths of one percent (0.85%) for general capital expenditures to include, but not limited to, property development, infrastructure, fire, police, and street improvements, and fifteen hundredths of one percent (0.15%) to fund economic activities under the Wayne Economic Development Program as described in its adopted Wayne Economic Development Plan;

- b. for the last 0.5%:
 - i. until all of the indebtedness evidenced by bonds of the City approved by the voters of the City of Wayne, Nebraska on November 4, 2014 (including refunding bonds issued to refund such indebtedness) are no longer outstanding and unpaid, for the purpose of paying the principal and interest of the City of Wayne, Nebraska bonds approved by the voters on November 4, 2014, in the principal amount not to exceed \$2,900,000.00 and paying costs related to such purpose; and
 - ii. from and after such date, for parks and recreation purposes for the City.

The portion of the Sales Tax which may be used for capital improvements and capital expenditures, and which may be used for parks and recreation purposes for the City, are herein referred to as the **“Pledged Sales Tax.”**

- (c) The City has heretofore issued and there are now outstanding and unpaid the following valid interest-bearing obligations of the City, which paid the costs of capital improvements and capital expenditures and are payable from the Pledged Sales Tax (together, the **“Outstanding Bonds”**):
 - (i) Tax Supported Municipal Improvement Bonds, Series 2023, in the outstanding principal amount of \$4,950,000, dated October 5, 2023 (the **“2023 Bonds”**); and
 - (ii) Tax Supported Municipal Improvement Bonds, Series 2024, in the outstanding principal amount of \$4,995,000, dated February 15, 2024 (the **“2024 Bonds”**).
- (d) (i) All of the Outstanding Bonds mature on December 15, 2026, and became redeemable at the option of the City at any time on or after December 15, 2024 at a redemption price equal to the principal amount thereof plus accrued interest to the date fixed for redemption; (ii) the Outstanding Bonds must be refinanced by the City on or before December 15, 2026, to establish long-term financing for the Project; (iii) all of the Outstanding Bonds (as called for redemption, collectively, the **“Refunded Bonds”**) are herein authorized to be called for redemption on a date or dates (each a **“Redemption Date”**) to be determined in the Designation (defined herein); (iv) for the purpose of providing for the payment and redemption of the Refunded Bonds as above set out and to pay costs of issuance thereof, it is in the best interest of the City to issue tax supported municipal improvement refunding bonds of the City, in one or more series, in the aggregate stated principal amount of not to exceed \$10,500,000 (the **“Bonds”**); and (v) except as set forth herein, the City has no bond sinking funds on hand for the retirement of the Refunded Bonds not required for the timely payment of principal and interest due on the Redemption Date.
- (e) The City is authorized to issue the Bonds pursuant to the Act and pursuant to Section 10-142, R.R.S. Neb., as amended, to refund the Outstanding Bonds and provide long-term financing for the Project and to pledge receipts of the Sales Tax and dedicate a portion of its property tax levy authority as provided in Section 77-3442, R.R.S. Neb., as amended, for payment of such bonds.
- (f) All conditions, acts and things required to exist or to be done precedent to the issuance of the Bonds to be designated as the City’s Tax Supported Municipal Improvement Refunding Bonds, Series 2025, (or such other title as determined in a Designation as described below) of the City of Wayne, Nebraska, in one or more series in the aggregate principal amount of not to exceed Ten Million Five Hundred Thousand Dollars (\$10,500,000) pursuant to the Act and Section 10-

142, R.R.S. Neb., as amended, to provide for the purchase, payment and redemption of the City's Outstanding Bonds do exist and have been done as required by law.

Section 2. (a) To provide funds for the purpose of paying and redeeming the Outstanding Bonds as set forth in Section 1 hereof, there shall be and there are hereby ordered issued the Tax Supported Municipal Improvement Refunding Bonds of the City in one or more series, in the aggregate stated principal amount of not to exceed Ten Million Five Hundred Thousand Dollars (\$10,500,000); provided, however, such amount may be increased as necessary to the extent the Bonds are sold at a net original issue discount.

(b) The Bonds or any portion thereof are hereby authorized to be sold pursuant to a negotiated sale with D.A. Davidson & Co., as initial purchaser (the "**Underwriter**"). In connection with such sale, the Mayor, City Clerk, Finance Director and City Administrator (each, an "**Authorized Officer**") are hereby authorized to specify, determine, designate, establish and appoint, as the case may be, in one or more written designations which may be included in a bond purchase agreement (each, a "**Designation**"), the following with respect to the Bonds: (i) the aggregate purchase price of the Bonds and the underwriting discount which shall not exceed 1.00% of the aggregate stated principal amount thereof; (ii) the form and contents of any bond purchase agreement in connection with such sale; (iii) for each series, the title, dated date, aggregate principal amount (which aggregate stated principal amount shall not exceed \$10,500,000; provided, however, such amount may be increased as necessary to the extent the Bonds are sold at a net original issue discount); (iv) the final maturity date, which shall not be later than December 15, 2038, provided that any or all portions of the maturity schedules may be structured such that the amortization period and future repayment schedule (after refinancing) is longer than the initial term of the financing (commonly referred to as a balloon payment); (v) the principal amounts maturing in each year and whether maturities will be issued as serial or term bonds; (vi) the rate or rates of interest to be borne by each principal maturity, and any original issue premium or original issue discount, provided that the true interest cost of the Bonds shall not exceed 5.00%; (vii) the principal payment dates and interest payment dates; (viii) whether to establish a debt service reserve fund for each series of Bonds, and the amount and provisions related such debt service reserve fund; (ix) the prepayment provisions whether the Bonds will be subject to redemption prior to their stated maturity, and

if subject to such optional redemption, the provisions governing such redemption, including a redemption price not to exceed 104% of the principal amount then being redeemed plus accrued interest to the date of redemption; (x) the amount and due date of each sinking fund installment for any of the Bonds issued as term Bonds; (xi) the designation of the Paying Agent and Registrar and the form and content of any agreement between the City and such entity; (xii) whether a Bond Insurance Policy will be obtained for a series of Bonds, the identity of the Bond Insurer, and the terms required for any such Bond Insurance Policy pursuant to Section 17 of this Ordinance; and (xiii) all other terms and provisions of the Bonds not otherwise specified or fixed by this Ordinance.

(c) The Authorized Officers, or each individually, are hereby authorized to irrevocably call any or all of the Outstanding Bonds for redemption on such date or dates he or she determines appropriate, which date or dates shall each be a Redemption Date hereunder. The Authorized Officers, or each individually, are hereby authorized to designate, approve, execute and deliver, as the case may be, the form, content, terms and provisions of any published and/or mailed notice of redemption with respect to the payment and redemption of the Refunded Bonds and to take any and all other actions and approve and execute any and all other documents as deemed by them necessary or appropriate in connection with the redemption of the Refunded Bonds on the Redemption Date.

(d) The City is hereby authorized to enter into an escrow agreement in connection with refunding the Refunded Bonds (the “**Escrow Agreement**”) in such form as may be approved by an Authorized Officer with a bank or trust company (the “**Escrow Agent**”), and the Authorized Officers are hereby authorized and directed to execute the Escrow Agreement, for and on behalf of and as the act and deed of the City. All money deposited with the Escrow Agent shall be deemed to be deposited in accordance with and subject to all of the provisions contained in this Ordinance and the Escrow Agreement. The Escrow Agent is hereby authorized to carry out, on behalf of the City, the duties, terms and provisions of the Escrow Agreement, and the Escrow Agent, the Underwriter and bond counsel for the District are authorized to take all necessary actions for the subscription and purchase of the escrowed securities described in the Escrow Agreement, including the

subscription for United States Treasury Securities State and Local Government Series or bidding for the purchase of United States Treasury Securities.

(e) The Bonds shall be issued in fully registered form in the denomination of \$5,000 or any integral multiple thereof. The date of original issue for the Bonds shall be date of original delivery. Interest on the Bonds, at the respective rates for each maturity, shall be payable on such dates as determined in the Designation, each an “Interest Payment Date”, and the Bonds shall bear interest from the date of original issue or the most recent Interest Payment Date, whichever is later. The interest due on each Interest Payment Date shall be payable to the registered owners of record as of the fifteenth day immediately preceding the Interest Payment Date (the “**Record Date**”), subject to the provisions of Section 4 hereof. The Bonds shall be numbered from 1 upwards in the order of their issuance. No Bond shall be issued originally or upon transfer or partial redemption having more than one principal maturity. The initial bond numbering and principal amounts for each of the Bonds issued shall be as directed by the initial purchaser thereof. Payments of interest due on the Bonds prior to maturity or earlier redemption shall be made by the Paying Agent and Registrar, as designated pursuant to Section 3 hereof, by mailing a check or draft in the amount due for such interest on each Interest Payment Date to the registered owner of each Bond, as of the Record Date for such Interest Payment Date, to such owner’s registered address as shown on the books of registration as required to be maintained in Section 3 hereof. Payments of principal due at maturity or at any date fixed for redemption prior to maturity, together with unpaid accrued interest thereon, shall be made by said Paying Agent and Registrar to the registered owners upon presentation and surrender of the Bonds to said Paying Agent and Registrar. The City and said Paying Agent and Registrar may treat the registered owner of any Bond as the absolute owner of such Bond for the purpose of making payments thereon and for all other purposes and neither the City nor the Paying Agent and Registrar shall be affected by any notice or knowledge to the contrary, whether such Bond or any installment of interest due thereon shall be overdue or not. All payments on account of interest or principal made to the registered owner of any Bond in accordance with the terms of this Ordinance shall be valid and effectual and shall be a discharge of the City and said Paying Agent and

Registrar, in respect of the liability upon the Bonds or claims for interest to the extent of the sum or sums so paid.

Section 3. BOKF, National Association, Lincoln, Nebraska, is hereby designated to serve as Paying Agent and Registrar for the Bonds, provided that the City reserves the right to designate a bank or trust company to serve in such capacity and upon such agreed terms as may be determined in the Designation by one or more Authorized Officers or at any time by the Mayor at the Mayor's discretion. If a bank or trust company is designated, such bank or trust company shall serve as Paying Agent and Registrar in such capacities under the terms of an agreement entitled "Paying Agent and Registrar's Agreement" between the City and said Paying Agent and Registrar, the form of which is hereby approved. The Mayor and City Clerk are hereby authorized to execute said agreement on behalf of the City in the form as an Authorized Officer shall deem appropriate on behalf of the City. The Paying Agent and Registrar shall keep and maintain for the City books for the registration and transfer of the Bonds at its office. The names and registered addresses of registered owner or owners of the Bonds shall at all times be recorded in such books. Any Bond may be transferred pursuant to its provisions at the office of said Paying Agent and Registrar by surrender of such bond for cancellation, accompanied by a written instrument of transfer, in form satisfactory to said Paying Agent and Registrar, duly executed by the registered owner in person or by such owner's duly authorized agent, and thereupon the Paying Agent and Registrar on behalf of the City will deliver at its office (or send by registered mail to the transferee owner or owners thereof at such transferee owner's or owners' risk and expense), registered in the name of such transferee owner or owners, a new Bond or Bonds of the same interest rate, aggregate principal amount and maturity. To the extent of the denominations authorized for the Bonds by this ordinance, one such bond may be transferred for several such bonds of the same interest rate and maturity, and for a like aggregate principal amount, and several such bonds may be transferred for one or several such bonds, respectively, of the same interest rate and maturity and for a like aggregate principal amount. In every case of transfer of a Bond, the surrendered Bond shall be canceled and destroyed. All Bonds issued upon transfer of the Bonds so surrendered shall be valid obligations of the City evidencing the same obligation as the Bonds surrendered and shall be entitled to all the benefits and

protection of this Ordinance to the same extent as the Bonds upon transfer of which they were delivered. The City as said Paying Agent and Registrar shall not be required to transfer any Bond during any period from any Record Date until its immediately following Interest Payment Date or to transfer any Bond called for redemption for a period of 30 days next preceding the date fixed for redemption.

Section 4. In the event that payments of interest due on the Bonds on an Interest Payment Date are not timely made, such interest shall cease to be payable to the registered owners as of the Record Date for such Interest Payment Date and shall be payable to the registered owners of the Bonds as of a special date of record for payment of such defaulted interest as shall be designated by the Paying Agent and Registrar whenever monies for the purpose of paying such defaulted interest become available.

Section 5. Bonds shall be subject to redemption, in whole or in part, prior to maturity at any time on or after the fifth anniversary of the date of original issue thereof at par plus accrued interest on the principal amount redeemed to the date fixed for redemption (or such other date as may be determined in the Designation). The City may select the Bonds to be redeemed for optional redemption in its sole discretion. Bonds for mandatory redemption shall be selected by the Paying Agent and Registrar using any random method of selection determined appropriate by the Paying Agent and Registrar. Bonds redeemed pursuant to the requirements for mandatory redemption shall be redeemed at par plus accrued interest on the principal amount redeemed. The Bonds shall be redeemed only in amounts of \$5,000 or integral multiples thereof. Bonds redeemed in part only shall be surrendered to said Paying Agent and Registrar in exchange for a new Bond evidencing the unredeemed principal thereof. Notice of redemption of any Bond called for redemption shall be given, at the direction of the City in the case of optional redemption and without further direction in the case of mandatory redemption, by said Paying Agent and Registrar by mail not less than 30 days prior to the date fixed for redemption, first class, postage prepaid, sent to the registered owner of such Bond at said owner's registered address. Such notice shall designate the Bond or Bonds to be redeemed by maturity or otherwise, the date of original issue, series and the date fixed for redemption and shall state that such Bond or Bonds are to be presented for prepayment at the office of said Paying Agent and Registrar. In case of any Bond partially redeemed, such notice shall specify the portion of the principal amount of such Bond to be

redeemed. No defect in the mailing of notice for any Bond shall affect the sufficiency of the proceedings of the City designating the Bonds called for redemption or the effectiveness of such call for Bonds for which notice by mail has been properly given and the City shall have the right to further direct notice of redemption for any such Bond for which defective notice has been given.

Section 6. If the date for payment of the principal of or interest on the Bonds shall be a Saturday, Sunday, legal holiday or a day on which banking institutions in Wayne, Nebraska, are authorized by law or executive order to close, then the date for such payment shall be the next succeeding day which is not a Saturday, Sunday, legal holiday or a day on which such banking institutions are authorized to close, and payment on such day shall have the same force and effect as if made on the nominal date of payment.

Section 7. The Bonds shall be in substantially the following form:

UNITED STATES OF AMERICA

STATE OF NEBRASKA
COUNTY OF WAYNE

CITY OF WAYNE, NEBRASKA
TAX SUPPORTED MUNICIPAL IMPROVEMENT REFUNDING BOND, SERIES 2025

No. R-__ \$ _____

| | | | |
|---------------------------|-------------------------------------|--|--------------|
| <u>Interest Rate</u> % | <u>Maturity Date</u> _____, 20__ | <u>Date of Original Issue</u> _____, 2025 | <u>CUSIP</u> |
|---------------------------|-------------------------------------|--|--------------|

Registered Owner: Cede & Co.
13-2555119

Principal Amount: _____ DOLLARS

KNOW ALL PERSONS BY THESE PRESENTS: That the City of Wayne, Nebraska, hereby acknowledges itself to owe and for value received promises to pay to the registered owner specified above, or registered assigns, the principal amount specified above in lawful money of the United States of America on the date of maturity specified above with interest thereon to maturity (or earlier redemption) from the date of original issue or most recent Interest Payment Date, whichever is later, at the rate per annum specified above, payable on _____, 20__, and semiannually thereafter on _____ and _____ of each year (each of said dates an "Interest Payment Date"). Said interest shall be computed on the basis of a 360-day year consisting of twelve 30-day months. The principal of this bond is payable upon presentation and surrender of the bond at the office of BOKF, National Association, Lincoln, Nebraska, as Paying Agent and Registrar. Interest on this bond due prior to maturity or earlier redemption will be paid on each Interest Payment Date by a check or draft mailed by the Paying Agent and Registrar to the registered owner of this bond, as shown on the books of record maintained by the Paying Agent and Registrar, at the close of business on the fifteenth day immediately preceding the Interest Payment Date, to such owner's registered address as shown on such books and records. Any interest not so timely paid shall cease to be payable to the person entitled thereto as of the record date such interest was payable, and shall be payable to the person who is the registered owner of this bond (or of one or more predecessor bonds hereto) on such special record date for payment of such defaulted interest as shall be fixed by the Paying Agent and Registrar whenever monies for such purposes become available.

This bond is one of an issue of fully registered bonds of the total principal amount of _____ Dollars (\$ _____), of even date and like tenor except as to date of maturity, rate of interest and denomination which were issued by the City for the purpose of providing for the purchase, payment and redemption of the City's Tax Supported Municipal Improvement Bonds, Series 2023, date of Original Issue – October 5, 2023; and Tax Supported Municipal Improvement Bonds, Series 2024, date of Original Issue – February 15, 2024, as more fully described in Ordinance No. ____ (the "Ordinance") legally passed and approved by the Mayor and City Council of said City on _____, 2025. The issuance of this bond and the bonds of this issue has been authorized by proceedings duly had and the Ordinance.

All Bonds of this issue are subject to redemption at the option of the City, in whole or in part, at any time on or after _____ years after the date of delivery, at par plus interest accrued on the principal amount redeemed to the date fixed for redemption.

Notice of redemption shall be given by mail to the registered owner of any bond to be redeemed at said registered owner's address in the manner specified in the Ordinance authorizing said issue of bonds. Individual bonds may be redeemed in part but only in \$5,000 amounts or integral multiples thereof.

This bond is transferable by the registered owner or such owner's attorney duly authorizing in writing at the office of the Paying Agent and Registrar upon surrender and cancellation of this bond, and thereupon a new bond or bonds of the same aggregate principal amount, interest rate and maturity will be issued to the transferee as provided in the Ordinance authorizing said issue of bonds, subject to the limitations therein prescribed. The City, the Paying Agent and Registrar and any other person may treat the person in whose name this bond is registered as the absolute owner hereof for the purpose of receiving payment due hereunder and for all purposes and shall not be affected by any notice to the contrary, whether this bond be overdue or not.

If the date for payment of the principal or interest on this bond shall be a Saturday, Sunday, legal holiday or a day on which banking institutions in the City of Wayne, Nebraska, are authorized by law or executive order to close, then the date for such payment shall be the next succeeding day which is not a Saturday, Sunday, legal holiday or a day on which such banking institutions are authorized to close, and payment on such day shall have the same force and effect as if made on the nominal date of payment.

For the prompt payment of the principal and interest on this bond and the other bonds of the same issue, as described in the Ordinance, the City of Wayne, Nebraska, has pledged funds received and to be received from revenues from the City's Pledged Sales Tax as defined and described in the Ordinance, with receipts from such Pledged Sales Tax to be allocated by the City to payment of principal and interest as the same fall due. In addition, the City has covenanted and agreed in the Ordinance that it shall designate a portion of its property tax authority pursuant to Section 77-3442, R.R.S. Neb., as amended, in such amount as will provide funds which, together with receipts from the Pledged Sales Tax as pledged to the payment of such principal and interest and any other money made available and used for such purpose, will be sufficient to make payment of the principal and interest on this bond and the other bonds of the same issue as the same fall due.

AS PROVIDED IN THE ORDINANCE REFERRED TO HEREIN, UNTIL THE TERMINATION OF THE SYSTEM OF BOOK-ENTRY-ONLY TRANSFERS THROUGH THE DEPOSITORY TRUST COMPANY, NEW YORK, NEW YORK (TOGETHER WITH ANY SUCCESSOR SECURITIES DEPOSITORY APPOINTED PURSUANT TO THE ORDINANCE, "DTC"), AND NOTWITHSTANDING ANY OTHER PROVISIONS OF THE ORDINANCE TO THE CONTRARY, A PORTION OF THE PRINCIPAL AMOUNT OF THIS BOND MAY BE PAID OR REDEEMED WITHOUT SURRENDER HEREOF TO THE REGISTRAR. DTC OR A NOMINEE, TRANSFEREE OR ASSIGNEE OF DTC OF THIS BOND MAY NOT RELY UPON THE PRINCIPAL AMOUNT INDICATED HEREON AS THE PRINCIPAL AMOUNT HEREOF OUTSTANDING AND UNPAID. THE PRINCIPAL AMOUNT HEREOF OUTSTANDING AND UNPAID SHALL FOR ALL PURPOSES BE THE AMOUNT DETERMINED IN THE MANNER PROVIDED IN THE ORDINANCE.

UNLESS THIS BOND IS PRESENTED BY AN AUTHORIZED OFFICER OF DTC (A) TO THE REGISTRAR FOR REGISTRATION OF TRANSFER OR EXCHANGE OR (B) TO THE REGISTRAR FOR PAYMENT OF PRINCIPAL, AND ANY BOND ISSUED IN REPLACEMENT HEREOF OR SUBSTITUTION HEREFOR IS REGISTERED IN THE NAME OF DTC AND ANY PAYMENT IS MADE TO DTC OR ITS NOMINEE, ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL BECAUSE ONLY THE REGISTERED OWNER HEREOF, DTC OR ITS NOMINEE, HAS AN INTEREST HEREIN.

IT IS HEREBY CERTIFIED AND WARRANTED that all conditions, acts and things required by law to exist or to be done precedent to and in the issuance of this bond did exist, did happen and were done and performed in regular and due form and time as required by law and that the indebtedness of said City, including this bond and the obligations refunded hereby, does not exceed any limitation imposed by law.

This bond shall not be valid and binding until authenticated by the Paying Agent and Registrar.

IN WITNESS WHEREOF, the Mayor and City Council of the City of Wayne, Nebraska, have caused this bond to be executed on behalf of the City with the manual or facsimile signatures of the Mayor and the City Clerk and by causing the official seal of the City to be impressed or imprinted hereon, all as of the date of original issue specified above.

THE CITY OF WAYNE, NEBRASKA

(facsimile signature)
Mayor

ATTEST:

(facsimile signature)
City Clerk
(SEAL)

CERTIFICATE OF AUTHENTICATION

This bond is one of the bonds authorized by Ordinance of the Mayor and City Council of the City of Wayne, Nebraska, described in the foregoing bond.

BOKF, NATIONAL ASSOCIATION, LINCOLN,
NEBRASKA
as Paying Agent and Registrar

By: _____
Authorized Signature

[STATEMENT OF INSURANCE

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto

Print or Type Name, Address and Social Security Number
or other Taxpayer Identification Number of Transferee

the within Bond and all rights thereunder, and hereby irrevocably constitutes and appoints _____ agent to transfer the within Bond on the Bond Register kept by the Paying Agent for the registration thereof, with full power of substitution in the premises.

Dated: _____

NOTICE: The signature to this assignment must correspond with the name of the Registered Owner as it appears upon the face of the within Bond in every particular.

Medallion Signature Guarantee:

Section 8. Each of the Bonds shall be executed on behalf of the City with the manual or facsimile signatures of the Mayor and City Clerk of the City. The Bonds shall be issued initially as “book-entry-only” bonds using the services of The Depository Trust Company (the “Depository”), with one typewritten bond per maturity being issued to the Depository. In such connection said officers are authorized to execute and deliver a letter of representations (the “Letter of Representations”) in the form required by the Depository, for and on behalf of the City, which shall thereafter govern matters with respect to registration, transfer, payment and redemption of the Bonds. Upon the issuance of the Bonds as “book-entry-only” bonds, the following provisions shall apply:

(a) The City and the Paying Agent and Registrar shall have no responsibility or obligation to any broker-dealer, bank or other financial institution for which the Depository holds Bonds as securities depository (each, a “Bond Participant”) or to any person who is an actual purchaser of a Bond from a Bond Participant while the Bonds are in book-entry form (each, a “Beneficial Owner”) with respect to the following:

(i) the accuracy of the records of the Depository, any nominees of the Depository or any Bond Participant with respect to any ownership interest in the Bonds,

(ii) the delivery to any Bond Participant, any Beneficial Owner or any other person, other than the Depository, of any notice with respect to the Bonds, including any notice of redemption, or

(iii) the payment to any Bond Participant, any Beneficial Owner or any other person, other than the Depository, of any amount with respect to the Bonds.

The Paying Agent and Registrar shall make payments with respect to the Bonds only to or upon the order of the Depository or its nominee, and all such payments shall be valid and effective fully to satisfy and discharge the obligations with respect to such Bonds to the extent of the sum or sums so paid. No person other than the Depository shall receive an authenticated Bond, except as provided in (e) below.

(b) Upon receipt by the Paying Agent and Registrar of written notice from the Depository to the effect that the Depository is unable or unwilling to discharge its responsibilities, the Paying Agent and Registrar shall issue, transfer and exchange Bonds requested by the Depository in appropriate amounts. Whenever the Depository requests the Paying Agent and Registrar to do so, the Paying Agent and Registrar will cooperate with the Depository in taking appropriate action after reasonable notice (i) to arrange, with the prior written consent of the City, for a substitute depository willing and able upon reasonable and customary terms to maintain custody of the Bonds or (ii) to make available Bonds registered in whatever name or names the Beneficial Owners transferring or exchanging such Bonds shall designate.

(c) If the City determines that it is desirable that certificates representing the Bonds be delivered to the Bond Participants and/or Beneficial Owners of the Bonds and so notifies the Paying Agent and Registrar in writing, the Paying Agent and Registrar shall so notify the Depository, whereupon the Depository will notify the Bond Participants of the availability through the Depository of bond certificates representing the Bonds. In such event, the Paying Agent and Registrar shall issue, transfer and exchange bond certificates representing the Bonds as requested by the Depository in appropriate amounts and in authorized denominations.

(d) Notwithstanding any other provision of this Ordinance to the contrary, so long as any Bond is registered in the name of the Depository or any nominee thereof, all payments with respect to such Bond and all notices with respect to such Bond shall be made and given, respectively, to the Depository as provided in the Letter of Representations.

(e) Registered ownership of the Bonds may be transferred on the books of registration maintained by the Paying Agent and Registrar, and the Series 2025 Bonds may be delivered in physical form to the following:

(i) any successor securities depository or its nominee;

(ii) any person, upon (A) the resignation of the Depository from its functions as depository or (B) termination of the use of the Depository pursuant to this Section.

(f) In the event of any partial redemption of a Bond unless and until such partially redeemed Bond has been replaced in accordance with the provisions of this Ordinance, the books and records of the Paying Agent and Registrar shall govern and establish the principal amount of such Bond as is then outstanding and all of the Bonds issued to the Depository or its nominee shall contain a legend to such effect.

If for any reason the Depository resigns and is not replaced or upon termination by the City of book-entry-only form, the City shall immediately provide a supply of bond certificates for issuance upon subsequent transfers or in the event of partial redemption. In the event that such supply of certificates shall be insufficient to meet the requirements of the Paying Agent and Registrar for issuance of replacement bond certificates upon transfer or partial redemption, the City agrees to order printed an additional supply of bond certificates and to direct their execution by manual or facsimile signature of its then duly qualified and acting officers. In case any officer whose signature or facsimile thereof shall appear on any Bond shall cease to be such officer before the delivery of such Bond (including any bond certificates delivered to the Paying Agent and Registrar for issuance upon transfer or partial redemption) such signature or such facsimile signature shall nevertheless be valid and sufficient for all purposes the same as if such officer or officers had remained in office until the delivery of such Bond. After being executed by the Mayor and City Clerk, said Bonds shall be delivered to

the Treasurer of the City who shall be responsible therefor under his/her official bond and such Treasurer shall maintain a record of information with respect to said Bonds in accordance with the requirements of Section 10-140, R.R.S. Neb., as amended, and shall cause the same to be filed with the Auditor of Public Accounts of the State of Nebraska. The Bonds shall not be valid and binding on the City until authenticated by the Paying Agent and Registrar. The Bonds shall be delivered to the Paying Agent and Registrar for registration and authentication. Upon execution, registration and authentication of the Bonds, they shall be delivered to the City Treasurer, who is authorized to deliver them to the Underwriter, as initial purchaser thereof, upon receipt of the purchase price thereof plus accrued interest thereon to date of payment of the Bonds. Such initial purchaser shall have the right to direct the registration of the Bonds and the denominations thereof within each maturity, subject to the restrictions of this Ordinance. The Underwriter and its agents and representatives, the Paying Agent and Registrar, and the City's bond counsel, are all hereby authorized to take such actions on behalf of the City as are necessary to effectuate the closing of the issuance and sale of the Bonds, including, without limitation, authorizing the release of the Bonds by the Depository at closing. The Bond Purchase Agreement (the "Purchase Agreement") to be entered into between the City and the Underwriter with respect to the purchase of the Bonds from the City, in such form as the Authorized Officer executing the Purchase Agreement shall in the exercise of his or her own independent judgment and absolute discretion determine to be necessary, proper, appropriate, advisable, or desirable in order to effectuate the issuance, sale, and delivery of the Bonds, be and the same is hereby in all respects authorized, adopted, specified, accepted, ratified, approved and confirmed.

Section 9. The City Clerk is directed to make and certify a transcript or transcripts of the proceedings of the Mayor and City Council precedent to the issuance of said Bonds, a copy of which shall be delivered to the Underwriter.

Section 10. The proceeds of the Bonds shall be applied to the redemption of the Refunded Bonds as described in Sections 1 and 2 hereof, including payment of any issuance expenses for the Bonds.

Section 11. The Bonds are special obligations of the City payable from, and secured as to the payment of principal and interest by a pledge of the Sales Tax, which includes the Additional Sales Tax (as

described and defined in Section 1 hereof) approved by the voters at the Election. The City hereby pledges the Sales Tax to the payment of the principal of and interest on the Bonds. The City hereby further agrees that it shall dedicate such portion of its property tax levy authority (as provided in Section 77-3442, R.R.S. Neb., as amended) as is necessary to provide funds which, together with receipts from the Sales Tax as pledged to the payment of the Bonds and any other monies made available and used for such purpose, will be sufficient to pay the principal of and interest on the Bonds as the same fall due (including mandatory sinking fund redemptions). The pledge of the Sales Tax provided for in this Section 11 for the Bonds shall not prevent the City from otherwise applying receipts from the Sales Tax in any year for other purposes, so long as sufficient funds have been budgeted for the payment of principal and interest falling due in such year on the Bonds. In addition, the City further reserves the right to issue additional bonds payable on par with the Bonds equally and ratably secured by a pledge of receipts from the Sales Tax.

Section 12. The Mayor and City Council hereby authorize the Authorized Officers, or each individually, to approve and deem final, within the meaning of Rule 15c2-12 under the Securities Exchange Act of 1934, as amended, a Preliminary Official Statement with respect to the Bonds and the information therein contained and to approve and deliver a final Official Statement for and on behalf of the City. The Authorized Officers, or any one or more of them, are hereby further authorized to take any and all actions and enter into any and all agreements and execute any documents deemed necessary or appropriate in connection with the issuance and sale of the Bonds, and any such actions previously taken are hereby ratified and confirmed.

Section 13. The City hereby (a) authorizes and directs that an Authorized Officer execute and deliver, on the date of issue of the Bonds, a continuing disclosure undertaking (the "Continuing Disclosure Undertaking") in such form as shall be satisfactory to the City and in compliance with Rule 15c2-12 of the Securities and Exchange Commission, and (b) covenants and agrees that it will comply with and carry out all of the provisions of the Continuing Disclosure Undertaking. Notwithstanding any other provision of this resolution, failure of the City to comply with the Continuing Disclosure Undertaking shall not be considered an event of default hereunder; however, any Participating Underwriter (as such term is defined in the

Continuing Disclosure Undertaking) or any Beneficial Owner or any Registered Owner of a Bond (as such terms are defined in the Continuing Disclosure Undertaking) may take such actions as may be necessary and appropriate, including seeking mandamus or specific performance by court order, to cause the City to comply with its obligations under this section.

Section 14. The City hereby covenants with the purchasers and holders of the Bonds herein authorized that it will make no use of the proceeds of said issue, including monies held in any sinking fund for the payment of principal and interest on said Bonds, which would cause said Bonds to be arbitrage bonds within the meaning of Sections 103 and 148 and other related sections of the Internal Revenue Code of 1986, as amended (the "Code"), and further covenants to comply with said Sections 103 and 148 and related sections and all applicable regulations thereunder throughout the term of said issue. The City hereby covenants and agrees to take all actions necessary under the Code to maintain the tax exempt status (as to taxpayers generally) of interest payable on the Bonds.

Section 15. The City's obligations under this Ordinance with respect to any or all of the Bonds herein authorized shall be fully discharged and satisfied as to any or all of such Bonds and any such Bond shall no longer be deemed to be outstanding hereunder if such Bond has been purchased by the City and canceled or when the payment of principal of and interest thereon to the respective date of maturity or redemption (a) shall have been made or caused to be made in accordance with the terms thereof, (b) shall have been provided for by depositing with a national or state bank having trust powers, or trust company, in trust, solely for such payment (i) sufficient money to make such payment and/or (ii) direct general obligations (including obligations issued or held in book entry form on the books of the Department of Treasury of the United States of America) of or obligations the principal and interest of which are unconditionally guaranteed by the United States of America (herein referred to as "U.S. Government Obligations") in such amount and bearing interest payable and maturing or redeemable at stated fixed prices at the option of the holder as to principal, at such time or times, as will ensure the availability of sufficient money to make such payments; provided, however, that with respect to any Bond to be paid prior to maturity, the City shall have duly called such Bond for redemption and given notice of such redemption as provided by law or made irrevocable

provision for the giving of such notice. Any money so deposited with such bank or trust company in excess of the amount required to pay principal of and interest on the Bonds for which such monies or U.S. Government Obligations were deposited shall be paid over to the City as and when collected.

Section 16. All documents, agreements, certificates, and instruments related to the Bonds shall be valid, binding, and enforceable against the City when executed and delivered by means of (i) an original manual signature; (ii) a faxed, scanned, or photocopied manual signature, or (iii) any other electronic signature permitted by electronic signatures laws, including any relevant provisions of the Uniform Commercial Code, in each case to the extent applicable. Each faxed, scanned, or photocopied manual signature, or other electronic signature, shall for all purposes have the same validity, legal effect, and admissibility in evidence as an original manual signature. Each document, agreement, certificate, and instrument related to the Bonds may be executed in any number of counterparts, each of which shall be deemed to be an original, but such counterparts shall, together, constitute one and the same document, agreement, certificate, or instrument, as applicable.

Section 17. The Authorized Officers are authorized to obtain an insurance policy (the “**Bond Insurance Policy**”) issued by a provider of bond insurance determined appropriate by an Authorized Officer (the “**Bond Insurer**”) guaranteeing the scheduled payment of the principal of and interest on the Bonds covered by the Bond Insurance Policy, and take any and all actions necessary or appropriate in connection with obtaining such Bond Insurance Policy. Notwithstanding any other provision of this Ordinance to the contrary, the provisions agreed to by an Authorized Officer with respect to the Bond Insurance Policy with the Bond Insurer shall govern with respect to the applicable Bonds.

Section 18. This Ordinance shall be in full force and effect from and after its passage and publication in pamphlet or electronic form as provided by law.

PASSED AND APPROVED this 2nd day of September, 2025.

THE CITY OF WAYNE, NEBRASKA

By _____
Mayor

ATTEST:

City Clerk

ORDINANCE 2025-15

AN ORDINANCE APPROVING AND AUTHORIZING THE EXECUTION OF AN ENERGY MANAGEMENT AND MARKET PARTICIPATION SUPPORT AGREEMENT WITH TENASKA POWER SERVICES CO., A NEBRASKA CORPORATION.

WHEREAS, the City of Wayne is a political subdivision of the State of Nebraska providing retail electric service to its residents; and

WHEREAS, Tenaska Power Services Co., is a Nebraska Corporation, organized and existing under the laws of the State of Nebraska; and

WHEREAS, the City of Wayne desires to enter into a contract with Tenaska Power Services Co. to provide firm electric service to the City's retail load.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the City of Wayne, Nebraska, that the Energy Management and Market Participation Support Agreement between Tenaska Power Services Co. and the City of Wayne, which is attached hereto, is approved, and the Mayor is hereby authorized to execute said Agreement on behalf of the City.

PASSED AND APPROVED this 2nd day of September, 2025.

THE CITY OF WAYNE, NEBRASKA,

By _____
Mayor

ATTEST:

City Clerk

ENERGY MANAGEMENT AND MARKET PARTICIPATION SUPPORT AGREEMENT

This Energy Management Agreement (“Agreement”) is executed on July 18, 2025 (“Effective Date”) between City of Wayne, Nebraska, a public corporation and political subdivision of the State of Nebraska (“Customer”), and Tenaska Power Services Co. (“Energy Manager”), a Nebraska corporation. Customer and Energy Manager are also referred to in this Agreement individually as “Party” and collectively as the “Parties”.

This Agreement consists of and is governed by the Base Agreement and the General Terms and Conditions attached hereto, together with attached exhibits incorporated by reference in this Agreement.

RECITALS

WHEREAS, Customer owns and controls various generating facility(ies) located within the SPP market as described further in Exhibit A hereto and including, but not limited to, Customer Generation (as defined below) (collectively, the “Resource(s)”);

WHEREAS, Customer represents that Nebraska law requires Customer to serve electric load for the service territory identified on Exhibit A (“Load”);

WHEREAS, Customer has existing generation, and capacity resulting from that generation (collectively, “Customer Generation”), and Customer anticipates that Energy Manager will register the Customer Generation with SPP and sell Customer Generation into the market to benefit Customer in accordance with and expressly subject to this Agreement;

WHEREAS, Customer desires Energy Manager to provide the Services described herein, and Energy Manager desires to provide Customer with such Services, in each case, in accordance with the terms of this Agreement.

NOW, THEREFORE, Customer and Energy Manager enter into this Agreement under which Energy Manager will provide Customer with the Services as described herein. Accordingly, for and in consideration of the premises, together with other good and valuable consideration, the receipt and sufficiency of which each party hereby acknowledges and accepts, Customer and Energy Manager agree as follows:

BASE AGREEMENT

1. DESIGNATION

Except as provided in this Section 1 of the Base Agreement, no Party shall be an agent, partner, joint venturer, or legal representative of any other Party for any purpose whatsoever, and no Party is authorized to assume or create any obligation, liability, or responsibility, expressed or implied, on behalf of or in the name of any other Party or to bind any other Party to any Third Party in any manner whatsoever; *provided, however*, that Customer authorizes Energy Manager to

act, and Energy Manager agrees to act, subject to the terms of this Agreement, as Customer's exclusive provider of the Services for the Resource(s), Load, and Transactions. The Parties shall conduct their respective duties, obligations, and operations related to this Agreement in accordance with the terms of this Agreement, the Governing Rules, and Prudent Industry Practice.

The relationship of Customer, on the one hand, with Energy Manager, on the other hand, as set forth in this Agreement is one of an independent contractor with Energy Manager serving as an independent contractor serving Customer.

2. **SERVICES**

- (a) **Optimization Services.** Energy Manager shall, in coordination with Customer and subject to Customer's approval, develop a daily plan optimizing the marketing and sale of Capacity (both Capacity resulting from Customer Generation and any additional Capacity Customer or Energy Manager may procure or create through adding Customer Generation), Energy and Ancillary Services from the Resources including, but not limited to, Customer Generation, and the procurement of Products for the Load. Energy Manager shall participate in the Day-Ahead and Real-Time markets by offering the Resources and bidding the Load into these SPP markets consistent with the daily plan and Customer's daily instructions. Energy Manager shall report daily to Customer on the progress and performance of Optimization Services by Energy Manager in the Day-Ahead and the Real-Time markets.
- (b) **Bilateral Transaction/Hedging Services.** Energy Manager shall seek opportunities to optimize the Resources and may present Customer with appropriate potential Transactions to sell or buy Products. Energy Manager will present to Customer for its review relevant hedging opportunities which Energy Manager is able to identify. For any such Transaction opportunities identified by Energy Manager and approved by Customer, the Parties may mutually agree to enter into a Bilateral Transaction to purchase and/or sell Products at a price and other terms mutually agreed by the Parties. For the avoidance of doubt, the exclusivity obligations created by this Agreement shall not prevent Customer from entering into Transactions on its own; *provided, however*, that this shall not affect any rights or obligations of this Agreement, including but not limited to Energy manager's exclusive right to schedule such Transactions and any related credit requirements provided by this Agreement.
- (c) **Market Participant Services.** Customer will be the Market Participant for the Resources and Load. Energy Manager will provide Customer with a Load Forecast (as provided by Section 2(j) of the Base Agreement) and will submit such data in the Load Forecast approved by Customer (including any adjustment(s) to such Load Forecast timely provided by Customer to Energy Manager from time to time) to SPP pursuant to the SPP Rules. Unless otherwise specified, all Services under this Agreement will utilize the Customer's Market Participant account. With respect to communications and Transactions, the following applies:

- (i) Energy Manager will communicate and transact with SPP as Customer's representative and in accordance with all Governing Rules for the Resources and Load.
- (ii) Energy Manager will timely relay SPP's instructions to the Resources in all events, including, but not limited to, in the event of emergencies, in a manner that is consistent with the standards, requirements or directions of SPP and that will permit Customer to perform its obligations under the SPP Rules.
- (iii) Energy Manager will communicate with SPP in matters concerning the provision of Products from the Resources, including, without limitation, information required in connection with dispatch of the Resources.
- (iv) Energy Manager will, in accordance with SPP Rules and subject to the other terms and conditions of this Agreement:
 - (A) report to SPP sources of Products available for operation; and
 - (B) provide to SPP scheduling and other information, including, but not limited to, scheduling and related information on Transactions for each Resource and Load, and submitting to SPP binding offers to sell Products with all applicable SPP designated specifications;

Energy Manager's role as representative of the Resources and Load for SPP activities is limited to administrative duties as authorized under this Agreement. Customer will provide Energy Manager with appropriate digital certificates and other authorizations to enable Energy Manager to have access to Customer's Market Participant account and enable Energy Manager to communicate and transact with SPP related to Customer's Market Participant account.

- (d) Scheduling Services. Energy Manager will submit all Energy and Ancillary Services bids and offers for the Resources and Load as furnished to Energy Manager by Customer consistent with the SPP Rules. Energy Manager will schedule all Transactions within SPP with the appropriate Third Parties, Transmission Providers, and balancing authorities.
- (e) Meter Agent Services. Energy Manager shall perform Meter Agent Services on behalf of Customer, *provided, however*, if Energy Manager is unable to serve as the Meter Agent for any reason, Energy Manager will enter into a Meter Agent Agreement with the Interconnection Utility whereby the Interconnection Utility will perform Meter Agent Services (as described in the Meter Agent Agreement) for the Resources and Load. Customer shall reimburse Energy Manager for all reasonable and documented costs and charges associated with the Meter Agent Agreement. Customer shall provide revenue quality meter data in a format agreeable to Energy Manager or grant Energy Manager access to Customer's revenue quality meter and revenue quality meter data as may be required under the Meter Agent Agreement to enable performance of the Meter Agent Services. Customer shall assume the obligations of the Market Participant with respect to the Meter Agent Agreement. If Customer does not provide revenue quality meter data to

Energy Manager in time for submissions, Energy Manager may, but shall not be obligated to, use an alternate source of meter data, such as telemetered generation from the Resources and/or Load, for submission to SPP, provided, however, Customer will be solely responsible for verifying the accuracy of meter data that is submitted by Energy Manager and used by SPP to settle the Resources and Load.

- (f) 24-Hour Monitoring. Energy Manager shall monitor the Resources and Load on a twenty-four (24) hour basis using available data connections or other means of communication as determined and mutually agreed upon by the Parties.
- (g) Transition Services. The Parties acknowledge and agree that the Services contemplated by this Agreement cannot be provided until all necessary registrations, acknowledgements, agreements and other documentation (“**Documentation**”) have been provided to and approved by SPP to enable Energy Manager to commence providing the Services. The period of time from the Effective Date of this Agreement until the Commencement Date shall be defined hereunder as the “**Transition Period**.” Subject to the terms of this Agreement and starting on the Effective Date throughout the Transition Period, Energy Manager will provide to Customer the services necessary to ensure the commencement of the Services, described as follows (the “**Transition Services**”):
 - (i) Establish and implement operational information technology and SPP interfaces;
 - (ii) Establish itself as the representative for the Resources and Load;
 - (iii) As mutually agreed by the Parties, assist Customer in registering to participate in SPP programs under the Governing Rules (e.g. Demand Response Load and Resource Adequacy);
 - (iv) As mutually agreed by the Parties, assist Customer with applicable registrations for Customer and its Resources to comply with SPP Rules; and
 - (iv) One (1) Business Day prior to the Commencement Date, submit the schedules applicable to the Resources and Load for the Commencement Date.

During the Transition Period Customer shall register the Resources and Load in Customer’s Market Participant account and will grant Energy Manager access to data at SPP concerning the Resources and Load. Customer shall also work diligently with Energy Manager to ensure that all necessary Documentation is completed, necessary SPP approvals authorizing Energy Manager to register as the representative of the Resources and Load are obtained expeditiously, and required SPP system changes are completed to reflect Energy Manager as the representative for the Resources and Load. Customer shall notify Energy Manager of the completion of all necessary approvals so that all other Services can commence. Energy Manager shall commence providing all Services other than Transition Services on the Commencement Date.

- (h) Testing Services. Energy Manager will coordinate with SPP regarding the testing and other performance-related requirements for the Resources, such as ratings and emissions.
- (i) REC Marketing Services. During the Term and upon Customer's request, Energy Manager will market RECs generated by the Resources that have not otherwise been sold or committed. Customer shall specifically inform Energy Manager of, and make available to Energy Manager, those RECs which Customer has designated for sale by Energy Manager within the SPP region as determined by Customer in its sole discretion. Energy Manager may market RECs separately to Third Parties in conjunction with its marketing of Products to Third Parties (each such Transaction, a "REC Transaction"). The activities described in this Section 2(i) of the Base Agreement shall be referred to as "REC Marketing Services" under this Agreement. Energy Manager shall propose any potential REC Transaction and related REC Marketing Services to Customer for consideration and both Parties will discuss and, upon mutual agreement, enter into a Bilateral Transaction under the Implementation Agreement in order to implement any such REC Transaction and related REC Marketing Services.
- (j) Load Forecasting Services. Energy Manager will develop or cause to be developed an hourly weather-adjusted written load forecast of Energy requirements (the "Load Forecast") setting forth Customer's projected hourly Load Forecast for the following seven (7) Days; provided that Customer supplies Energy Manager with at least three years, and preferably up to five years of historic hourly consumption information. Energy Manager will present the Load Forecast to Customer for approval and, once approved, the Load Forecast will be used by Energy Manager in performing Services as described in Section 2(c) of the Base Agreement.
- (k) Demand Response Resource Dispatch Services. Energy Manager will assist Customer with Customer's participation in the SPP Demand Response program(s) to the extent these programs are advantageous to Customer, and/or Energy Manager will identify opportunities for the Resources to generate in order to reduce the forecasted demand for the Load. This shall include evaluation with Customer of the applicable program rules, the development of demand response strategies, and registration of Demand Response Resource(s). Once finalized by Customer, Energy Manager will assist Customer with Customer's implementation of Customer's demand resource program(s), if applicable. In accordance with Article VI of the General Terms and Conditions of this Agreement, Energy Manager will provide notification to the Resources of dispatch requirements as determined by Energy Manager or as requested or directed by SPP, the applicable Transmission Operator ("TO"), or the applicable Reliability Coordinator ("RC"). Customer will follow such dispatch instructions or will notify Energy Manager of Customer's reasons for non-compliance. For the avoidance of doubt, Customer will be responsible for any equipment cost and equipment installation necessary to participate in SPP's Demand Response program(s).

For the avoidance of doubt, Energy Manager shall have the exclusive right to sell eligible Products from Customer's Resources into the Energy Reserve Market and/or Operating Reserve Market operated by SPP during the Term of this Agreement. Energy Manager

will (i) work with Customer to develop a curtailment plan for each of Customer's Resources consistent with the requirements applicable to Resources under the Governing Rules; (ii) offer each Resource each Day into the Operating Reserve market for the following Day in accordance with Customer's instructions and the Governing Rules; (iii) if any Resource is dispatched as a Demand Response Resource by SPP, promptly communicate such dispatch and curtailment instructions to Customer; and (iv) process all payments in accordance herewith and the Governing Rules. For avoidance of doubt, during the Term: (i) only Customer's Resources designated on Exhibit A shall be represented by Energy Manager in providing Services under this Agreement; and (ii) Customer shall not schedule its Resources into the Operating Reserve Market directly with SPP or through any Person except Energy Manager.

- (l) Auction Revenue Rights and Transmission Congestion Rights Services. Upon transition of the Customer's Transmission Customer account to the Customer's Market Participant account, which is anticipated to be effective for the planning year beginning June 1, 2027, Energy Manager will assist Customer with the SPP ARR/TCR process by providing recommendations and submitting nominations consistent with Customer's strategy goals (*i.e.* risk mitigation) at Customer's direction for paths from Customer's Resource(s) to Customer's Load. In round three of the SPP Annual ARR Allocation Process, Energy Manager will provide Customer with a nomination strategy, including eligible ARR paths and volumes, for any remaining volumes up to Customer's round three nomination cap for each time of use.

Any transmission or ARR paths identified by Energy Manager and communicated to Customer shall remain confidential. Customer shall choose to either nominate all of the paths identified by Energy Manager or no paths in round three of the Annual ARR Allocation Process. If Customer agrees to nominate all paths and volumes identified by Energy Manager, all awarded volumes on these paths will be included in the Annual ARR Rd 3 NEB. On a Monthly basis, Energy Manager shall further assist Customer with nomination strategies for any ARRs not awarded in the Annual ARR allocation Process that are still available. Energy Manager and Customer agree to collect the Annual Auction Revenue and, if applicable, the Monthly Auction Revenue for all awarded volumes and not self-convert to TCR's unless mutually agreed.

- (m) Resource Adequacy. Energy Manager shall, at Customer's election, assist with the procurement and or sale of SPP Capacity, both Firm Capacity and Deliverable Capacity, to meet Customer's SPP Resource Adequacy obligation and/or market excess Capacity, if available, through Bilateral Transactions as mutually agreed by the Parties.
- (n) Implementation Agreement. The Parties agree that when Customer consents to its first Bilateral Transaction with Energy Manager related to this Agreement, the Parties will execute the Implementation Agreement if they have not done so already. All Bilateral Transactions between the Parties related to this Agreement shall be entered under and governed by the Implementation Agreement. The Parties acknowledge that unless and until an Implementation Agreement is executed, the Parties will be unable to enter into Bilateral Transactions related to this Agreement.

- (o) Customer Generation. Notwithstanding anything in this Agreement, Customer may construct, acquire or procure additional generation of any type in its sole discretion and any such additional generation shall be deemed and treated hereunder as Customer Generation. If this occurs, Energy Manager shall conduct all of the activities under this Agreement in a manner that incorporates and includes any generation Customer may construct, acquire or procure, and all rights and attributes thereof. This additional service may require additional fees to Energy Manager, which Energy Manager and Customer will negotiate and agree to via an amendment to this Agreement in good faith and in a manner consistent with this Agreement.

3. **SETTLEMENTS AND REPORTING**

- (a) Shadow Settlement. Energy Manager shall use its proprietary data management and calculation engine, PowerTools Platform®© (“***PTP***”®) to shadow settle all SPP settlement statement versions regarding the Resources and Load. Energy Manager will reconcile all SPP statements and Pass Through Amounts related to the Resources, Load, and Transactions, will alert Customer to any amounts which Energy Manager determines are erroneous or extraneous, and, if Customer requests, will provide Customer with SPP settlement data in the format provided by SPP to Energy Manager. If Customer wishes to pursue a dispute regarding the accuracy of any SPP statement or Pass Through Amount related to the Resources, Load, and Transactions, Customer, at its election, may request that Energy Manager provide Customer with assistance and/or support in respect of such dispute and, if Energy Manager agrees, Energy Manager shall provide such assistance and/or support to Customer (collectively, “***Dispute Resolution Services***”). Dispute Resolution Services may include, but are not limited to, any one or more of the following activities: (i) Energy Manager providing Customer with shadow settlement data in Energy Manager’s possession relating to a dispute, (ii) Energy Manager assisting Customer in formulating a dispute, (iii) Energy Manager filing a dispute with SPP prior to any deadline for contesting such statement(s) established in the Governing Rules, (iv) Energy Manager resolving a dispute with SPP for Customer, (v) Energy Manager contacting the applicable meter data agent to correct meter data submissions to match actual generation of the Resources (as determined by Energy Manager’s access to telemetry via the Telecommunications Package), or (vi) any other assistance and/or services provided by Energy Manager as mutually agreed by the Parties.
- (b) Regulatory Reporting. Energy Manager will assist in data collection for Customer’s regulatory reporting. Customer will be responsible for required state, federal or regional reports applicable to its licenses and business interests. For clarification, nothing herein shall obligate Energy Manager to prepare or submit any regulatory or governmental reports for Customer; *provided, however*, that Energy Manager shall timely provide to Customer all information in its possession that is reasonably requested by Customer for Customer’s regulatory or governmental reports.

4. **RESERVED**

5. **PAYMENT FOR SERVICES**

- (a) Set Up Fee. Energy Manager shall charge Customer a one-time fee for establishing and configuring the telemetry and other communication equipment and software linking the Resources and Load to Energy Manager (and to SPP where applicable) and for the provision of the Transition Services described in Section 2(g) of the Base Agreement (the “***Set Up Fee***”). Energy Manager will invoice Customer a Set Up Fee equal to fifteen thousand Dollars (\$15,000) for all Resources and Load identified in Exhibit A as of the Effective Date as part of Energy Manager’s first normal Monthly invoice issued following the Effective Date. Any Resource or Load which Customer may request to be added to Exhibit A after the Effective Date shall be subject to Energy Manager’s approval, an additional Set Up Fee negotiated between the Parties, and an amendment to this Agreement.
- (b) Volumetric Fee. For the performance of Services described herein, including those in Section 2 of the Base Agreement, for each Month of the Term, Customer shall pay Energy Manager a fee equal to \$1.50/MWh multiplied by the MWh of Gross Load (the “***Volumetric Fee***”) in arrears and prorated for any partial Month of service, beginning on the Commencement Date; *provided* that the multiplier used to calculate the Volumetric Fee shall increase by the Escalator on the first Day of the Month of each anniversary of the Commencement Date. Any Resource or Load which Customer may request to be added to Exhibit A after the Effective Date shall be subject to Energy Manager’s approval and an amendment to this Agreement, and may be subject to a change in the Volumetric Fee negotiated between the Parties and memorialized in an amendment hereto.
- (c) Demand Response Resource NEB Sharing. For each Month commencing with the Initial Term through the remainder of the Term, Customer will pay Energy Manager an amount equal to Energy Manager’s NEB Share for such Month as determined pursuant to Exhibit C attached hereto.
- (d) Pass Through Amounts and Reimbursements. Except when specified otherwise under this Agreement, Customer shall pay Energy Manager (i) all amounts Energy Manager is required to pay SPP (or to Third Parties, if applicable) directly applicable to the procurement, scheduling, and delivery of Products, and (ii) all other applicable Pass Through Amounts incurred by Energy Manager. Notwithstanding anything to the contrary, no amounts shall be recovered twice pursuant to this paragraph.
- (e) Dispute Resolution Success Fee. To the extent Energy Manager performs any Dispute Resolution Services in any Month with respect to a dispute, Energy Manager shall receive a “***Dispute Resolution Fee***” of fifteen percent (15%) of any positive amounts recovered by or for Customer associated with the resolution of such dispute. The Dispute Resolution Fee shall only be due to Energy Manager after Customer receives such amounts.
- (f) ARR/TCR Service Fees. Customer shall pay Energy Manager seventy (70%) of each of (i) the Annual ARR Rd 3 NEB, and (ii) the Monthly Auction Revenue created through the Monthly ARR Allocation Process, in each case associated with the paths awarded where such paths were recommended by Energy Manager (the “***ARR/TCR Services Fee***”). Customer shall retain thirty (30%) of each of the foregoing. Energy Manager will invoice

Customer each Month during the applicable auction year for the ARR/TCR Services Fee due under this Section. If the net value of the Annual ARR Rd 3 NEB for the auction year is negative, or if participation in the Monthly ARR Allocation Process in accordance with the Energy Manager strategy results in a negative Monthly Auction Revenue, Energy Manager will reimburse Customer for such losses as invoiced to Customer by SPP and verified by Energy Manager.

- (g) Optimization Services Fee. For performance of the Optimization Services, Customer shall pay Energy Manager a fee each Month equal to twenty-five percent (25%) of the positive Net Optimization Benefit applicable to the Month (“Optimization Fee”). For purposes of this Agreement, the “Net Optimization Benefit” or “NOB” for a Month shall equal (i) the revenue resulting from the actual sale of Energy and Ancillary Services from or pertaining to the Resource in the Day-Ahead Energy Market and the Day-Ahead Ancillary Services market, *minus* (ii) the revenue that would have been received from the sale of Energy and Ancillary Services to SPP at the applicable Real-Time settlement point price for the Resource, summed for each settlement interval of the Month. Excluded from the calculation of the NOB is any uninstructed deviation charge or other penalty incurred due to any Resource failure to follow a SPP Dispatch Instruction. To the extent Customer enters into any Bilateral Transaction with Energy Manager during the Term of this Agreement intended to meet Customer’s risk management or operational objectives, such Bilateral Transaction will be priced as mutually agreed between the Parties at the time of each such Bilateral Transaction and shall be excluded from the NOB calculation.

6. TERM

- (a) All Services and the obligation to pay fees under this Agreement, other than the Set Up Fee, respectively, shall be effective as of the Commencement Date unless provided otherwise in this Agreement. All other terms, provisions, and obligations, including the Set Up Fee, and associated Pass Through Amounts, shall be effective as of the Effective Date of this Agreement. This Agreement shall have a primary term of three (3) consecutive calendar years, beginning on the Commencement Date and expiring at 11:59:59 PM EPT on the last Day of the Month in which the third (3rd) anniversary of the Commencement Date occurs (the “Initial Term”). Upon expiration of the Initial Term, this Agreement shall then automatically renew and extend for successive three (3) year terms (each a “Renewal Term”) unless either Party provides written notice of non-renewal to the other Party no later than three-hundred sixty (360) Days prior to the expiration of the Initial Term or any Renewal Term (as applicable).
- (b) Notwithstanding anything to the contrary in any provision of this Agreement, but without limiting the Parties’ obligations under Section 6(c) below, if, on the date this Agreement would expire or otherwise terminate, SPP’s system still reflects Energy Manager as the representative for Customer’s Market Participant for the Resources or Load, then the Term of this Agreement shall be deemed to continue (and the terms of this Agreement shall survive) until the date that SPP reflects in its system that Energy Manager is no longer the representative for Customer’s Market Participant for the Resources and Load.

- (c) For the avoidance of doubt, from and after the Effective Date and for the duration of the Term, no Party shall have any right to terminate this Agreement early or otherwise exercise a non-renewal of this Agreement except to the extent expressly permitted under the terms of this Agreement or as otherwise mutually agreed by the Parties in writing.

WITNESS that the Parties have executed this Agreement effective as of the Effective Date.

TENASKA POWER SERVICES CO.

CITY OF WAYNE, NEBRASKA

By: 
Name: Kevin R. Smith
Title: President

By: _____
Name: _____
Title: _____

GENERAL TERMS AND CONDITIONS

DEFINITIONS

For purposes of this Agreement, the following capitalized terms shall have the meanings set forth below. All other capitalized terms used in this Agreement, but not otherwise defined in this Agreement, shall have the same meaning as defined in the Governing Rules.

“**Affected Party**” shall have the meaning set forth in Section 3.4 of the General Terms and Conditions.

“**Affiliate**” shall mean, with respect to any Person, (i) any other Person, directly or indirectly, controlling, controlled by, or under common control with such Person or (ii) any other Person under the joint control, directly or indirectly, of such Person. As used in this definition, the term “control” and similar terms shall mean the ownership of more than fifty percent (50%) of the voting securities of such Person or the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, through ownership of voting securities, by contract or otherwise.

“**Agreement**” shall have the meaning set forth in the preamble of this Agreement.

“**Ancillary Services**” shall have the meaning set forth in the Governing Rules.

“**Annual ARR Allocation Process**” shall mean the process by which SPP awards ARRs that entitles the holder to a share of the auction revenues generated in the applicable TCR Auction(s) and/or entitles the holder to self-covert the ARRs into TCRs.

“**Annual Auction Revenue**” shall mean the sum of the credits or charges associated with each path in the nomination portfolio, calculated as the TCR Auction Clearing Price per a given auction at the source minus the TCR auction clearing price per a given auction at the sink (each expressed in \$/MW-period), for the applicable auction year multiplied by the MW volume awarded for the applicable period. A positive calculated amount shall mean a revenue and a negative calculated amount shall mean a charge.

“**Annual ARR Allocation Round Three Net Economic Benefit**” or “**Annual ARR Rd 3 NEB**” shall mean, for any Annual TCR Auction, an amount equal to the Annual Auction Revenue received by Customer from SPP in the Annual TCR Auction associated with paths awarded in round three (3) of the Annual ARR Allocation Process where such paths were recommended by Energy Manager.

“**Annual TCR Auction**” shall mean the process held each May by SPP whereby ARR holders can bid to purchase and self-convert their ARRs to TCRs.

“**Applicable Laws**” shall mean any act, statute, law, regulation, permit, license, ordinance, rule, judgment, order, decree, directive, guideline, protocol, or policy (to the extent mandatory) or any similar form of decision or determination by, or any interpretation or administration of, any of the

foregoing by any Governmental Authority with jurisdiction over the Resources, Load, or Energy Manager, or the Services to be performed under this Agreement.

“**Assessments**” shall have the meaning set forth in Section 3.4 of the General Terms and Conditions.

“**Auction Revenue Rights**” or “**ARRs**” shall mean the financial instrument(s) awarded by SPP that entitles the holder to a share of the auction revenues generated in the applicable TCR Auction(s) and/or entitles the holder to self-cover the ARR into TCRs.

“**Bilateral Transaction**” shall mean a Transaction or series of Transactions between Energy Manager and Customer pursuant to the terms of the Implementation Agreement.

“**Business Day**” shall mean any Day other than a Saturday, Sunday, or Day on which Federal Reserve member banks in Texas are closed for business.

“**Business Hours**” shall mean the consecutive hours from 8:00 a.m. to 5:00 p.m. Central Prevailing Time on Business Days.

“**Capacity**” shall mean any capacity used to meet reliability requirements or the ability to generate and provide or deliver a Product and includes the meaning defined in the Governing Rules.

“**Central Prevailing Time**” or “**CPT**” shall mean standard time or daylight saving time, as applicable to the central time zone of the United States.

“**Commencement Date**” shall mean the later of (i) June 1, 2027 or (ii) the date upon which Energy Manager receives notice that SPP authorizes Energy Manager to commence representing the Resources and Load within SPP’s system.

“**Confidential Information**” shall have the meaning set forth in Section 14.1(a) of the General Terms and Conditions.

“**Credit Exposure**” shall mean the net amount one Party would owe the other Party if all Transactions and Services between the Parties under this Agreement were closed out and terminated, and all obligations under this Agreement were accelerated and netted against amounts the other Party would owe such Party on the date of credit calculation to derive the amount of credit exposure faced by one Party to the other Party or a Third Party. This calculation will include amounts owed for delivered Products and Services whether billed or unbilled, the forward value of committed but undelivered Products and Services taking into account deviations in the current market value of a Product from the value or price of such Product prevailing at the time a Transaction was entered into. All credit obligations between the Parties with respect to Bilateral Transactions shall be governed by the Implementation Agreement.

“**Credit Support**” shall mean cash, pre-payments, letters of credit, and, if acceptable to the requesting Party, may include guarantees or other reasonable forms of security.

“**Customer**” shall have the meaning set forth in the preamble of this Agreement.

“**Customer Resource**” shall include those Resources listed on Exhibit A. For the avoidance of doubt, Load participating as a Demand Response Resource shall be considered a Customer Resource.

“**Customer Revenue Meter**” shall mean a revenue-quality meter installed and maintained by Customer, at Customer’s expense, for the measurement of Energy generation and/or Energy consumption at a Customer Resource or Load.

“**DA RUC Process**” shall have the meaning set forth in Section 4.2 of the General Terms and Conditions.

“**Day**” shall mean a calendar day.

“**Day-Ahead**” shall have the meaning set forth in the Governing Rules.

“**Day-Ahead Market**” shall have the meaning set forth in the Governing Rules.

“**Day-Ahead Reliability Unit Commitment Schedules**” or “**DA RUC Schedules**” shall have the meaning set forth in Section 4.2 of the General Terms and Conditions.

“**Day-Ahead Schedule**” shall have the meaning set forth in Section 4.1 of the General Terms and Conditions.

“**Defaulting Party**” shall have the meaning set forth in Section 12.2 of the General Terms and Conditions.

“**Deliverable Capacity**” means the Accredited Capacity of a Generation Facility, measured in MW, that is determined to be deliverable in either a Summer Season and/or a Winter Season Deliverability Study as defined in SPP Tariff Attachment AA.

“**Delivery Point**” shall mean, (a) with respect to the delivery or receipt of Energy or Capacity, the node recognized by SPP representing any Resource or Load or such other point as may be agreed to by the Parties in compliance with the Governing Rules, and (b) with respect to the delivery or receipt of any other Product, the point as may be agreed to by the Parties in compliance with the Governing Rules.

“**Dispute Resolution Fee**” shall have the meaning set forth in Section 5(e) of the Base Agreement.

“**Dispute Resolution Services**” shall have the meaning set forth in Section 3(a) of the Base Agreement.

“**DNP 3.0**” shall have the meaning set forth in Section 6.1 of the General Terms and Conditions.

“**Documentation**” shall have the meaning set forth in Section 2(g) of the Base Agreement.

“**Due Date**” shall mean the tenth (10th) Day after Customer’s receipt of Energy Manager’s invoice; *provided, however*, if such Day is not a Business Day, the next Business Day.

“**Effective Date**” shall have the meaning set forth in the preamble of this Agreement.

“**Energy**” shall mean electric energy.

“**Energy Manager**” shall have the meaning set forth in the preamble of this Agreement.

“**Energy Manager’s NEB Share**” shall have the meaning given that term in Exhibit C.

“**Escalator**” shall mean the greater of (i) the percentage change in the Consumer Price Index for Urban Areas or “CPI-U” published by the U.S. Department of Labor and applicable for the twelve consecutive Months ending prior to the first Day of the Month in which the Commencement Date occurs each year during the Term, from the annual average CPI-U prevailing for the prior twelve consecutive Month period, or (ii) two and one-half percent (2.50%).

“**Event of Default**” shall have the meaning set forth in Section 12.1 of the General Terms and Conditions.

“**FERC**” shall mean the Federal Energy Regulatory Commission or any successor thereto.

“**Force Majeure**” shall have the meaning set forth in Section 13.1 of the General Terms and Conditions.

“**Firm Capacity**” means the SPP-accredited generating capability of commercially operable generating units, or portions of generating units, measured in MW, adjusted to reflect purchases and sales of Capacity with another party, and that is deliverable with Firm transmission service to the Load Responsible Entity’s load.

“**Governing Rules**” shall mean all applicable SPP Rules, SPP Manuals, the SPP Tariff, and any other applicable rules, market guides, tariffs, protocols, business practice manuals, or other applicable rules or directives of SPP, the Transmission Provider or Interconnection Utility, the applicable state commission, market monitor, any reliability entity, NERC, FERC, or any successor thereto, as such protocols, rules or directives may be amended from time to time.

“**Governmental Authority**” shall mean any federal, state or local government, court of competent jurisdiction, administrative agency or commission or other governmental or regulatory instrumentality, agency, authority or authorized arbitral body thereof, including without limitation, SPP, the applicable state commission, market monitor, any reliability entity, NERC, FERC, or any successor thereto.

“**Gross Load**” shall mean the total Energy required to meet the Customer’s Monthly demand and shall be calculated as the sum of the absolute value of the reported hourly Load provided to SPP plus, during the applicable Month and without duplication, any Energy produced at a Customer Resource that reduces the reported hourly Load to SPP and/or Energy reduced at a Customer

Resource as recorded by a Customer Revenue Meter for the applicable Month. Customer shall provide revenue quality meter data in a format agreeable to Energy Manager or grant Energy Manager access to Customer's Revenue Meter as may be required for Energy Manager to calculate Gross Load.

“**Guarantor**” shall mean any Person that provides a guaranty of a Party's obligations hereunder.

“**Imaged Agreement**” shall have the meaning set forth in Section 16.11 of the General Terms and Conditions.

“**Implementation Agreement**” shall mean the ISDA Master Agreement (copyright 2002 by the International Swaps and Derivatives Association, Inc.) including the Schedule, Credit Support Annex, and all other annexes attached thereto, or any other form of master agreement, entered into between Energy Manager and Customer, as such agreement may be amended from time to time.

“**Initial Term**” shall have the meaning set forth in Section 6(a) of the Base Agreement.

“**Interconnection Utility**” shall mean the utility within SPP to which a Resource or Load is interconnected at the Delivery Point.

“**Interest Rate**” shall mean, for any date, the lesser of (i) the per annum rate of interest equal to the “*Prime Rate*” as may from time to time be published in *The Wall Street Journal* under “*Money Rates*” on such Day (or if not published on such Day, on the most recent preceding Day on which published), plus two percent (2%) or (ii) the maximum rate permitted by applicable law.

“**Load**” shall have the meaning set forth in the Recitals.

“**Load Forecast**” shall have the meaning given that term in Section 2(j) of the Base Agreement.

“**Market Participant**” shall have the meaning set forth in the SPP Rules.

“**Material Adverse Change**” shall mean with respect to a Party, the occurrence of one or more events which, in the commercially reasonable judgment of the other Party, constitutes a material adverse effect on the creditworthiness, financial liquidity, access to capital, financial responsibility or ability of a Party to perform its obligations.

“**Meter Agent**” shall have the meaning set forth in the Governing Rules.

“**Meter Agent Agreement**” shall have the meaning set forth in the Governing Rules.

“**Month**” shall mean a calendar month.

“**Monthly ARR Allocation Process**” shall mean the Monthly process by which SPP awards ARRs, that entitles the holder to a share of the auction revenues generated in the applicable TCR Auction(s) and/or entitles the holder to self-convert the ARRs into TCRs.

“**Monthly Auction Revenue**” shall mean the sum of the credits or charges associated with each path in the nomination portfolio, calculated as the TCR Auction Clearing Price per a given auction at the source minus the TCR auction clearing price per a given auction at the sink (each expressed in \$/MW-period), for the applicable auction Month multiplied by the MW volume awarded for the applicable period. A positive calculated amount shall mean a revenue and a negative calculated amount shall mean a charge.

“**Monthly Revenues**” shall have the meaning given that term in Exhibit C.

“**MW**” shall mean one megawatt.

“**MWh**” shall mean megawatt-hour(s).

“**NERC**” shall mean the North American Electric Reliability Corporation or any successor thereto.

“**Net Optimization Benefit**” or “**NOB**” shall have the meaning set forth in Section 5(g) of the Base Agreement.

“**Non-Defaulting Party**” shall have the meaning set forth in Section 12.2 of the General Terms and Conditions.

“**Optimization Fee**” shall have the meaning set forth in Section 5(g) of the Base Agreement.

“**Optimization Services**” shall have the meaning set forth in Section 2(a) of the Base Agreement.

“**Outage Event**” shall mean any forced outage, trip, derating, or decrease in output at a Resource, whether or not caused by an event of Force Majeure, resulting in interruption, curtailment, reduction, or cessation of the production or provision of Products from a Resource.

“**Outage Scheduling Services**” shall have the meaning set forth in Section 5.2 of the General Terms and Conditions.

“**Party**” or “**Parties**” shall have the meaning set forth in the preamble of this Agreement.

“**Pass Through Amounts**” shall mean, without duplication, all actual, direct Third Party costs incurred by Energy Manager; all charges assessed against Energy Manager by SPP or any Governmental Authority and payable by Energy Manager (except any fines, late fees or other similar punitive charges Energy Manager is assessed by SPP or any Governmental Authority that arise due to Energy Manager’s breach of this Agreement, gross negligence or willful misconduct, but subject to the claim procedure in Section 9.2 of the General Terms and Conditions); all credits received by Energy Manager from SPP; and, to the extent expressly stated to be a Pass Through Amount herein, amounts payable to any other Third Party; in each case, that arise due to Energy Manager’s performance of the Services in accordance with the terms of this Agreement and excluding energy Manager’s cost of providing any Credit Support to Customer pursuant to Section 11.6 of the General Terms and Conditions or any Credit Support to SPP or of doing business in SPP generally.

“**Permit**” shall mean, unless otherwise provided, any approval, waiver, exemption, variance, franchise, permit, authorization, license, or similar order of or from any federal, state, county, municipal, or other governmental body, instrumentality, agency, authority, or court having jurisdiction over the matter in question.

“**Permitted Termination**” shall have the meaning set forth in Section 3.7 of the General Terms and Conditions.

“**Person**” shall mean an individual, corporation, voluntary association, joint stock company, business trust, partnership, limited liability company, municipality (including any municipal electric board, cooperative, power utility, agency, or subdivision), rural electric cooperative, or other entity.

“**Pledgor**” shall have the meaning set forth in Section 11.6(a) of the General Terms and Conditions.

“**Product**” shall mean Energy, Ancillary Services, Capacity, and any other power product allowed for sale or purchase in the SPP market (collectively and individually).

“**Product Costs**” shall have the meaning given that term in Exhibit C.

“**Prudent Industry Practice**” shall mean, in respect of the performance under this Agreement, the practices, methods, techniques, standards and acts that, at the time of the performance under this Agreement, are then engaged in or approved by a significant portion of the independent power production industry and that, in the exercise of reasonable judgment in light of the facts known at the time of performance, would have reasonably been expected to accomplish the desired results. Prudent Industry Practice is not intended to be limited to the optimum practices, methods, techniques, standards and acts to the exclusion of all others, but rather reflect the range of the practices, methods, techniques, standards and acts then generally accepted in the SPP region, having due regard for, among other things, contractual obligations, Applicable Laws, Permits, and the Governing Rules.

“**PTP**” shall have the meaning set forth in Section 3(a) of the Base Agreement.

“**RC**” shall have the meaning set forth in Section 2(k) of the Base Agreement.

“**Real-Time**” shall have the meaning set forth in the Governing Rules.

“**Real-Time Balancing Market**” shall have the meaning set forth in the Governing Rules.

“**Real-Time Balancing Market Schedules**” or “**RTBM Schedules**” shall have the meaning set forth in Section 4.3 of the General Terms and Conditions.

“**REC Marketing Services**” shall have the meaning set forth in Section 2(i) of the Base Agreement.

“**REC Transaction**” shall have the meaning set forth in Section 2(i) of the Base Agreement.

“**Recording**” shall have the meaning set forth in Section 16.10 of the General Terms and Conditions.

“**Renewable Energy Credit**” or “**REC**” shall mean a credit or certificate that represents all of the environmental attributes of renewable generation and all right to claim such attributes. For purposes of this definition, “environmental attributes” shall mean any fuel emissions, air quality or other environmental characteristics, credits or benefits associated with the generation of electricity from a Resource, other than Energy produced by a Resource.

“**Renewal Term**” shall have the meaning set forth in Section 6(a) of the Base Agreement.

“**Replacement Products**” shall have the meaning set forth in Section 2.4 of the General Terms and Conditions.

“**Representatives**” shall mean each Party’s respective directors, officers, and employees, including, without limitation, attorneys, accountants, partners, and consultants.

“**Resource(s)**” shall have the meaning set forth in the Recitals.

“**Responsible Party**” shall have the meaning set forth in Section 3.4 of the General Terms and Conditions.

“**Secured Party**” shall have the meaning set forth in Section 11.6(a) of the General Terms and Conditions.

“**Service Fees**” shall mean, with respect to a Month, the Volumetric Fee.

“**Services**” shall mean one, all, or any combination of the services and other obligations to be performed by Energy Manager under this Agreement.

“**Set Up Fee**” shall have the meaning set forth in Section 5(a) of the Base Agreement.

“**SPP**” shall mean Southwest Power Pool, Inc.

“**SPP Manuals**” shall mean the manuals of instruction and operation published and provided as guidance to Market Participants by SPP.

“**SPP Rules**” shall mean the tariffs, market protocols, business practice manuals and other documents governing the operation of the SPP transmission system and SPP markets.

“**SPP Tariff**” shall mean the compilation of rules, rates, terms, and conditions governing operation of the SPP transmission system and markets, including the Market Protocols, as filed with and accepted by the FERC.

“TCR Auction Clearing Price” shall mean the prices generated at each source and sink settlement location in each round of the Annual TCR Auction and Monthly TCR Auction based upon the TCR offers and bids submitted.

“Telecommunications Package” shall have the meaning set forth in Section 6.1 of the General Terms and Conditions.

“Term” shall mean the period commencing on the Effective Date through and including the expiration of the Initial Term and any Renewal Term, as applicable, subject in all cases to any early termination of this Agreement as permitted herein and subject to Section 6(b) of the Base Agreement.

“Third Party” shall mean any Person other than Customer or Energy Manager.

“TO” shall have the meaning given that term in Section 2(k) of the Base Agreement.

“Transaction” shall mean a particular transaction relating to the scheduling, delivery, sale, and/or purchase of a Product, as applicable. A Transaction may be for any length of time, including, for example, durations as short as one SPP settlement interval, one hour, or one Day.

“Transition Period” shall have the meaning set forth in Section 2(g) of the Base Agreement.

“Transition Services” shall have the meaning set forth in Section 2(g) of the Base Agreement.

“Transmission Congestion Rights” or **“TCRs”** shall mean a financial right entitling the holder to a share of the congestion revenue collected in the Day-Ahead Market.

“Transmission Provider” shall mean any entity that provides transmission and/or distribution services for the delivery of Energy.

“Volumetric Fee” shall have the meaning set forth in Section 5(b) of the Base Agreement.

“VPN” shall have the meaning set forth in Section 6.1 of the General Terms and Conditions.

The terms defined above have the meanings set forth above for all purposes, and such meanings are equally applicable to both the singular and plural forms of the terms defined. “Include,” “includes” and “including” shall be deemed to be followed by “without limitation” whether or not they are in fact followed by such words or words of like import. Any agreement, instrument, document, rule or law defined or referred to herein means such agreement, instrument, document, rule or law as from time to time amended, modified or supplemented. References to a Person include its successors and permitted assigns. “Hereof,” “herein,” “hereunder” and comparable terms refer, unless otherwise expressly indicated, to the entire agreement or instrument in which such terms are used and not to any particular Article, Section or other subdivision thereof or attachment thereto. References in an instrument to “Article,” “Section” or another subdivision or to an attachment are, unless the context otherwise requires, to an article, section or subdivision of or an attachment to such agreement or instrument. All references to exhibits, appendices, or attachments in this Agreement, or any agreement or instrument that is governed by this Agreement,

are to exhibits, appendices or other attachments (however named) attached to this Agreement or such instrument or agreement governed by this Agreement (as applicable). References to any gender include, unless the context otherwise requires, references to all genders. References to “\$” or to “Dollars” or “Cents” shall mean the lawful currency of the United States of America.

ARTICLE I
TITLE: STANDARD OF PERFORMANCE

1.1 Title.

- (a) Where Transactions involving a Product from or pertaining to a Resource or Load are transacted and/or settled with SPP, Customer’s Market Participant account shall represent a Resource or Load and Transactions, and Energy Manager will not take title to such Products sold or delivered to SPP from Transactions utilizing Customer’s Market Participant account or provided by SPP to a Resource or Load through Customer’s Market Participant account.
- (b) Where Transactions involving a Product from or pertaining to a Resource or Load are transacted between Energy Manager and Customer pursuant to a Bilateral Transaction, Energy Manager, acting on its own behalf as principal and not as agent for Customer, shall (i) purchase Products from Customer under a Bilateral Transaction, or (ii) sell Products to Customer under a Bilateral Transaction, in each case as applicable. All Bilateral Transactions between the Parties shall be entered into under and governed by the Implementation Agreement.
- (c) Where Transactions involving a Product from or pertaining to a Resource or Load are transacted between Customer and a Third Party (other than SPP), Energy Manager shall not take title to such Products under such Transactions.
- (d) For the avoidance of doubt, Energy Manager shall schedule all of Customer’s Transactions (including but not limited to Bilateral Transactions) which require scheduling with SPP for Customer subject to and in accordance with this Agreement.

1.2 Standard of Performance Obligations. Energy Manager shall discharge its obligations hereunder in good faith and in a commercially reasonable manner and shall perform the Services in a good, workmanlike manner and in accordance with (i) Prudent Industry Practice, (ii) instructions from Customer, and (iii) the terms of this Agreement.

1.3 Exclusivity. For the Resources and Load, subject to the other terms and conditions of this Agreement, Customer grants Energy Manager the exclusive right to:

- (a) act as Customer’s provider of Services; whereas,
 - (i) only the Resources and Load designated in Exhibit A attached hereto will be represented by Energy Manager under this Agreement,

- (ii) Customer will cause each such Resource and Load to schedule all Transactions through and with Energy Manager, and
 - (iii) Customer will not schedule Transactions directly with SPP, or through any other Person except Energy Manager, as long as there is no Force Majeure event or Event of Default that has occurred and is continuing with respect to Energy Manager;
- (b) serve as Customer's representative, limited to the purpose of representing the Customer in communications and Transactions with SPP, as provided under Section 2 of the Base Agreement;
 - (c) schedule the Products per Customer's instruction described in this Agreement; and
 - (d) administer the purchase or sale of Products pertaining to the Resources and Load with SPP or other Third Parties accordance with the terms of this Agreement and the Governing Rules.

ARTICLE II

TRANSACTION PROCEDURES

- 2.1 **SPP Submissions.** Pursuant to Article IV of the General Terms and Conditions, Customer shall be deemed to have delegated to Energy Manager the authority to submit, adjust, and maintain with SPP all Day-Ahead Schedules, DA RUC Schedules, and RTBM Schedules from or pertaining to the Resources and Load as provided to Energy Manager by Customer.
- 2.2 **Reserved.**
- 2.3 **Bilateral Transactions.** The Parties may enter into Bilateral Transactions for the purchase or sale of a Product pursuant to and governed by the Implementation Agreement.
- 2.4 **Replacement Products.** To the extent that a Resource is unable to make available or deliver, or decides not to make available or deliver, a quantity of any Product committed for delivery and which Energy Manager has scheduled for sale or delivery into the SPP region hereunder (including a projected shortfall of the ability of a Resource to provide a Product or any other reason for Customer to request Energy Manager to procure a Product in response to such a shortfall), whether committed for sale or delivery to SPP or to a Third Party (as applicable), Customer may request that Energy Manager source Products from Third Parties other than SPP to fill such shortfall ("***Replacement Products***"). To the extent Energy Manager is able to source Replacement Products and the Parties mutually agree on the terms of a Bilateral Transaction for such Replacement Products, the Parties shall enter into such Bilateral Transaction for Replacement Products pursuant to the Implementation Agreement.
- 2.5 **Reports.** Energy Manager and Customer may, from time to time, mutually agree to the form, content and periodicity of distribution of reports which detail Transactions and settlement with SPP under the Customer's Market Participant.

- 2.6 Transactions Beyond Term of Agreement. As to any Transaction scheduled hereunder that continues by its terms beyond any expiration or earlier termination of this Agreement, then this Agreement shall remain in full force and effect as to that Transaction and shall continue to govern that Transaction for its duration. Further, any obligations accrued during the Term (including fees, charges, or reimbursement applicable under this Agreement) shall become due and payable when assessed, even if assessment occurs after the expiration or earlier termination of this Agreement. The obligations associated with such Transactions hereunder shall survive the expiration or earlier termination of this Agreement. For the avoidance of doubt, this Section does not apply to Bilateral Transactions, which shall remain subject to the terms and conditions of the Implementation Agreement.

ARTICLE III **GOVERNING RULES**

- 3.1 Governing Rules. Both Parties agree to abide by all applicable Governing Rules. For purposes of determining responsibility and rights of the Parties at any given time, in addition to the terms and conditions of this Agreement, the Governing Rules that are in effect at the time of performance or non-performance of an action, subject to the continuation of any grandfathered provisions, shall govern with respect to that action. In the event of a direct and irreconcilable conflict between the Governing Rules and the terms and conditions set forth in this Agreement, the Governing Rules shall prevail.
- 3.2 Compliance Support. Energy Manager shall assist Customer in any audit of a Resource conducted or initiated by a regional reliability coordinator or NERC, including preparation of responses to NERC or regional reliability coordinator data requests related to NERC standards for which Energy Manager has information useful to Customer for the demonstration of compliance. In addition to the foregoing, if the regional reliability coordinator requests a NERC audit for a time period during which Energy Manager served as Customer's provider of Services, then upon Customer's request, with respect to such audits that call for production of records of communications with SPP, Energy Manager shall support Customer with relevant information and assistance including assisting Customer in responding to a NERC audit by providing Customer with Energy Manager's pertinent documentation of Energy Manager's communications with SPP or a Resource. Nothing contained in this Agreement shall be construed to make Energy Manager a "generation owner," "generation operator," or any similar entity, or to make Energy Manager subject to any classification under applicable NERC rules as a result of Energy Manager's execution of this Agreement or Energy Manager's performance of the Services or otherwise, and Customer shall not register Energy Manager or require Energy Manager to register with NERC as a "generation owner" or "generation operator" with respect to a Resource.
- 3.3 SPP Dispatch Instructions. The Parties acknowledge that from time to time, SPP or a Governmental Authority may issue instructions or orders to Energy Manager affecting or requiring specific actions with respect to operation of a Resource or Load (collectively, "**SPP Dispatch Instructions**"). Where any such SPP Dispatch Instructions are issued requiring changes in the dispatch or operation of a Resource or Load, Energy Manager

shall relay instructions to a Resource or Load to generate, make available, or provide Energy (or other applicable Product), or to cease generating or providing Energy (or other applicable Product), as mandated by such instructions. SPP Dispatch Instructions will be communicated to Customer promptly following receipt of such by Energy Manager. Based on the SPP Dispatch Instructions, Energy Manager shall communicate to Customer the quantities of Energy (or any other Product) to generate or provide, or to cease generating or providing, and the time period during which such instructions are to be followed, and Customer shall cause a Resource or Load to promptly comply with such instructions, consistent with the operational limitations of a Resource or Load, as appropriate; unless in the sole and reasonable judgment of Customer, such compliance would create a threat to safety, risk of bodily harm or damage to equipment, or is not otherwise in compliance with the SPP Rules, in which case Customer will notify Energy Manager immediately of the reason for non-compliance and Energy Manager will communicate such reason to SPP in accordance with the SPP Rules. Energy Manager shall not be liable to Customer for any damages resulting from compliance or non-compliance with any SPP Dispatch Instruction.

- 3.4 Compliance with Laws. Energy Manager and Customer shall at all times comply with all Applicable Laws. In the event that actions or omissions of one Party (“***Responsible Party***”) cause the other Party (“***Affected Party***”) to (a) be materially non-compliant with the Governing Rules or Applicable Laws affecting the Services, the Resources, or Load or (b) have assessed or brought against it any fines, penalties, reprimands, censures, sanctions, assessments, or other material adverse actions by SPP, market monitor, or any other Governmental Authority (“***Assessments***”) (which, for the avoidance of doubt, shall not include ordinary course settlement charges or penalties, such as imbalance penalties or charges, mismatched schedule charges, uninstructed deviation charges, or late fees), then, in addition to any other rights or remedies hereunder (including the right, if any, to indemnification against such Assessments), the Affected Party shall have the right to (x) give written notice to the Responsible Party setting forth the circumstances of non-compliance and, if practicable, demand that the Responsible Party cure such non-compliance; and (y) demand that the Responsible Party use commercially reasonable efforts to cooperate in the Affected Party’s defense against such allegation or Assessment (provided the foregoing shall not require the Affected Party to incur material expenses unless reimbursed by the Responsible Party nor to take any position in any regulatory proceeding contrary to its interests or policies). The Responsible Party shall reimburse the Affected Party for any Assessments paid by the Affected Party; *provided, however*, that any payment required shall remain subject to the limitation of liability in Section 9.2 of the General Terms and Conditions.
- 3.5 Energy Manager Affiliates. Notwithstanding any provision of this Agreement to the contrary, Energy Manager shall in all cases remain obligated for the performance of the Services and its obligations under this Agreement regardless of whether such Services or obligations are performed by its Affiliates.
- 3.6 Operation of the Resources. Notwithstanding anything in this Agreement to the contrary, Customer retains and shall retain ultimate decision-making authority and control with respect to the Resources and Load relating to the operation, maintenance, and dispatch of

the Resources and Load and the sale of Products from or pertaining to the Resources or Load. Accordingly, all control over and with respect to the dispatch, maintenance, and operation of the Resources or Load, the undertaking of any particular arrangement or Transaction, the ultimate decision making authority hereunder, and the execution of any Transaction shall reside exclusively with Customer. Energy Manager shall have no dispatch control over the Resources or Load during any period of the Term, whether in practice as a result of the performance or undertaking of the Services, or otherwise pursuant to the terms of this Agreement. Customer's operation, maintenance, and dispatch of the Resources or Load shall be in accordance with Prudent Industry Practice and the Governing Rules and comply with all applicable Permits.

- 3.7 Change in Laws or Regulations. In the event a change in Applicable Laws or the Governing Rules (a) materially impairs a Party's ability to perform under this Agreement, (b) materially increases a Party's costs or risks of performing under this Agreement, or (c) materially decreases the economic benefits obtained by a Party under this Agreement, the adversely affected Party may notify the other Party of the adverse effect and propose amendments to this Agreement to address the adverse effect of the change in Applicable Laws or Governing Rules. The Parties shall negotiate in good faith to amend this Agreement to restore the Parties to the relative economic values and risk position each had enjoyed under this Agreement prior to the change in Applicable Laws or Governing Rules. If the Parties have not reached agreement on an amendment by the thirtieth (30th) Day after the effectiveness of the notice sent by the affected Party, then the affected Party may, upon written notice to the other Party, terminate this Agreement by designating a termination date that is no earlier than ten (10) Days after the date of such written notice ("**Permitted Termination**"). Neither Party shall owe damages to the other Party in the event of a Permitted Termination; *provided*, that neither Party shall be relieved of any payment obligations accruing under this Agreement prior to the date of such termination or that by their nature survive such termination. The Permitted Termination applies solely to Services under this Agreement and not to Bilateral Transactions under the Implementation Agreement. Bilateral Transactions under the Implementation Agreement will continue despite a Permitted Termination of Services, unless the Parties negotiate a termination or unwinding of those Bilateral Transactions pursuant to the Implementation Agreement. Upon a Permitted Termination, Energy Manager will reasonably cooperate with Customer to transition the Resources, Load, and the Services to a replacement provider of Services

ARTICLE IV **SCHEDULING**

- 4.1 Day-Ahead Requirements. Subject to Customer's election to participate in the Day-Ahead Market with respect to any Product relating to the Resources or Load or otherwise as may be required under the Governing Rules, Customer shall provide Energy Manager all bids, offers, Resource parameters, and/or other such information relevant to or required by the Governing Rules, pertaining to any Product relating to a Resource to be included for submission to SPP to satisfy all relevant data and information required for participation in the Day-Ahead Market (collectively, "**Day-Ahead Schedules**") to the extent Energy Manager does not otherwise possess such information. Such Day-Ahead Schedules shall

be provided to Energy Manager (to the extent required pursuant to the immediately preceding sentence) in those time increments, quantities, duration, and terms required by the Governing Rules, for the Resources in accordance with this Agreement and in compliance with the Governing Rules in all material respects; each component of Customer's Day-Ahead Schedules (collectively and individually) shall satisfy the requirements of the Governing Rules when provided to Energy Manager. If Energy Manager determines that Customer's Day-Ahead Schedules conflict with the requirements of the Governing Rules, Energy Manager shall promptly notify Customer by telephone or in writing and shall coordinate with Customer to modify Customer's Day-Ahead Schedules. If such Day-Ahead Schedules cannot be modified then Energy Manager shall have the right to reject Customer's Day-Ahead Schedules to the extent reasonably necessary to remedy any conflict therewith. Customer shall provide or make available to Energy Manager all Day-Ahead Schedules required to be delivered pursuant to this Section 4.1 using the format, software, and communication format and specifications, and other technical criteria mutually agreed between the Parties. Customer shall provide Energy Manager the Day-Ahead Schedules required to be delivered pursuant to this Section 4.1 at least two (2) hours prior to any applicable deadline specified under the Governing Rules; *provided, however*, nothing herein shall be construed as restricting Customer from providing updated Day-Ahead Schedules to Energy Manager at any time. In lieu of providing the Day-Ahead Schedules, Customer and Energy Manager may agree that Customer will provide Energy Manager specific procedures and operating rules to be used by Energy Manager to generate all or a portion of the Day-Ahead Schedules.

- 4.2 Day-Ahead Reliability Unit Commitment Process Requirements. Customer shall provide Energy Manager all offers, Resource parameters, and/or other such information relevant to or required by the Governing Rules, pertaining to any Product relating to a Resource to be included for submission to SPP (or to update existing information with SPP) to satisfy all relevant data and information required for participation in any applicable Day-Ahead Reliability Unit Commitment Process ("***DA RUC Process***") and/or to satisfy the obligation to submit, update, and/or maintain data and information to SPP for the DA RUC Process (collectively, "***Day-Ahead Reliability Unit Commitment Schedules***" or "***DA RUC Schedules***"). Such DA RUC Schedules shall be provided to Energy Manager (to the extent required pursuant to the immediately preceding sentence) in those time increments, quantities, duration, and terms required by the Governing Rules in all material respects, for a Resource, in accordance with this Agreement and in compliance with the Governing Rules in all material respects; each component of Customer's DA RUC Schedules (collectively and individually) shall satisfy the requirements of the Governing Rules when provided to Energy Manager. If Energy Manager determines that Customer's DA RUC Schedules conflict with the requirements of the Governing Rules, Energy Manager shall promptly notify Customer by telephone or in writing and shall coordinate with Customer to modify Customer's DA RUC Schedules. If such DA RUC Schedules cannot be modified, then Energy Manager shall have the right to reject Customer's DA RUC Schedules to the extent reasonably necessary to remedy any conflict therewith. Customer shall provide or make available to Energy Manager all DA RUC Schedules required to be delivered pursuant to this Section 4.2 using the format, software and communication format and specifications, and other technical criteria mutually agreed between the Parties.

Customer shall provide Energy Manager the DA RUC Schedules required to be delivered pursuant to this Section 4.2 at least one (1) hour prior to the earlier of (i) any applicable deadline specified by the Governing Rules or (ii) any deadline directed by Customer pertaining to a specific Transaction. Nothing herein shall be construed as restricting Customer from providing updated DA RUC Schedules to Energy Manager at any time, and Energy Manager shall implement such Schedules as soon as reasonably practicable. In lieu of providing the DA RUC Schedules, Customer and Energy Manager may agree that Customer will provide Energy Manager specific procedures and operating rules to be used by Energy Manager to generate all or a portion of the DA RUC Schedules.

- 4.3 Real-Time Balancing Market Requirements. Customer shall provide Energy Manager all offers, Resource parameters, and/or other such information relevant to or required by the Governing Rules, pertaining to any Product relating to a Resource to be included for submission to SPP (or to update existing information with SPP) to satisfy all relevant data and information required for participation in any applicable Real-Time Balancing Market or service and/or to satisfy the obligation to submit, update, and/or maintain data and information to SPP for the Real-Time Balancing Market (collectively, “***Real-Time Balancing Market Schedules***” or “***RTBM Schedules***”). Such RTBM Schedules shall be provided to Energy Manager (to the extent required pursuant to the immediately preceding sentence) in those time increments, quantities, duration, and terms required by the Governing Rules in all material respects, for a Resource or Load, in accordance with this Agreement and in compliance with the Governing Rules in all material respects; each component of Customer’s RTBM Schedules (collectively and individually) shall satisfy the requirements of the Governing Rules when provided to Energy Manager. If Energy Manager determines that Customer’s RTBM Schedules conflict with the requirements of the Governing Rules, Energy Manager shall promptly notify Customer by telephone or in writing and shall coordinate with Customer to modify Customer’s RTBM Schedules. If such RTBM Schedules cannot be modified, then Energy Manager shall have the right to reject Customer’s RTBM Schedules to the extent reasonably necessary to remedy any conflict therewith. Customer shall provide or make available to Energy Manager all RTBM Schedules required to be delivered pursuant to this Section 4.3 using the format, software and communication format and specifications, and other technical criteria mutually agreed between the Parties. Customer shall provide Energy Manager the RTBM Schedules required to be delivered pursuant to this Section 4.3 at least one (1) hour prior to the earlier of (i) any applicable deadline specified by the Governing Rules or (ii) any deadline directed by Customer pertaining to a specific Transaction. Nothing herein shall be construed as restricting Customer from providing updated RTBM Schedules to Energy Manager at any time, and Energy Manager shall implement such Schedules as soon as reasonably practicable. In lieu of providing the RTBM Schedules, Customer and Energy Manager may agree that Customer will provide Energy Manager specific procedures and operating rules to be used by Energy Manager to generate all or a portion of the RTBM Schedules.
- 4.4 Schedule Changes. Subject to Sections 4.1, 4.2, and 4.3, herein, Customer may change information provided to Energy Manager as part of its schedules as allowable under the Governing Rules. Energy Manager will implement any such change as soon as reasonably

practicable. Notices shall be made to Energy Manager by telephone and followed up by written communication via email or through other mutually agreed electronic communication. In the event that any schedule or schedule change provided to Energy Manager differs from a prior schedule for the same time period, such subsequent schedule shall supersede the prior schedule, and Energy Manager will rely upon and implement the most recent schedule when submitting such to SPP for Customer and any Pass Through Amounts arising from or attributable to such a schedule change shall be Customer's responsibility.

4.5 Scheduling Validation. Energy Manager will schedule Customer's Product obligations (including each of Customer's Transactions which require scheduling with SPP) for Customer pursuant to Customer's schedules provided to Energy Manager pursuant to Sections 4.1, 4.2, and 4.3 of the General Terms and Conditions; *provided, however*, if Customer's schedules cannot be submitted to SPP because Energy Manager determines that they fail to meet the validation requirements of SPP, Energy Manager shall promptly notify Customer and shall coordinate with Customer to modify Customer's schedules. If such schedules cannot be modified, then Energy Manager may rescind any component of Customer's schedules to the extent such schedules fail to meet any validation requirement of SPP. In addition, Energy Manager shall not be required to employ extraordinary means or to incur hardship or loss to schedule a modified Transaction for Customer.

4.6 Incorrect or Incomplete Data. Data provided by Customer to Energy Manager for any submission to SPP shall be complete and correct in all material respects to enable a timely submission acceptable to SPP and in compliance with the Governing Rules in all material respects. In the event Energy Manager determines that such information provided by Customer to Energy Manager relating to the scheduling of or offer to provide any quantity of Product(s) by Energy Manager for Customer becomes incorrect or is incomplete or is not anticipated to meet the compliance requirements of the Governing Rules applicable to the Resource or Load and Customer's Market Participant representing the Resources or Load, Energy Manager shall promptly notify Customer and provide Customer an opportunity to correct or complete such data. Except in the case of Energy Manager's fraud, gross negligence or willful misconduct, Customer agrees to reimburse Energy Manager for any Replacement Product costs, Pass Through Amounts, or other costs incurred by Energy Manager in accordance with this Agreement resulting from submissions to SPP based upon such incorrect or incomplete Customer data.

ARTICLE V

RESOURCE INFORMATION

5.1 Customer's Resource(s). Customer shall provide, or cause to be provided, to Energy Manager all SPP registration and network modeling information applicable to a Resource as soon as reasonably practicable after the Effective Date, or at such time that an additional Resource is requested to be added to Exhibit A (as applicable). Customer shall provide to Energy Manager the Resource parameters, telemetry information, and Delivery Point(s) applicable to the Resource as may be required by the Governing Rules, along with any other information about the Resource Customer reasonably believes would be helpful for

Energy Manager to know or that Energy Manager reasonably requests in connection with the Services provided under this Agreement. Energy Manager may rely on the most recent information Customer has supplied to Energy Manager. Energy Manager will provide assistance to Customer to identify required information and shall provide typical data values where available to Energy Manager. Resources may only be added or removed from this Agreement through a written amendment of this Agreement executed by the Parties.

- 5.2 Outage Scheduling Services. Energy Manager shall provide “**Outage Scheduling Services**” to Customer, which shall consist of submitting to SPP, in such electronic data transmission format as is authorized by SPP for the provision of the Resource outage information, all information furnished to Energy Manager by Customer, and providing to Customer all electronic data received from SPP, concerning outages at or pertaining to a Resource, including planned outages, scheduled maintenance outages, or emergency maintenance outages. When a Resource experiences or projects a planned outage, forced outage, event of Force Majeure or any other event or condition affecting the operation of the Resource, Customer shall notify Energy Manager as soon as practicable after Customer becomes aware of such an event, and provide all necessary and available information concerning the associated reduction in, or limitation of, the operating capability or output of Products from the Resource, and any other anticipated effects of the event which may affect the performance of the Resource. Energy Manager shall transmit Resource outage data to SPP concerning any Outage Event (planned, unplanned, or maintenance) within the time periods specified under the SPP Rules, provided that Customer has furnished such data to Energy Manager in sufficient time to permit Energy Manager to comply with applicable timing requirements of the SPP Rules.

ARTICLE VI

EQUIPMENT AND DATA TRANSMISSION

- 6.1 Market Information System Equipment. The Parties agree and understand that Energy Manager will provide an Energy Manager-owned and managed, contracted, or licensed telecommunications solution (“**Telecommunications Package**”) and will remotely support Customer in the installation of such Telecommunications Package on Customer’s premises intended to satisfy the requirement herein for telecommunication circuits to Energy Manager’s primary and backup locations. Energy Manager will pass through to Customer the actual, direct Third Party monthly communications service cost for interfacing with the Telecommunications Package as a Pass Through Amount under this Agreement. Customer may provide Energy Manager with a high speed Internet connection at the location of the Telecommunications Package in which case Energy Manager can provide Customer with an additional communications path using a Virtual Private Network (“**VPN**”) connection over the Internet, at no additional cost to Customer. If Customer desires to use a communications method or equipment other than the Telecommunications Package in order to communicate Customer’s Real-Time operational data and scheduling information timely to Energy Manager, (i) Customer must use commercially reasonable efforts to install and maintain, at Customer’s sole expense, the equipment and software at the Customer’s site, and the telecommunication circuits to Energy Manager’s primary and backup

locations, necessary for all required voice and data communications with SPP; and (ii) subject to prior Energy Manager approval, Customer may request that Energy Manager arrange and remit payment for such telecommunication equipment and service, including but not limited to telecommunication circuits, and Energy Manager shall invoice Customer for any such amounts. Customer must provide or make available to Energy Manager all telemetry and status signals specified in the Governing Rules, and install and/or maintain, at Customer's sole expense, any other communication equipment necessary to deliver required Real-Time data to Energy Manager, using the communication protocol known in the industry as "DNP 3.0" unless the Parties mutually agree to use an alternate communication protocol.

- 6.2 Real-Time Data Transmission. The Parties agree that Energy Manager shall send telemetered data directly to SPP. Customer will use commercially reasonable efforts to continually transmit operational Resource and Load data to Energy Manager on a Real-Time basis as required by the Governing Rules.
- 6.3 Communication Cost. Customer shall provide Energy Manager with access to all SPP systems available to Customer which Energy Manager specifies in writing as being necessary to provide Services or required by the Governing Rules. Customer shall reimburse Energy Manager for all additional reasonable Third Party costs or expenses incurred by Energy Manager for equipment or facilities located at Customer's site and/or directly related to providing communications to a Resource or Load, or to adjust for changes in (i) communication technology, (ii) SPP or NERC communication criteria or standards, or (iii) communication technology implemented by Customer during the Term to the extent Energy Manager's provision of additional equipment or facilities has been authorized by Customer. Prior to incurring any such Third Party costs subject to reimbursement by Customer, Energy Manager shall provide Customer with an estimate of and an explanation of the need for such costs and obtain Customer's written approval for such costs, which shall not be unreasonably withheld. For such communication costs, Energy Manager will invoice Customer and provide Customer with supporting details from Energy Manager's invoices from Third Party communications providers or vendors. Included in communications costs reimbursable by Customer are any applicable incremental SPP WAN costs attributable to Customer which are specified by supporting cost documentation from SPP.

ARTICLE VII

SPP SETTLEMENTS AND RECONCILIATION

- 7.1 SPP Settlements. Customer shall be responsible for directly remitting and receiving settlement statements and payments with SPP for all activities involving Customer's Market Participant account related to the Resources and Load. Energy Manager shall not be responsible to Customer for errors in meter data supplied by or to SPP, if applicable, for use in settlement calculations.
- 7.2 Reconciliation. Energy Manager will reconcile SPP statements and Pass Through Amounts as provided in Section 3(a) of the Base Agreement.

ARTICLE VIII
TAXES

- 8.1 Taxes. As between the Parties, Customer will pay or cause to be paid all taxes imposed by any Governmental Authority on, or with respect to, any Product, Transaction, Customer's Market Participant, the Resources, or Load; *provided, however*, for the avoidance of doubt, each Party's responsibility for taxes with respect to Bilateral Transactions shall be governed by the Implementation Agreement.

Each Party agrees to provide a state sales tax exemption certificate upon the other Party's request. The Party failing to provide a sales tax exemption form shall be liable for any state sales tax it is assessed on Transactions.

Each Party agrees to indemnify the other Party for any taxes, penalties, late fees, or other charges assessed to the indemnitee by a Governmental Authority for uncollected and owed taxes associated with this Agreement which were the obligation of the indemnitor and which the indemnitor did not properly remit. This Section 8 shall survive the expiration or earlier termination of this Agreement and shall stay in full force and effect for five (5) years following the expiration or earlier termination of this Agreement.

ARTICLE IX
INDEMNITIES, LIABILITIES, AND WARRANTY DISCLAIMER

- 9.1 INDEMNITIES. SUBJECT TO THE LIABILITY LIMITATIONS SET FORTH IN SECTION 9.2 BELOW, AND TO THE EXTENT PERMITTED BY THE APPLICABLE GOVERNING LAW (AS PROVIDED BY SECTION 16.3 OF THE GENERAL TERMS AND CONDITIONS), EACH PARTY UNDERSTANDS AND AGREES THAT IT SHALL DEFEND, RELEASE, INDEMNIFY, AND HOLD THE OTHER PARTY HARMLESS FROM (I) ALL THIRD PARTY LIABILITIES, COSTS, CLAIMS, LOSSES, OR CAUSES OF ACTION ARISING FROM PERSONAL INJURY, PROPERTY LOSS, PROPERTY DAMAGE, OR DEATH, HOWEVER CAUSED, AND RELATED TO ANY EVENT, CIRCUMSTANCE, ACT OR INCIDENT FIRST OCCURRING OR EXISTING DURING THE PERIOD OF TIME WHEN CONTROL AND TITLE TO ANY PRODUCT IS VESTED IN SUCH INDEMNIFYING PARTY, OR (II) ANY OTHER THIRD PARTY LIABILITIES, COSTS, CLAIMS, LOSSES, OR CAUSES OF ACTION, TO THE EXTENT CAUSED BY SUCH INDEMNIFYING PARTY'S WILLFUL MISCONDUCT OR GROSS NEGLIGENCE.

- 9.2 LIMITATION OF LIABILITY. EXCEPT FOR INDEMNITIES PROVIDED IN SECTION 9.1 HEREOF, THE LIABILITY OF EACH PARTY TO THE OTHER PARTY FOR ANY CLAIM OR CAUSE OF ACTION RELATED TO THIS AGREEMENT SHALL BE LIMITED TO DIRECT, ACTUAL DAMAGES ONLY AND ALL OTHER DAMAGES ARE WAIVED. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY CONSEQUENTIAL, INDIRECT, PUNITIVE, LOST PROFIT, LOST OPPORTUNITY, BUSINESS INTERRUPTION, OR EXEMPLARY DAMAGES FOR ANY CLAIM OR CAUSE OF ACTION RELATED TO THIS

AGREEMENT WHETHER ARISING FROM BREACH OF CONTRACT OR WARRANTY, INDEMNITY, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), STATUTE, OR OTHERWISE. MOREOVER, NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, EXCLUDING ANY LIABILITY FOR PAYMENTS OR CREDITS DUE TO CUSTOMER UNDER THE BASE AGREEMENT, UNLESS CLAIMS OR OBLIGATIONS ARE CAUSED BY ENERGY MANAGER'S WILLFUL MISCONDUCT OR GROSS NEGLIGENCE, FOR EACH MONTH OF SERVICE, THE LIABILITY OF ENERGY MANAGER TO CUSTOMER FOR ANY OBLIGATIONS OR CLAIMS UNDER THIS AGREEMENT (INCLUDING INDEMNITIES) SHALL BE LIMITED TO A MAXIMUM OF THE SERVICE FEES RECEIVED BY ENERGY MANAGER FROM CUSTOMER FOR THE MONTH IN WHICH THE EVENT GIVING RISE TO THE CLAIM OCCURRED. FOR THE AVOIDANCE OF DOUBT, OTHER THAN WITH RESPECT TO ENERGY MANAGER'S PAYMENT OBLIGATIONS EXPRESSLY EXCLUDED FROM THE LIMITATION OF LIABILITY ABOVE, ENERGY MANAGER WILL NOT BE OBLIGATED TO PAY OUT IN THE AGGREGATE FOR DAMAGE CLAIMS IN ANY MONTH MORE THAN THE SERVICE FEES ENERGY MANAGER HAS RECEIVED FROM CUSTOMER FOR SUCH MONTH.

- 9.3 WARRANTY DISCLAIMER. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THIS AGREEMENT, THE SERVICES ARE PROVIDED ON AN "AS IS" BASIS, AND CUSTOMER'S USE OF THE SERVICES IS AT ITS OWN RISK. ENERGY MANAGER DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY AND ALL OTHER EXPRESS OR IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND TITLE, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE. ENERGY MANAGER DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED, ERROR-FREE, OR COMPLETELY SECURE, OR THAT THE PROVISION OF SERVICES WILL ALWAYS BE EXECUTED WITHOUT HUMAN ERRORS OR OMISSIONS.
- 9.4 ADDITIONAL INDEMNITIES. AN INDEMNIFYING PARTY'S INDEMNITY OBLIGATIONS AND ANY WAIVERS AND RELEASES OF CLAIMS IN THIS AGREEMENT WILL EXTEND TO THE INDEMNIFIED PARTY, ITS AFFILIATED COMPANIES, INCLUDING ANY ENTITY CONTROLLING, UNDER THE CONTROL OF, OR UNDER COMMON CONTROL WITH SUCH PARTY, AND TO THE RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, OWNERS, SHAREHOLDERS AND INSURERS OF EACH THEREOF.
- 9.5 Survival. The provisions of this Article IX shall survive the expiration or earlier termination of this Agreement for a period of three (3) years.

ARTICLE X
NOTICES

- 10.1 Notices. Unless otherwise provided in this Agreement, any notices given under this Agreement must be in writing and personally delivered or sent by mail or email, to such Persons or locations designated on Exhibit B and shall be deemed given and effective when delivered by hand or upon:
- (a) three (3) Business Days after such notice is deposited in the United States mail with postage prepaid for transmittal by registered or certified mail, return receipt requested;
 - (b) one (1) Business Day after such notice is placed in the hands of a recognized commercial mail or courier service for overnight delivery; or
 - (c) the Business Day on the date such notice was sent by mail or email with confirmation of receipt of such mail or email by confirmed mail or email transmission, provided that such receipt occurred during Business Hours of such Business Day. For mail or email transmissions received after such Business Hours of such Business Day at the receiving location, notice will be deemed effective upon the opening of Business Hours of the next Business Day.

For the avoidance of doubt, either Party may update its notice information contained in Exhibit B at any time without the need for a formal amendment by sending written notice to the other Party in accordance with this Section 10.1.

ARTICLE XI
BILLING; PAYMENT; CREDIT

- 11.1 Invoices. For the convenience of the Parties, and to allow for netting of payment obligations pursuant to Section 11.4 of the General Terms and Conditions, for so long as there are any Transactions outstanding under the Implementation Agreement, the Parties agree to invoice net amounts due under this Agreement and the Implementation Agreement in a single Monthly invoice as provided herein. All Services hereunder and Transactions hereunder or under the Implementation Agreement shall be accounted for consistent with the settlement procedures set by the Governing Rules. The accounting period for the Services, Transactions, and settlements hereunder shall be one (1) Month. Energy Manager's Monthly invoices will detail the Services and quantity of Products scheduled and settled for Customer under this Agreement and under the Implementation Agreement during the applicable billing Month together with any adjustments for prior Months' Services or Transactions to account for revised settlement billing statements received from Third Parties and from SPP, and any applicable Pass Through Amounts. In the event an SPP statement conflicts with Customer's records, the SPP statement shall govern subject to any dispute Customer timely raises with Energy Manager for submission to SPP regarding such statement; *provided however* that submission of a dispute shall not relieve a Party of its payment obligation until such dispute is resolved and to the extent adjustments

are made to amounts owed. Energy Manager's invoice will show the amount that each Party owes (or is owed) pursuant to this Agreement and pursuant to the Implementation Agreement.

- 11.2 Payment Date. All payments to either Party, as set forth in the Energy Manager invoices, shall be made by ACH or wire transfer on or before the Due Date.
- 11.3 Late Payment. Amounts owed but not paid on or before the Due Date shall be payable with interest at the Interest Rate calculated daily from the Due Date until payment is received.
- 11.4 Offset. In the event that Customer and Energy Manager are each required to pay an amount to the other in the same Month pursuant to this Agreement and/or the Implementation Agreement, then such amounts shall be aggregated and the Parties shall discharge their obligations to pay through offset. In such an offset, the Party owing the greater aggregate amount shall pay to the other Party the net difference between the amounts owed. The Parties agree that this Agreement constitutes a master netting agreement for purposes of offsetting such payments under this Agreement.
- 11.5 Billing Disputes. In the event Customer, in good faith, disputes any Energy Manager invoice, Customer shall provide Energy Manager with written notice of the disputed amounts, together with a statement describing the particulars of the dispute, including the calculations with respect to any errors or inaccuracies, and any such amounts (other than Pass Through Amounts) so disputed shall not be required to be paid until resolution of the dispute. Energy Manager agrees to work diligently with Customer to clarify and/or correct any error or suspected errors on the invoices before the Due Date. Except to the extent that Energy Manager agrees that any Pass Through Amount is not due, the Party owing any amount shall pay all Pass Through Amounts assessed pursuant to Section 5(d) of the Base Agreement, even if disputed, set forth in the Energy Manager invoice on or before the Due Date. If it is subsequently determined that Customer has overpaid or underpaid amounts actually due, the Parties will make any necessary adjustments within ten (10) Days after determination of any overpayment or underpayment. Subject to Section 11.3 of the General Terms and Conditions, the Party in receipt of any overpayments shall refund such overpayments with interest accrued at the Interest Rate from the date payment was received. The obligations under this Section 11.5 shall survive the expiration or earlier termination of this Agreement.
- 11.6 Credit Terms.
- (a) Credit Support and Limits. The obligation of each Party (as "Secured Party") to provide or receive Services hereunder is conditioned upon compliance by the other Party (as "Pledgor") with Secured Party's credit policies and requirements. If a Pledgor experiences a Material Adverse Change in creditworthiness, as determined by the Secured Party using commercially reasonable standards of measuring creditworthiness, then such Secured Party may request that the Pledgor provide Credit Support in an amount sufficient to cover such Secured Party's Credit

Exposure. A failure by Pledgor to provide Credit Support pursuant to this Section 11.6(a) within two (2) Business Days of receiving a request hereunder will be an Event of Default pursuant to Section 12.1(a) of the General Terms and Conditions.

- (b) Grant of Security Interest/Remedies. To secure its obligations under this Agreement and to the extent either or both Parties deliver Credit Support hereunder, Pledgor hereby grants to the Secured Party a present and continuing security interest in, and lien on (and right of setoff against), and assignment of, all cash collateral and cash equivalent collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, such Secured Party, and each Party agrees to take such action as the other Party reasonably requires in order to perfect the Secured Party's first-priority security interest in, and lien on (and right of setoff against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof. Upon or any time after the occurrence or deemed occurrence and during the continuation of an Event of Default, the Non-Defaulting Party may do any one or more of the following: (i) exercise any of the rights and remedies of a Secured Party with respect to all Credit Support, including any such rights and remedies under law then in effect; (ii) draw on any outstanding letter of credit issued for its benefit; and (iii) liquidate all Credit Support then held by or for the benefit of the Secured Party free from any claim or right of any nature whatsoever of the Defaulting Party, including any equity or right of purchase redemption by the Defaulting Party. The Secured Party shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce the Pledgor's obligations under this Agreement (the Pledgor remaining liable for any remaining amounts owing to the Secured Party after such application, if any), subject to the Secured Party's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

11.7 Maintenance of Records; Audit.

- (a) Energy Manager and Customer shall each maintain in accordance with Prudent Industry Practice complete, accurate and up-to-date supporting records that are pertinent to the Services and payment obligations hereunder, including all Pass Through Amounts. Energy Manager shall ensure that such supporting books and records are distinguishable from Energy Manager's other activities not associated with a Resource or Load. The Parties shall each retain such books and records for a minimum of four (4) years after the Term, or if longer, the relevant period required by Applicable Law or Governing Rules.
- (b) Each Party has the right, at its sole expense and during Business Hours and upon reasonable written notice to the other Party, to examine the records of the other Party or its own records as necessary to verify the accuracy of any invoice, charge, or computation made pursuant to this Agreement. If any such examination reveals any inaccuracy in any invoice, the necessary adjustments in such invoice and the payments thereof shall be promptly made together with interest at the Interest Rate, if applicable, from the original date of payment; *provided*, that no adjustment for

any invoice or payment shall be made unless objection to the accuracy thereof was made prior to the lapse of two (2) years from the date that the disputed invoice was delivered; and, *provided further*, that no adjustment shall be made to invoices or summaries related to SPP settlement statements that SPP has deemed final under the Governing Rules. Notwithstanding anything in this Agreement or the Implementation Agreement to the contrary, adjustments to any invoice may be made up to four (4) years from the date that the particular Transactions were completed to adjust for (i) corrections made by SPP to prior SPP statements and/or (ii) tax claims. This paragraph of this Agreement shall survive the expiration or earlier termination of this Agreement for a period of four (4) years from the date of such expiration or earlier termination of this Agreement for the purpose of the right to examine records and such invoice and payment objections and corrections. [For so long as the Parties mutually agree that invoicing and payment of amounts owed under the Implementation Agreement are subject to the net invoicing and payment terms of this Agreement, then in the event of any direct conflict between the terms of this Article and the terms of the Implementation Agreement, the terms of this Article shall control.

11.8 Reserved.

11.9 Statements Received After Termination of this Agreement. After the expiration or earlier termination of this Agreement, if Energy Manager receives any statements from Third Parties, whether adjustments or revisions, attributable to Transactions or Services under this Agreement, Energy Manager will invoice Customer accordingly. Energy Manager will continue to send Monthly invoices to Customer reflecting any revisions, corrections, or adjustments to prior Months' statements from Third Parties until Energy Manager has transmitted invoices which reflect corrections for any Month made by any Third Party, applicable to Customer for such Month. For each invoice provided to Customer after the expiration or earlier termination of this Agreement, Customer shall pay Energy Manager any amounts owed, and Energy Manager shall pay Customer any amounts owed, as the case may be, by the Due Date. This Section 11.9 shall survive the expiration or earlier termination of this Agreement until accounting and billing for all Transactions and Services for all Months of Service under this Agreement is complete, invoices have been issued to Customer, and payments between the Parties have been resolved.

ARTICLE XII

DEFAULTS AND REMEDIES

12.1 Events of Default. A Party shall be deemed in default under this Agreement upon the occurrence of any one or more of the following events (each an "***Event of Default***"):

- (a) the failure by a Party to make a timely payment of any amounts due or provide required Credit Support to the other Party under this Agreement;

- (b) the failure of a Party to perform its obligations under this Agreement, which failure causes SPP to suspend or disqualify a Resource, Load, or the Market Participant from market participation;
- (c) the breach of any representation or warranty of such Party that results in a material adverse impact on the other Party, or the failure by such Party to materially perform any other provision of this Agreement, which failure is not excused by the terms of this Agreement;
- (d) the appointment (voluntary or involuntary) of a receiver or liquidator or trustee of such Party or of any of the property of such Party by order of a court of competent jurisdiction;
- (e) the filing of a petition or consent seeking relief or assisting in seeking relief in a proceeding under any of the provisions of federal or state bankruptcy or insolvency laws, as any such laws now exist or as those laws may be amended, or the filing of an answer admitting the material allegations of a petition filed against it in such proceeding; the general assignment by a Party for the benefit of its creditors; or the admission by such Party in writing of its inability to pay its debts generally as they become due;
- (f) the occurrence of either (i) an “Event of Default” with respect to such Party, or (ii) if applicable, a “Termination Event” where such Party is a single “Affected Party”, and as a result thereof the other Party hereto designates an “Early Termination Date” pursuant to the Implementation Agreement, in each case as such terms are defined in the Implementation Agreement; and/or
- (g) the commission of a fraudulent act or omission by a Party in the performance of its obligations hereunder.

12.2 Rights of Non-Defaulting Party. If an Event of Default occurs and is continuing with respect to a Party (the “***Defaulting Party***”), the Party not subject to the Event of Default (the “***Non-Defaulting Party***”) shall have the right to take any one or more of the following actions:

- (a) upon the occurrence of an Event of Default as specified in Sections 12.1(a), 12.1(b), 12.1(d), 12.1(e), 12.1(f), or 12.1(g), to suspend performance immediately and without notice;
- (b) upon the occurrence of an Event of Default as specified in Section 12.1(c), upon three (3) Business Days’ notice, to suspend performance of any obligation which, if performance continued, would expose the Non-Defaulting Party to material risks or material unrecovered costs;
- (c) upon the occurrence of an Event of Default as specified under Sections 12.1(a), 12.1(b), or 12.1(g), to terminate this Agreement by giving the Defaulting Party written notice setting forth a description of the Event of Default and designating a

termination date, provided that the Defaulting Party shall have three (3) Business Days after the date of such notice in which to cure the Event of Default;

- (d) upon the occurrence of an Event of Default as specified under Section 12.1(c), to terminate this Agreement by giving the Defaulting Party written notice setting forth a description of the Event of Default and designating a termination date, provided that the Defaulting Party shall have fifteen (15) Days after the date of such notice in which to cure the Event of Default;
- (e) upon the occurrence of an Event of Default as specified in Sections 12.1(d), 12.1(e), or 12.1(f), to terminate this Agreement immediately and without notice;
- (f) to pursue collection of direct, actual damages and seek any other remedy at law or in equity (except to the extent limited by, or waived under, this Agreement);
- (g) to pursue collection of reasonable attorney's fees and costs if any action is brought to enforce any term or provision of this Agreement or collect amounts due (whether at the trial court level or any appeal there from); and/or
- (h) to pursue any other remedy provided under this Agreement.

12.3 Acceleration of Amounts Due. If a termination of this Agreement occurs pursuant to this Article XII, the Non-Defaulting Party may accelerate all amounts owing between the Parties, offset amounts owed by the Defaulting Party against amounts due the Defaulting Party and against any Credit Support held between the Parties, and liquidate and terminate all Services, Transactions and/or scheduled quantities of Products where commercially reasonable to do so. To the extent applicable, where scheduled Transactions or scheduled quantities cannot be liquidated or terminated in a commercially reasonable manner, or may not be liquidated and terminated without causing a breach of any contract with a Third Party under which such scheduled Transactions or scheduled quantities have been committed, then this Agreement will continue in force as to those scheduled Transactions and scheduled quantities for the duration of the contractual commitment to Third Parties.

ARTICLE XIII **FORCE MAJEURE**

13.1 Force Majeure. Subject to Section 13.2 of the General Terms and Conditions, neither Party shall be considered to be in default in the performance of any obligations under this Agreement (other than the obligation to make a payment of amounts owed) to the extent and for the duration that such failure of performance results from Force Majeure. The term “**Force Majeure**” means causes that are beyond the reasonable control of the Party affected that, by exercise of due diligence, such Party could not reasonably have been expected to avoid and that, by exercise of due diligence, it has been unable to overcome and not the result of the fault or negligence of such Party including, but not limited to: flood, earthquake, tornado, hurricane, storm, or fire; acts of terrorism; civil disobedience, strikes, or other labor dispute; labor or material shortage; sabotage; pandemic, epidemic or other

public health emergency; restraint, order, rule, or regulation of any court, governmental body, or public authority, including SPP (whether valid or invalid); material equipment malfunction or failure not caused by the act or omission of the Party claiming Force Majeure (including computer hardware or software malfunction) and not reasonably susceptible to cure by the exercise of diligent efforts by the Party claiming Force Majeure.

- 13.2 Due Diligence. No Party, however, shall be relieved of liability for failure of performance hereunder based on Force Majeure if such failure is due to causes arising out of its own negligence or due to removable or remediable causes that it fails to remove or remedy within a reasonable time period. A Party claiming Force Majeure must exercise due diligence to overcome the Force Majeure event. Either Party rendered unable to fulfill any of its obligations under this Agreement by reason of Force Majeure shall give prompt written notice of such fact to the other Party and shall exercise due diligence to remove such inability with all reasonable dispatch.
- 13.3 Obligations During Force Majeure. Notwithstanding any other provisions as stated in this Article XIII, an event of Force Majeure does not relieve a Party of any of its obligations under the Governing Rules and this Agreement that the Party can reasonably perform during a Force Majeure event, and does not excuse a Party of its obligations to make payments for obligations arising prior to the Force Majeure event, or of any payment obligations for non-performance arising pursuant to the Governing Rules and this Agreement.
- 13.4 Bilateral Transactions. For the avoidance of doubt, this Article XIII shall not apply to Bilateral Transactions governed by the Implementation Agreement, and any applicable force majeure provisions contained in the Implementation Agreement shall apply to such Bilateral Transactions.

ARTICLE XIV **CONFIDENTIALITY**

- 14.1 Confidentiality.
- (a) Subject to the remaining provisions of this Section 14.1, each Party agrees, for itself, its Affiliates, and its Representatives, to keep confidential this Agreement, all negotiations concerning this Agreement, and all other information furnished by either Party related to schedules, Services, credit and financial obligations, Customer's Transactions, or other Transactions under this Agreement ("***Confidential Information***"); *provided, however*, such confidentiality obligation shall expire three (3) years immediately following the expiration or earlier termination of this Agreement.
- (b) The receiving Party, its Affiliates, and its Representatives shall not disclose any Confidential Information to any Third Party without the prior written consent of the disclosing Party unless requested or required by a Governmental Authority or self-regulatory organization or as permitted in accordance hereof, except that a

Party may disclose Confidential Information to any Affiliate, Representative, current or future financing sources, insurer, auditor, or potential purchaser of or investor in a Party and its parent or Affiliates (and its and their Representatives who need to know such information) who agree to keep such Confidential Information confidential on terms no less restrictive, as a whole, than those set forth in this Section 14.1, without such prior written consent. Except with regard to disclosures permitted by this Section 14.1, the disclosing Party shall require such Third Party to agree to treat the Confidential Information in accordance with this Agreement. Each Party shall be responsible for the compliance by its Affiliates and Representatives with this Section 14.1 of the General Terms and Conditions.

- (c) In the event any Party is requested or required to disclose such Confidential Information by law or by a court, agency, or other governing body having or purporting to have jurisdiction over the Party, to the extent permitted by law such Party shall notify the other Party prior to any disclosure so as to allow the other Party to resist such disclosure before the governing body and/or to seek appropriate protection from further disclosure.
- (d) The Parties agree that disclosure of Confidential Information in breach of the confidentiality provisions of this Agreement constitutes an irreparable injury and that injunctive relief is an appropriate remedy to prevent the unwarranted disclosure of any Confidential Information.
- (e) The confidentiality provisions of this Agreement shall not apply to any Confidential Information (i) the receiving Party developed independently without using the Confidential Information, (ii) that was in the public domain at the time of disclosure hereunder, (iii) that passes into the public domain by acts other than the acts of or caused by the Party receiving said Confidential Information, or (iv) that thereafter is disclosed to the receiving Party by a Third Party, provided that the receiving Party does not know (or has no reasonable basis to know) that the information was received or disclosed unlawfully.

ARTICLE XV
REPRESENTATIONS AND WARRANTIES

15.1 Mutual Representations and Warranties. Each Party represents and warrants to the other Party continuously throughout the Term that:

- (a) it is duly organized, validly existing, and in good standing under the laws of the jurisdiction under which it is organized and is authorized to do business in the state(s) in which it is performing or receiving Services (as applicable);
- (b) it has the full power and authority to enter into this Agreement and perform all of the specified obligations, representations, warranties, and covenants under this Agreement;

- (c) the execution, delivery, and performance of this Agreement have been duly authorized by all requisite action of its governing body, and the Person signing this Agreement on its behalf was duly authorized to execute and deliver this Agreement on its behalf;
 - (d) it has obtained, or shall obtain prior to the Commencement Date, all required licenses, registrations, certifications, Permits, and other authorizations; and has taken, or shall take prior to the Commencement Date, all actions required by Applicable Laws, the Governing Rules or governmental regulations with the exception of licenses, registrations, certifications, Permits, or other authorizations that do not materially affect performance under this Agreement;
 - (e) it is not in violation of any contracts, laws, ordinances, or governmental rules, regulations, or orders of any Governmental Authority or arbitration board materially affecting performance of this Agreement and to which it is subject;
 - (f) it is not bankrupt, does not contemplate becoming bankrupt nor, to its knowledge, will become bankrupt;
 - (g) it is solely responsible for keeping itself informed of and understanding its respective responsibilities under the Governing Rules and any laws, rules, regulations, and tariffs approved by any Governmental Authority with jurisdiction over the matters specified herein; and
 - (h) it is not registered as a commodity trading advisor under the U.S. Commodity Exchange Act and is not holding itself out as in the business of advising others as to the value or advisability of trading swaps, options, futures or cash settled forwards or any other commodity transaction. Any oral or written communications by Energy Manager with respect to this Agreement are not intended to be commodity trading advice.
- 15.2 Additional Customer Representations and Warranties. Customer represents and warrants that Customer will work in good faith with Energy Manager to make, prior to the Commencement Date, all required registrations with, and receive all required certifications and approvals from, SPP to perform this Agreement.
- 15.3 Additional Energy Manager Representations and Warranties. Energy Manager represents and warrants that Energy Manager has made or will make prior to the Commencement Date all required registrations with, and received all other required certifications and approvals from, SPP to perform this Agreement.

ARTICLE XVI
MISCELLANEOUS

- 16.1 Disclaimer. This Agreement shall not constitute, create, or otherwise recognize the existence of a joint venture, association, partnership, or other formal business entity of any

kind among the Parties, and the rights and obligations of the Parties with respect to this Agreement shall be limited to those set forth in this Agreement.

- 16.2 Assignment. Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent may not be unreasonably withheld, conditioned or delayed; *provided, however*, either Party may, without the consent of the other Party (and without relieving itself from liability hereunder), (i) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements, (ii) transfer or assign this Agreement to an Affiliate of such Party so long as such Affiliate's creditworthiness as of the date of such proposed transfer or assignment is equal to or higher than that of such Party or the Guarantor, if any, for such Party, or the obligations of such Affiliate are guaranteed by such Party or its Guarantor, if any, in accordance with a guaranty agreement in form and substance satisfactory to the other Party, or (iii) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets of such Party whose creditworthiness is equal to or higher than that of such Party or its Guarantor, if any; *provided, however*, that in each such case, any such assignee shall agree in writing to be bound by the terms and conditions hereof and so long as the transferring Party delivers such tax and enforceability assurance as the non-transferring Party may reasonably request and, in the case of Energy Manager, the assignee possesses all licenses and expertise necessary to perform all obligations of Energy Manager under this Agreement. Any purported assignment in contravention of this Section shall be null and void and the non-assigning Party is not obligated to recognize the purported assignment of this Agreement.
- 16.3 Governing Law, Jury Trial Waiver, Expenses. THIS AGREEMENT WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEBRASKA WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES. EACH PARTY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAWS, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY SUIT, ACTION, CLAIM OR PROCEEDING RELATING TO THIS AGREEMENT. EACH PARTY (i) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF THE OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF SUCH A SUIT, ACTION, CLAIM OR PROCEEDING, SEEK TO ENFORCE THE FOREGOING WAIVER AND (ii) ACKNOWLEDGES THAT IT AND THE OTHER PARTY HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION. IF EITHER PARTY BRINGS ANY LEGAL ACTION TO ENFORCE ITS RIGHTS UNDER THIS AGREEMENT OR SEEKS ENFORCEMENT UNDER THE TERMS OF ANY CREDIT SUPPORT PROVIDED BY THE OTHER PARTY, THE PREVAILING PARTY SHALL BE ENTITLED TO REIMBURSEMENT FROM THE OTHER PARTY OF REASONABLE ATTORNEYS' FEES AND LITIGATION COSTS AND EXPENSES, INCLUDING WITNESS FEES OF ANY KIND, IN AN AMOUNT TO BE DETERMINED BY THE APPLICABLE COURT OR BY AGREEMENT OF THE PARTIES.

- 16.4 Counterparts. This Agreement may be executed in multiple counterparts, including PDF documents exchanged by email, each one of which shall be considered an original Agreement, but all of which together shall constitute one and the same instrument.
- 16.5 Waiver. No waiver by either Party of any one or more defaults by the other in the performance of any provisions of this Agreement shall be construed as a waiver of any other default or defaults whether of a like kind or different nature. The rights and remedies of the Parties are cumulative and not alternative. Neither any failure nor any delay by any Party in exercising any right, power or privilege hereunder will operate as a waiver of such right, power or privilege, and no single or partial exercise of any such right, power or privilege will preclude any other or further exercise of such right, power or privilege or the exercise of any other right, power or privilege. Failure by a Party to enforce any of the terms, covenants, conditions or other provisions of this Agreement at any time will not in any way affect, limit, modify or waive that Party's right thereafter to enforce strict compliance with every term, covenant or condition of this Agreement, notwithstanding any course of dealing or custom of the trade.
- 16.6 Amendments. This Agreement shall not be amended without the written consent of both Parties.
- 16.7 Severability. Any provision, article, or section declared or rendered unlawful by a court of law or regulatory agency with jurisdiction over the Parties, or deemed unlawful because of a statutory change, shall not otherwise affect the other lawful obligations that arise under this Agreement. In the event any provision of this Agreement is declared invalid, the Parties shall promptly negotiate to restore this Agreement as near as possible to its original intent.
- 16.8 Entire Agreement. This Agreement contains the entire understanding and agreement between the Parties with respect to the subject matter of this Agreement and supersedes all previous communications, negotiations and agreements, whether oral or written, between the Parties with respect to such subject matter.
- 16.9 Headings. The section headings of this Agreement are for convenience of reference only, and do not form a part of this Agreement, and do not in any manner modify, interpret, or construe the intent or agreement of the Parties.
- 16.10 Recordings. Each Party consents to the recording and retention of any telephone conversations, e-mail or electronic message between the Parties ("**Recording**"), and each Party will obtain any required consents to such Recordings from such Party's affected personnel, contractors, or agents. Subject to other applicable rules of evidence, such as the rule of relevance, the contents of such Recording transmitted between the Parties concerning this Agreement may be utilized to determine the intent of the Parties in any dispute arising under this Agreement, and such telephone or electronic record will be deemed a written business record of any information, confirmation, consent, bid, authorization, instruction, notice or Transaction under this Agreement, which may be submitted in evidence in any proceeding or action related to this Agreement. Each Party

waives objection to the admission in court of such Recording based on the “Best Evidence Rule” or other legal principles. Such Recording will be the controlling evidence of the Parties’ agreement with respect to any particular information, confirmation, consent, notice, or Transaction in the event a written confirmation of that information, confirmation, consent, or other Transaction is not fully executed or accepted by both Parties. A written confirmation executed by both Parties will prevail over a Recording of a Transaction. Each Party waives any further notice of monitoring or recording and agrees to notify its officers and employees and obtain any required consent to any such monitoring or recording.

- 16.11 Imaged Agreement. Any original executed Agreement, confirmation or other related document may be photocopied and stored on computer tapes and disks (the “***Imaged Agreement***”). The Imaged Agreement, if introduced as evidence on paper, the confirmation if introduced as evidence in automated facsimile form, the Recording, if introduced as evidence in its original form and as transcribed onto paper, and all computer records of the foregoing, if introduced as evidence in printed format, in any judicial, arbitration, mediation or administrative proceedings, will be admissible as between the Parties to the same extent and under the same conditions as other business records originated and maintained in documentary form. Neither Party will object to the admissibility of the Recording, the confirmation or the Imaged Agreement (or photocopies of the transcription of the recording, the confirmation or the Imaged Agreement) on the basis that such were not originated or maintained in documentary form under the hearsay rule, the best evidence rule or other rule of evidence.
- 16.12 Survival of Contract Terms. In addition to Sections of this Agreement which specifically state that they shall survive the expiration or earlier termination of this Agreement, the Parties also agree that these General Terms and Conditions shall survive the expiration or earlier termination of this Agreement as and to the extent necessary to give proper effect to the intent of the Parties with respect to their respective rights and obligations arising prior to the expiration or earlier termination of this Agreement.
- 16.13 No Fiduciary Duty. Both Parties recognize the commercial nature of this Agreement and neither Party will owe any essential fiduciary duty to the other Party or any Third Party with respect to the performance of any of its obligations hereunder. The Parties hereby waive, to the fullest extent permitted by Applicable Laws, any and all fiduciary duties that, absent such waiver, may be implied by law, and in doing so, recognize, acknowledge and agree that their duties and obligations to one another are only as expressly set forth in this Agreement. Customer acknowledges and agrees that this Agreement shall not preclude Energy Manager from providing services or making sales of a like nature to any other Person, either currently or in the future. Energy Manager may, notwithstanding this Agreement, engage in whatever activities it may choose, including, without limitation, providing the same or similar sales or services in the same geographic region (or other competing activities) for its own account (or for the account of others). Neither this Agreement nor any activity undertaken related to this Agreement will prevent Energy Manager from engaging in such activities, or require Energy Manager to disclose the same.

- 16.14 Joint Preparation of Agreement. The Parties have participated jointly in the negotiation and drafting of this Agreement. In the event any ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any provisions of this Agreement.
- 16.15 No Public Utility Designation. Each Party agrees that it shall not claim in any bankruptcy proceeding related to such Party that the other Party is serving as a public utility for such Party by selling Energy or providing Services under this Agreement.
- 16.16 Exclusion of Third Party Rights. The provisions of this Agreement will not impart rights enforceable by any Person or entity not a Party or bound as a Party hereto unless such Person or entity is a permitted successor or assignee of a Party bound by this Agreement, and the Parties do not intend to create any Third Party beneficiary under this Agreement, except to the extent (i) security interests in this Agreement have been granted to Customer's lenders, and (ii) certain rights to raise contractual rights and/or defenses under this Agreement have been extended to a Party's Guarantor under any guaranty provided as Credit Support hereunder.

Exhibit A
Resources and Load

Resources:

| | |
|--------------------------------------|---------|
| Facility Name | WAPA |
| Location | |
| Physical Address | |
| Nominal Nameplate Capacity | 1.15 MW |
| Facility Type | hydro |
| Interconnecting Transmission Utility | |

| | |
|--------------------------------------|------------|
| Facility Name | Cottonwood |
| Location | |
| Physical Address | |
| Nominal Nameplate Capacity | 2.38 MW |
| Facility Type | wind |
| Interconnecting Transmission Utility | |

| | |
|--------------------------------------|--------------|
| Facility Name | Customer Gen |
| Location | |
| Physical Address | |
| Nominal Nameplate Capacity | 20 MW |
| Facility Type | diesel |
| Interconnecting Transmission Utility | |

Load:

Summer season: 16.54 MW

Winter season: 12.85 MW

Exhibit B
Notice Information

| | |
|--|---|
| Tenaska Power Services Co. | City of Wayne, Nebraska |
| Notice Address: 300 E. John Carpenter Freeway, Suite 1100 Irving, TX 75062 | Notice Address: 513 Main Street, P.O. Box 8 Wayne, NE 68787 |
| Attn: Director, Contract Administration | Attn: Wes Blecke, City Administrator |
| Phone: (817) 303-1860 | Phone: 402-375-1733 |
| Email: TPSContractAdmins@tnsk.com | Email: wblecke@cityofwayne.org |
| CICI Number: 549300K7NFSB93YGBN35 | CICI Number: |
| CFTC Designation: End User | CFTC Designation: |
| Duns: 01-501-6913 | Duns: 031172505 |
| Federal Tax ID Number: 47-0824081 (The above is the Tax ID for Tenaska Energy, Inc., the parent company of TPS. TPS is a disregarded entity for federal tax purposes.) | Federal Tax ID Number: 47-6006407 |
| Confirmations: Attn: Confirms Phone: (817) 303-3609 Email: confirms@tnsk.com | Confirmations: Attn: Phone: Email: |
| Real-Time Trading: Phone: (817) 462-1528 | Real-Time Trading: Phone: |
| Payments: Attn: Accounts Receivable 14302 FNB Parkway Omaha, NE 68154 Phone: (402) 938-1621 | Payments: Attn: Accounts Receivable P.O. Box 8 Wayne, NE 68787 402-375-1733 |
| Invoices: Attn: Accounts Payable Phone: (817) 462-1521 Email: tps-accounting@tnsk.com | Invoices: Attn: Accounts Payable Phone: 402-375-1733 Email: bporter@cityofwayne.org |

| | |
|--|---|
| Wire/ACH Transfer: Bank: US Bank, Omaha, NE ABA No: 042000013 Account No: 130111671306 Account Name: Tenaska Power Services Co. | Wire/ACH Transfer: Bank: State Nebraska Bank ABA No: 104901335 Account No: 150215 Account Name: City of Wayne |
| Credit and Collections: Attn: Credit Department Phone: (817) 303-1113 Email: credit@tnsk.com | Credit and Collections: Attn: Beth Porter Phone: 402-375-1733 Email: bporter@cityofwayne.org |
| With additional Notices of an Event of Default or Potential Event of Default to: Attn: Vice President and General Counsel Phone: (817) 462-8053 Email: eodnotices@tnsk.com | With additional Notices of an Event of Default or Potential Event of Default to: Attn: Amy Miller, City of Wayne Attorney Phone: 402-833-1440 Email: amymillerlaw@gmail.com |

Exhibit C
Energy Manager's NEB Share Calculation

1. “**Energy Manager's NEB Share**” for a given Month shall equal thirty-five percent (35%) of the positive Net Economic Benefit achieved for any Demand Response Resource participation or any load reduction activities directed by Energy Manager for such Month.
2. “**Net Economic Benefit**” or “**NEB**” for a given Month shall equal (i) Monthly Revenues for such Month, *minus* (ii) Product Costs for such Month.

For purposes of the foregoing NEB calculation, the following definitions, terms and conditions shall apply:

- (a) “**Monthly Revenues**” shall mean, with respect to a Month, the total net revenues received by Customer in such Month from sales of Product provided by the Resources when operating and/or participating in the SPP Energy and/or Operating Reserve Markets.
- (b) “**Product Costs**” shall mean, with respect to any Month, (1) the Resource(s) cost associated with production or provision of applicable Products included in the SPP market offer used to clear or dispatch the Resource(s) by SPP, including but not limited to: (i) variable operation and maintenance costs, including the variable costs under any long term service agreement for the Resources, in each case that are used in the submission to the SPP market as part of the Resource(s) offer, and (ii) Resource(s) start-up costs that are used in the submission to the SPP market as part of the Resource(s) offer; or (2) if such Products were not physically produced or provided, then the costs of replacing such Products to provide or settle such Products.
- (c) Exclusions From NEB Calculations. Customer may generate Energy from the Resource(s) during a time period which Energy Manager has advised it would not be economical to run such Resource(s) (*e.g.*, when Customer is testing the Resource(s) or dealing with operational or safety issues at the Resource(s)). If in any Month Customer generates Energy from the Resource(s) during periods in which Energy Manager has advised such generation would be uneconomic, then all costs and revenues associated with such action (whether positive or negative) shall be borne solely by Customer and excluded from the NEB calculation for such Month. For operational reasons or otherwise, Customer may request Energy Manager to intentionally consummate a sale of a Product for a price that is less than the Customer's cost of producing the Product at the Resource(s), or to purchase a Product at a price in excess of the cost of production in the Resource(s). If these or similar intentional cases should arise, Customer will bear all costs and losses resulting from such Transaction, and such Transactions will be excluded from the calculation of the NEB for the applicable Month.

- (d) Netting of Losses. If in any Month a Transaction results in a NEB that is negative, such negative amounts shall be netted against the positive NEB amounts for such Month; provided, however, that Energy Manager's NEB Share in such Month shall never be negative.

ELECTRONICS RECYCLING

SEP 6, 2025, 8-10AM

New Location



FNBO PARKING LOT

1100 E 10th St, Wayne, enter from the west

Requested donation of \$10/carload &
\$50/reasonable size business load

Fees are \$5/monitor, \$10/TV,
\$15/microwave

No charge for flatscreens

Details at www.cityofwayne.org/greenteam or 402-375-1733



Betty McGuire - [External] You're Invited to Recycle Electronics in Wayne Sep 6, 2025

From: Sandy Brown <sandybro@live.com>
To: "betty@cityofwayne.org" <betty@cityofwayne.org>
Date: 8/18/2025 9:32 PM
Subject: [External] You're Invited to Recycle Electronics in Wayne Sep 6, 2025
Attachments: Electronics Recycling in Wayne 9-6-25 - Color Flyer.jpg

Hi Betty,

This is to share with the clerks group. Can you also include in the city council packet for Sep 2?
Thank you!

The Wayne Green Team invites all surrounding communities to its annual electronics recycling event **Saturday, September 6, 2025**

Time: The event starts at 8am and ends at 10am, or earlier if the truck fills up.

New Location for Drop Off Site: FNBO Parking Lot at 1100 East 10th Street in Wayne. Enter from the west on 10th Street to unload, then exit to the east onto Hillside Drive.

Fees: Requested donation of \$10/carload or \$50/business load of reasonable size, and fees for CRTs (tube) of \$5/monitor and \$10/TV (no charge for flatscreens). There is a \$15 fee per microwave.

Accepted Electronics:

Bring your old TVs, computers, cell phones, printers, cords and more. Even vacuums, toasters, and kitchen mixers are ok. Visit our [FAQ](#) on our website for a complete list of acceptable items.

Not Accepted: No batteries or large appliances, such as refrigerators, dehumidifiers/humidifiers, ovens, dishwashers, dryers and washers, etc.

Thank You! Since 2013, our community has recycled over 188,000 pounds of electronics. Funding comes from the Nebraska Department of Water, Environment and Energy, with electronic recycling services by [The Retrofit Companies](#). Volunteer support comes from the Wayne State College Men's Basketball and Women's Soccer teams. Help keep harmful substances out of landfills and bring your electronics to be recycled in Wayne!

Sandy Brown
402-369-4685

www.cityofwayne.org/greenteam

Like us on Facebook at Wayne Green Team

Contractor's Application for Payment

| | |
|--|---|
| Owner: <u>City of Wayne, Nebraska</u> | Owner's Project No.: _____ |
| Engineer: <u>JEO Consulting Group, Inc.</u> <u>Gehring Construction and Ready Mix Co.,</u> | Engineer's Project No.: <u>230243.00</u> |
| Contractor: <u>Inc.</u> | Contractor's Project No.: _____ |
| Project: <u>Wayne 7th Street Trail, CDBG No. 22-PW-008</u> | |
| Contract: <u>Wayne 7th Street Trail, CDBG No. 22-PW-008</u> | |
| Application No.: <u>3</u> | Application Date: <u>8/22/2025</u> |
| Application Period: From <u>7/29/2025</u> to <u>8/22/2025</u> | |

| | | |
|--|----|------------|
| 1. Original Contract Price | \$ | 575,569.65 |
| 2. Net change by Change Orders | \$ | 6,440.00 |
| 3. Current Contract Price (Line 1 + Line 2) | \$ | 582,009.65 |
| 4. Total Work completed and materials stored to date (Sum of Column G Lump Sum Total and Column J Unit Price Total) | \$ | 396,354.81 |
| 5. Retainage | | |
| a. <u>5%</u> X <u>\$ 335,782.01</u> Work Completed = | \$ | 16,789.10 |
| b. <u>5%</u> X <u>\$ 60,572.80</u> Stored Materials = | \$ | 3,028.64 |
| c. Total Retainage (Line 5.a + Line 5.b) | \$ | 19,817.74 |
| 6. Amount eligible to date (Line 4 - Line 5.c) | \$ | 376,537.07 |
| 7. Less previous payments (Line 6 from prior application) | \$ | 334,355.02 |
| 8. Amount due this application | \$ | 42,182.05 |
| 9. Balance to finish, including retainage (Line 3 - Line 4 + Line 5.c) | \$ | 205,472.58 |

Contractor's Certification

The undersigned Contractor certifies, to the best of its knowledge, the following:

- (1) All previous progress payments received from Owner on account of Work done under the Contract have been applied on account to discharge Contractor's legitimate obligations incurred in connection with the Work covered by prior Applications for Payment;
- (2) Title to all Work, materials and equipment incorporated in said Work, or otherwise listed in or covered by this Application for Payment, will pass to Owner at time of payment free and clear of all liens, security interests, and encumbrances (except such as are covered by a bond acceptable to Owner indemnifying Owner against any such liens, security interest, or encumbrances); and
- (3) All the Work covered by this Application for Payment is in accordance with the Contract Documents and is not defective.

Contractor: Gehring Construction & Ready Mix Co., Inc.

Signature: *Stephen Anderson* **Date:** 8-22-25

| | |
|-----------------------------------|--------------------------|
| Recommended by Engineer | Approved by Owner |
| By: _____ | By: _____ |
| Title: _____ | Title: _____ |
| Date: _____ | Date: _____ |
| Approved by Funding Agency | |
| By: _____ | By: _____ |
| Title: _____ | Title: _____ |
| Date: _____ | Date: _____ |

Progress Estimate - Unit Price Work

Contractor's Application for Payment

| | | | |
|--------------------|--|----------------------------------|-----------|
| Owner: | City of Wayne, Nebraska | Owner's Project No.: | |
| Engineer: | JEO Consulting Group, Inc. | Engineer's Project No.: | 230243.00 |
| Contractor: | Gehring Construction and Ready Mix Co., Inc. | Contractor's Project No.: | |
| Project: | Wayne 7th Street Trail, CDBG No. 22-PW-008 | | |
| Contract: | Wayne 7th Street Trail, CDBG No. 22-PW-008 | | |

Application No.: 3 Application Period: From 07/29/25 to 08/22/25 Application Date: 08/22/25

| A | B | C | D | E | F | G | H | I | J | K | L |
|-------------------|---|---------------|-------|-----------------|--------------------------------|---|--|--|--|--------------------------------|--------------------------------|
| Bid Item No. | Description | Item Quantity | Units | Unit Price (\$) | Value of Bid Item (C X E) (\$) | Work Completed | | Materials Currently Stored (not in G) (\$) | Work Completed and Materials Stored to Date (H + I) (\$) | % of Value of Item (J / F) (%) | Balance to Finish (F - J) (\$) |
| | | | | | | Estimated Quantity Incorporated in the Work | Value of Work Completed to Date (E X G) (\$) | | | | |
| Original Contract | | | | | | | | | | | |
| 1 | MOBILIZATION | 1 | LS | 15,000.00 | 15,000.00 | 0.50 | 7,500.00 | | 7,500.00 | 50% | 7,500.00 |
| 2 | EROSION CONTROL, CLASS 1D | 6,889 | SY | 1.53 | 10,540.17 | 6,913.00 | 10,576.89 | | 10,576.89 | 100% | (36.72) |
| 3 | EROSION CONTROL, CLASS 2A | 137 | SY | 7.62 | 1,043.94 | 56.00 | 426.72 | | 426.72 | 41% | 617.22 |
| 4 | CURB INLET PROTECTION | 66 | LF | 14.14 | 933.24 | 20.00 | 282.80 | | 282.80 | 30% | 650.44 |
| 5 | FABRIC SILT FENCE-HIGH POROSITY | 223 | LF | 4.15 | 925.45 | 167.00 | 693.05 | | 693.05 | 75% | 232.40 |
| 6 | SILT CHECK, TYPE 2-HIGH | 980 | LF | 4.80 | 4,704.00 | 220.00 | 1,056.00 | | 1,056.00 | 22% | 3,648.00 |
| 7 | COVER CROP SEEDING | 2 | ACRE | 328.00 | 656.00 | | - | | - | 0% | 656.00 |
| 8 | GENERAL CLEARING AND GRUBBING | 1 | LS | 4,200.00 | 4,200.00 | 0.50 | 2,100.00 | | 2,100.00 | 50% | 2,100.00 |
| 9 | EARTHWORK MEASURED IN EMBANKMENT | 1,986 | CY | 26.00 | 51,636.00 | 1,788.00 | 46,488.00 | | 46,488.00 | 90% | 5,148.00 |
| 10 | WATER | 32 | MGAL | 30.00 | 960.00 | | - | | - | 0% | 960.00 |
| 11 | REMOVE PAVEMENT | 113 | SY | 12.00 | 1,356.00 | 27.00 | 324.00 | | 324.00 | 24% | 1,032.00 |
| 12 | REMOVE DRIVEWAY | 137 | SY | 12.00 | 1,644.00 | 137.00 | 1,644.00 | | 1,644.00 | 100% | - |
| 13 | REMOVE COMBINATION CURB AND GUTTER | 23 | LF | 25.00 | 575.00 | 13.00 | 325.00 | | 325.00 | 57% | 250.00 |
| 14 | CRUSHED ROCK SURFACE COURSE | 5 | TON | 75.00 | 375.00 | | - | | - | 0% | 375.00 |
| 15 | 5" CONCRETE CLASS 47B-3500 SIDEWALKS | 1,806 | SY | 56.00 | 101,136.00 | 1,344.00 | 75,264.00 | | 75,264.00 | 74% | 25,872.00 |
| 16 | 5" CONCRETE PAVEMENT, CLASS 47B-3500 | 150 | SY | 56.00 | 8,400.00 | 150.00 | 8,400.00 | | 8,400.00 | 100% | - |
| 7 | 7" CONCRETE CLASS 47B-3500 SIDEWALKS | 674 | SY | 66.00 | 44,484.00 | 674.00 | 44,484.00 | | 44,484.00 | 100% | - |
| 18 | CONCRETE CLASS 47B-3500 DRIVEWAY 8" | 77 | SY | 72.00 | 5,544.00 | 77.00 | 5,544.00 | | 5,544.00 | 100% | - |
| 19 | CONCRETE CLASS 47B-HE DRIVEWAY 8" | 60 | SY | 82.00 | 4,920.00 | 86.00 | 7,052.00 | | 7,052.00 | 143% | (2,132.00) |
| 20 | 9" CONCRETE PAVEMENT, CLASS 47B-3500 | 107 | SY | 77.00 | 8,239.00 | 27.00 | 2,079.00 | | 2,079.00 | 25% | 6,160.00 |
| 21 | RUMBLE STRIPS, CONCRETE | 2 | STA | 3,500.00 | 7,000.00 | 2.00 | 7,000.00 | | 7,000.00 | 100% | - |
| 22 | CONCRETE CLASS 47B-3500 CURB, TYPE II | 57 | LF | 50.00 | 2,850.00 | | - | | - | 0% | 2,850.00 |
| 23 | COMBINATION CONCRETE CLASS 47B-3500 CURB AND GUTTER | 267 | LF | 50.00 | 13,350.00 | 13.00 | 650.00 | | 650.00 | 5% | 12,700.00 |
| 24 | DETECTABLE WARNING PANEL | 76 | SF | 40.00 | 3,040.00 | 52.00 | 2,080.00 | | 2,080.00 | 68% | 960.00 |
| 25 | FOUNDATION COURSE | 66 | SY | 30.00 | 1,980.00 | | - | | - | 0% | 1,980.00 |
| 26 | SUBGRADE PREPARATION | 2,940 | SY | 2.00 | 5,880.00 | 2,249.00 | 4,498.00 | | 4,498.00 | 76% | 1,382.00 |
| 27 | REMOVE CULVERT PIPE | 13 | LF | 21.00 | 273.00 | 13.00 | 273.00 | | 273.00 | 100% | - |
| 28 | ADJUST MANHOLE TO GRADE | 4 | EA | 525.00 | 2,100.00 | 3.00 | 1,575.00 | | 1,575.00 | 75% | 525.00 |
| 29 | 8" STORM SEWER PIPE, TYPE 7 OR 8 | 36 | LF | 34.50 | 1,242.00 | 22.00 | 759.00 | | 759.00 | 61% | 483.00 |
| 30 | 12" CULVERT PIPE, TYPE 3, 4 OR 5 | 8 | LF | 46.00 | 368.00 | 8.00 | 368.00 | | 368.00 | 100% | - |
| 31 | 15" CULVERT PIPE, TYPE 2 | 22 | LF | 47.00 | 1,034.00 | 22.00 | 1,034.00 | | 1,034.00 | 100% | - |
| 32 | 15" CULVERT PIPE, TYPE 3, 4 OR 5. | 37 | LF | 47.00 | 1,739.00 | 37.00 | 1,739.00 | | 1,739.00 | 100% | - |
| 33 | 12" FLARED END SECTION | 2 | EA | 520.00 | 1,040.00 | 2.00 | 1,040.00 | | 1,040.00 | 100% | - |
| 34 | 15" FLARED END SECTION | 3 | EA | 950.00 | 2,850.00 | 3.00 | 2,850.00 | | 2,850.00 | 100% | - |
| 35 | 30" ROUND EQUIVALENT CULVERT PIPE, TYPE 2, 4, 5, 7 OR 8. See change order request to up size to 36" | 5 | LF | 100.00 | 500.00 | 2.50 | 250.00 | | 250.00 | 50% | 250.00 |
| 36 | 30" ROUND EQUIVALENT CONCRETE FLARED-END SECTION. See change order request to upsize to 36" | 1 | EA | 1,400.00 | 1,400.00 | 0.50 | 700.00 | | 700.00 | 50% | 700.00 |
| 37 | CONCRETE COLLAR | 4 | EA | 1,600.00 | 6,400.00 | | - | | - | 0% | 6,400.00 |

Progress Estimate - Unit Price Work

Contractor's Application for Payment

| | | | |
|-------------|--|---------------------------|-----------|
| Owner: | City of Wayne, Nebraska | Owner's Project No.: | |
| Engineer: | JEO Consulting Group, Inc. | Engineer's Project No.: | 230243.00 |
| Contractor: | Gehring Construction and Ready Mix Co., Inc. | Contractor's Project No.: | |
| Project: | Wayne 7th Street Trail, CDBG No. 22-PW-008 | | |
| Contract: | Wayne 7th Street Trail, CDBG No. 22-PW-008 | | |

Application No.: 3 Application Period: From 07/29/25 to 08/22/25 Application Date: 08/22/25

| A | B | C | D | E | F | G | H | I | J | K | L |
|---------------------------------|--|----------------------|-------|-----------------|--------------------------------|---|--|--|--|--------------------------------|--------------------------------|
| Bid Item No. | Description | Contract Information | | | | Work Completed | | Materials Currently Stored (not in G) (\$) | Work Completed and Materials Stored to Date (H + I) (\$) | % of Value of Item (J / F) (%) | Balance to Finish (F - J) (\$) |
| | | Item Quantity | Units | Unit Price (\$) | Value of Bid Item (C X E) (\$) | Estimated Quantity Incorporated in the Work | Value of Work Completed to Date (E X G) (\$) | | | | |
| 38 | REMOVE FLARED-END SECTION | 5 | EA | 265.00 | 1,325.00 | 5.00 | 1,325.00 | | 1,325.00 | 100% | - |
| 39 | CURB INLET | 5 | EA | 6,000.00 | 30,000.00 | | - | 7,900.00 | 7,900.00 | 26% | 22,100.00 |
| 40 | MANHOLE | 1 | EA | 13,200.00 | 13,200.00 | 0.50 | 6,600.00 | | 6,600.00 | 50% | 6,600.00 |
| 41 | GRATE INLET | 1 | EA | 3,850.00 | 3,850.00 | | - | 1,318.92 | 1,318.92 | 34% | 2,531.08 |
| 42 | JUNCTION BOX | 1 | EA | 3,600.00 | 3,600.00 | | - | 1,318.92 | 1,318.92 | 37% | 2,281.08 |
| 43 | AREA INLET WITH OPEN SIDES | 2 | EA | 7,550.00 | 15,100.00 | 1.00 | 7,550.00 | 4,831.11 | 12,381.11 | 82% | 2,718.89 |
| 44 | REMOVE AND RESET FENCE | 44 | LF | 30.00 | 1,320.00 | | - | | - | 0% | 1,320.00 |
| 45 | 18" STORM SEWER PIPE, TYPE 1 | 196 | LF | 53.00 | 10,388.00 | | - | 4,831.40 | 4,831.40 | 47% | 5,556.60 |
| 46 | 30" STORM SEWER PIPE, TYPE 1 | 119 | LF | 87.50 | 10,412.50 | | - | 6,372.45 | 6,372.45 | 61% | 4,040.05 |
| 47 | 36" STORM SEWER PIPE, TYPE 1 | 173 | LF | 120.50 | 20,846.50 | | - | 12,940.40 | 12,940.40 | 62% | 7,906.10 |
| 48 | 48" STORM SEWER PIPE, TYPE 1 | 331 | LF | 193.50 | 64,048.50 | 168.00 | 32,508.00 | 21,059.60 | 53,567.60 | 84% | 10,480.90 |
| 49 | TRAFFIC CONTROL | 1 | LS | 16,500.00 | 16,500.00 | 0.50 | 8,250.00 | | 8,250.00 | 50% | 8,250.00 |
| 50 | REMOVE LIGHTING UNIT | 3 | EA | 2,475.00 | 7,425.00 | 3.00 | 7,425.00 | | 7,425.00 | 100% | - |
| 51 | REMOVE LIGHT POLE FOUNDATION | 3 | EA | 3,950.00 | 11,850.00 | 3.00 | 11,850.00 | | 11,850.00 | 100% | - |
| 52 | STREET LIGHTING UNIT, TYPE SL-BT-40-12-LED | 3 | EA | 5,700.00 | 17,100.00 | | - | | - | 0% | 17,100.00 |
| 53 | CONCRETE FOR FOUNDATION | 2 | CY | 3,350.00 | 6,700.00 | 1.33 | 4,455.50 | | 4,455.50 | 67% | 2,244.50 |
| 54 | FOUNDATION STEEL | 187 | LB | 13.65 | 2,552.55 | 125.00 | 1,706.25 | | 1,706.25 | 67% | 846.30 |
| 55 | CONDUCTORS | 504 | LF | 8.40 | 4,233.60 | 336.00 | 2,822.40 | | 2,822.40 | 67% | 1,411.20 |
| 56 | RELOCATE TRAFFIC SIGN AND POST | 6 | EA | 863.10 | 5,178.60 | | - | | - | 0% | 5,178.60 |
| 57 | INSTALL STREET LIGHT CONDUIT AND CABLE | 168 | LF | 46.20 | 7,761.60 | 112.00 | 5,174.40 | | 5,174.40 | 67% | 2,587.20 |
| 58 | EROSION CONTROL MOBILIZATION | 3 | EA | 620.00 | 1,860.00 | 1.00 | 620.00 | | 620.00 | 33% | 1,240.00 |
| Original Contract Totals | | | | | \$ 575,569.65 | | \$ 329,342.01 | \$ 60,572.80 | \$ 389,914.81 | 68% | \$ 185,654.84 |

RESOLUTION NO. 2025-51

A RESOLUTION ADOPTING THE LOCAL HAZARD MITIGATION PLAN UPDATE PREPARED BY THE LOWER ELKHORN NATURAL RESOURCES DISTRICT & LEWIS AND CLARK NATURAL RESOURCE DISTRICT.

WHEREAS, the federal Disaster Mitigation Act requires proactive pre-disaster planning as a condition of receiving certain financial assistance under the Robert T. Stafford Act; and

WHEREAS, the Lower Elkhorn Natural Resources District & Lewis and Clark Natural Resources District, in accordance with the federal Disaster Mitigation Act, has prepared a Local Hazard Mitigation Plan (LHMP); and

WHEREAS, the hazard mitigation plan identifies the hazards for the communities within the Lower Elkhorn Natural Resources District & Lewis and Clark Natural Resources District, including the City of Wayne; and

WHEREAS, the LHMP includes a plan for monitoring, evaluating, and future updates; and

WHEREAS, the LHMP was developed through engaging the partners in the process and soliciting input on the existing risks in each community; and

WHEREAS, the LHMP is a way to reduce or alleviate the loss of life, personal injury, and property damage that can result from a disaster through long- and short-term strategies; and

WHEREAS, the LHMP prepared by the Lower Elkhorn Natural Resources District & Lewis and Clark Natural Resources District will be reviewed and approved by the Nebraska Emergency Management Agency and Federal Emergency Management Agency.

Upon a motion duly made, and unanimously passed, it was:

RESOLVED, that the City of Wayne adopts the LHMP prepared by the Lower Elkhorn Natural Resources District & Lewis and Clark Natural Resources District; and

RESOLVED, that the City of Wayne will use the adopted and approved portions of the LHMP to guide pre- and post-disaster mitigation of the hazards identified; and

RESOLVED, that the City of Wayne will coordinate the strategies identified in the LHMP with other planning programs and mechanisms under its jurisdictional authority; and

RESOLVED, that the City of Wayne will continue with its support of the Steering Committee and continue to participate in the Planning Partnership as described by the LHMP; and

RESOLVED, that the City of Wayne will help to promote and support the mitigation successes of all LHMP Planning Partners.

PASSED and adopted by the Wayne City Council at a meeting of the City of Wayne on September 2, 2025, by the following vote: All Yeas.

THE CITY OF WAYNE, NEBRASKA,

By _____
Mayor

ATTEST:

City Clerk

City of Wayne

Local Planning Team

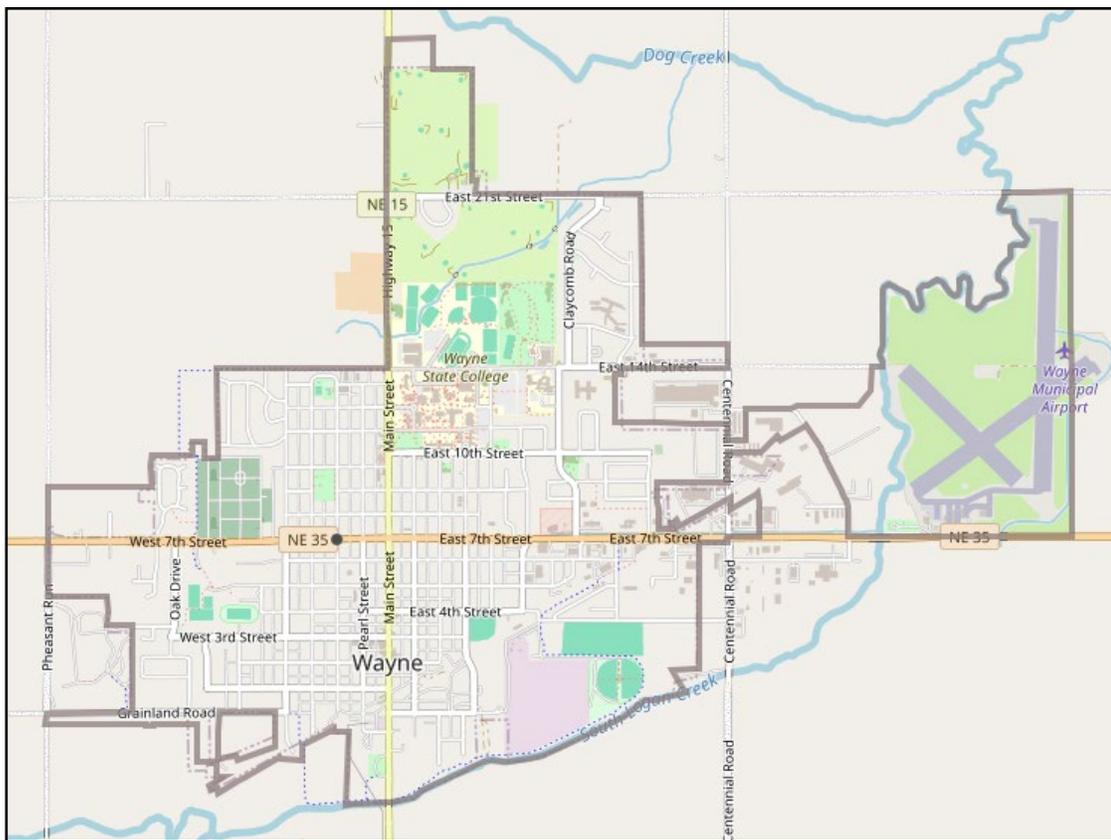
Table WYN 1: Local Planning Team

| Name | Title | Jurisdiction |
|-------------|------------------------------|---------------|
| Wes Blecke | City Administrator | City of Wayne |
| Joel Hansen | Street and Planning Director | City of Wayne |

Location and Services

The City of Wayne is in the eastern central portion of Wayne County, directly south of the boundary with Dixon County. The city serves as the county seat and covers 3.00 square miles. Nebraska Highway 35 is the main east and west transportation corridor, and Nebraska Highway 15 is the main north and south transportation corridor. The city is close to three waterways which form a major confluence on the northeast side of Wayne, becoming South Logan Creek. Deer and South Logan Creeks connect on the southwest portion of the city. Dog Creek flows west to east on the city's north side before merging with South Logan Creek.

Figure WYN 1: Boundary Map



Transportation

The City of Wayne has two major transportation corridors. Nebraska Highway 35 runs east and west, becomes 7th Street when running through the city limits. Nebraska Highway 15 runs north and south, becomes Main Street when running through the city. Wayne also features a municipal airport known named Stan Morris Field. Transportation information is important to hazard mitigation plans because it suggests possible evacuation corridors in the community, as well as areas more at risk of transportation incidents.

Nebraska Highways 35 and 15 are the biggest concerns to the community due to the volume of traffic carried and their intersection directly in the city's center. These routes carry a variety of hazardous materials including diesel fuel, gasoline, fertilizer, and sundry agricultural chemicals directly through the city, near schools, residences, and businesses. The risks posed by this hazard manifested when a 2018 vehicle collision caused a fuel fire and one fatality on Main Street.

Demographics

Wayne's population increased from 5,573 people in 2016 to 5,973 in 2022. This is an average annual increase of about 67 people, totaling 400, or 7.1%. This information is important because although the overall population has remained stable, shifting internal demographics may impact hazard mitigation priorities. Wayne's population accounted for 61.5% of Wayne County's population of 9,701 in 2022.¹

The young, elderly, minorities, and poor may be more vulnerable to certain hazards than other groups. In comparison to Wayne County, Wayne's population was:

- **Younger.** The median age of Wayne was 23.1 years old in 2022, compared with the county average of 31.8 years. Wayne had a slightly larger proportion of people under 20 years old (32%) than Wayne County (20%).² This is most likely due to Wayne State College.
- **Significantly more ethnically diverse.** In 2016, Wayne's population was 8.3% Hispanic or Latino, growing to 10% in 2022 as compared to the County (7%).³
- **More likely to be below the federal poverty line.** The poverty rate in Wayne (25% of families living below the federal poverty line) was higher than Wayne County's poverty rate (16.6%) in 2022.⁴

Employment and Economics

The City of Wayne economy had:

- **Mix of industries, some specialization.** Wayne's major employment sectors, accounting for 10% or more of employment each, were: Educational Services (25.4%), Accommodation & Food Services (15.6%), Retail Trade (14.4%), and Health Care & Social Assistance (10.4%).⁵

¹ Census Reporter. (2022). Wayne, NE. ACS 2022 5-Year Data. Retrieved from <https://censusreporter.org/profiles/16000US3151840-wayne-ne/>

² Ibid.

³ Ibid.

⁴ Ibid.

⁵ Data USA. (2021). Wayne, NE. Retrieved from <https://datausa.io/profile/geo/wayne-ne>

- **Significantly lower household income.** Wayne’s median household income in 2022 (\$51,399) was \$13,552 lower than the county (\$64,951).⁶

Major Employers

Major employers within Wayne include Great Dane Trailers, Providence Medical Center, Wayne State College, and Heritage Homes/Heritage Industries. There is a split of workers traveling to and from Wayne for employment. About half of the employees travel to nearby Norfolk, Sioux City, or other surrounding communities. Conversely, about half of workers travel to Wayne from these same communities.

Housing

In comparison to Wayne County, Wayne’s housing stock was:

- **Less owner owned.** Of occupied housing units in Wayne, 59% are owner-owned compared with 69% of occupied housing in Wayne County in 2022. Renter occupied rates were significantly higher compared to the county (41% to 31%).⁷
- **Significantly more multifamily.** Although the predominant housing type in Wayne is single-family detached, Wayne contains more multifamily housing with five or more units per structure than Wayne County (26% compared to 16%). The housing in Wayne is 73% single-family detached, compared with 82% of the county’s housing. Wayne has a comparable share of mobile housing (1%) compared to the county (1%).⁸

This housing information is relevant to hazard mitigation as the age of housing may indicate which housing units were built prior to the development of state building codes. Furthermore, unoccupied housing may suggest that future development may be less likely to occur. Finally, communities with mobile homes may be more vulnerable to high winds, tornadoes, and severe winter storms.

Development Trends

Since the 2019 hazard mitigation plan, 36 new owner-occupied residential structures and 8 multifamily dwellings with 164 living units were constructed. An additional 12 structures were demolished during the same timeframe. The relatively stable population of the city can be attributed to the diverse economy including employment opportunities, Wayne State College enrollment, and the expanding service at Providence Medical Center. Additional growth and in-fill from new business and populace is anticipated, particularly in the north and northwest. This upcoming growth is attributed to Wayne’s priorities of entrepreneurship and growing local businesses.

⁶ Census Reporter. (2022). Wayne, NE. ACS 2022 5-Year Data. Retrieved from <https://censusreporter.org/profiles/16000US3151840-wayne-ne/>

⁷ Census Reporter. (2022). Wayne, NE. ACS 2022 5-Year Data. Retrieved from <https://censusreporter.org/profiles/16000US3151840-wayne-ne/>

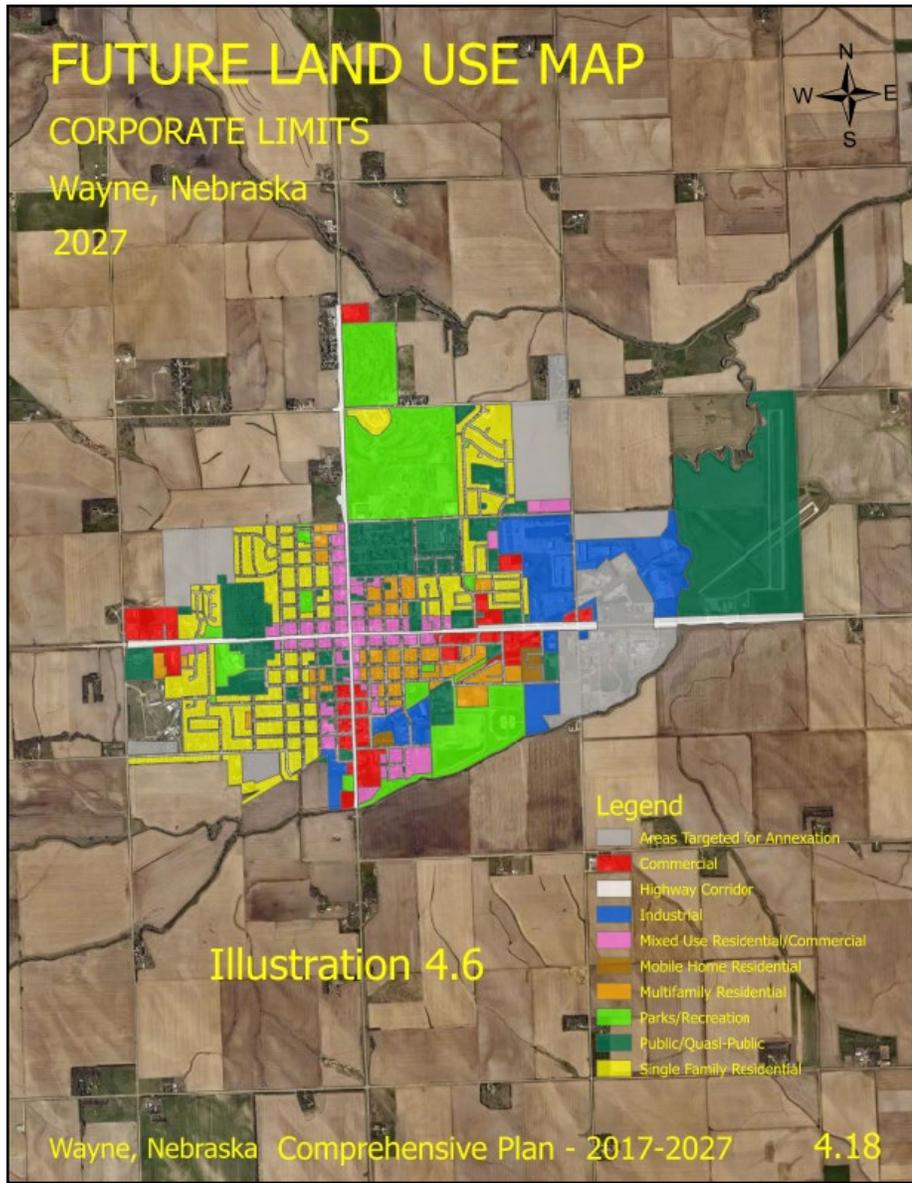
⁸ Ibid.

Table WYN 2: Recent and Expected Development Trends

| Criteria | Response |
|--|---|
| Has your jurisdiction annexed any land since the development of the previous Hazard Mitigation Plan? | Yes |
| If yes, give the estimated area annexed and estimated number of parcels or structures. | .75 Acres Municipal Airport, industrial properties (4) |
| Is your jurisdiction expected to annex any areas during the performance period of this Plan? | Yes |
| Are any areas targeted for development or major redevelopment in the next five (5) years? | Yes |
| If yes, please briefly describe | Housing developments – northwest and northeast Wayne |

See figure below for future land use map.

Figure WYN 2: Future Land Use Map



Critical Infrastructure/Key Resources

Chemical Storage Fixed Sites

According to the Tier II System reports submitted to the Nebraska Department of Environment and Energy, there are ten fixed chemical storage sites.

Table WYN 3: Chemical Storage Fixed Sites

| Facility Name | Address | In Floodplain (Y/N) |
|-----------------------------|--------------------|---------------------|
| CenturyLink | 215 S Pearl St | N |
| D V Fyre Tec | 701 Centennial Rd | N |
| Fredrickson Oil Co | 3110 N Highway 15 | N |
| Gerhold Concrete Co | 809 Centennial Rd | N |
| Great Dane LLC | 1200 Centennial Rd | N |
| Helena Agri-Enterprises LLC | 110 S Windom Dr | N |
| NDOT Wayne Yard | 1300 E 7th St | N |
| Titan Machinery Inc | 602 Centennial Rd | N |
| Wayne Municipal Airport | 2304 E Highway 35 | N |

Critical Facilities

Each participating jurisdiction identified critical facilities vital for disaster response, providing shelter to the public, and essential for returning the jurisdiction’s functions to normal during and after a disaster. Critical facilities were identified during the original planning process and updated by the local planning team as a part of this plan update. The following table provides a summary of the critical facilities for the jurisdiction.

Table WYN 4: Critical Facilities

| CF Number | Name | Short Term Shelter (Y/N) | Generator (Y/N) | Located in Floodplain (Y/N) |
|-----------|--|--------------------------|-----------------|-----------------------------|
| 1 | Benthack Applied Science Building | N | N | N |
| 2 | Brandenburg Education Building | N | N | N |
| 3 | Carhart Science and Mathematics Building | N | N | N |
| 4 | City Auditorium | Y | N | N |
| 5 | City Hall | N | Y | N |
| 6 | City of Wayne Power Plant | N | Y | N |
| 7 | City of Wayne Public Works | N | N | N |
| 8 | Conn Library | N | N | N |
| 9 | East Water Tower | N | N | N |
| 10 | ESU #1 Tower School | N | N | N |
| 11 | Hahn Administration Building | N | N | N |
| 12 | Lift Station #1 | N | N | Y |
| 13 | Lift Station #2 | N | Y | N |
| 14 | Lift Station #4 | N | N | N |
| 15 | Mobile Home Court | N | N | N |
| 16 | Mobile Home Court | N | N | N |
| 17 | Mobile Home Court | N | N | N |
| 18 | Nebraska Department of Roads | N | N | N |
| 19 | Nebraska National Guard Building | N | N | N |
| 20 | Northeast Public Health Department | N | Y | N |
| 21 | Northeast Public Power District | N | Y | N |
| 22 | Peterson Fine Arts Hall | N | N | N |
| 23 | Post Office | N | N | N |
| 24 | Providence Medical Center | N | Y | N |
| 25 | St. Mary’s Catholic School | N | N | N |
| 26 | Wastewater Treatment Plan | N | Y | N |

| CF Number | Name | Short Term Shelter (Y/N) | Generator (Y/N) | Located in Floodplain (Y/N) |
|-----------|--|--------------------------|-----------------|-----------------------------|
| 27 | Wayne Community Activity Center | Y | N | N |
| 28 | Wayne County Courthouse | N | N | N |
| 29 | Wayne County Museum | N | N | N |
| 30 | Wayne Elementary School | N | N | N |
| 31 | Wayne High School | N | N | N |
| 32 | Wayne State College Rec Center | N | N | N |
| 33 | Wayne State College Rice Auditorium | N | N | N |
| 34 | Wayne State College Student Center / Campus Services | N | Y | N |
| 35 | Wayne Volunteer Fire Department Hall | Y | N | N |
| 36 | Well #7 | N | N | N |
| 37 | Well #9 | N | N | N |
| 38 | Well #10 | N | Y | N |
| 39 | Well #11 | N | Y | N |
| 40 | West Water Tower | N | N | N |

*City has two portable generators that can be connected to wells and lift stations when needed.

Historical Occurrences

A complete risk assessment, including past incidents, for each identified hazard of concern can be found in *Section Four: Hazard Identification and Risk Assessment* in the base plan.

Hazard Vulnerability and Impact Assessment

For an in-depth discussion regarding areawide hazards, please see *Section Four: Hazard Identification and Risk Assessment*. The hazards discussed in detail below were prioritized by the local planning team based on existing community conditions (e.g., underserved, or functional access needs populations may be more susceptible based on certain conditions, vulnerabilities, or needs) and hazard history, and the jurisdiction’s capabilities. **This section only addresses the hazards and their associated impacts that are relevant and unique to the municipality. Notably, landslides and earthquakes are not included in this assessment because they are not considered significant risks to the community based on historical data and current preparedness measures.**

Drought

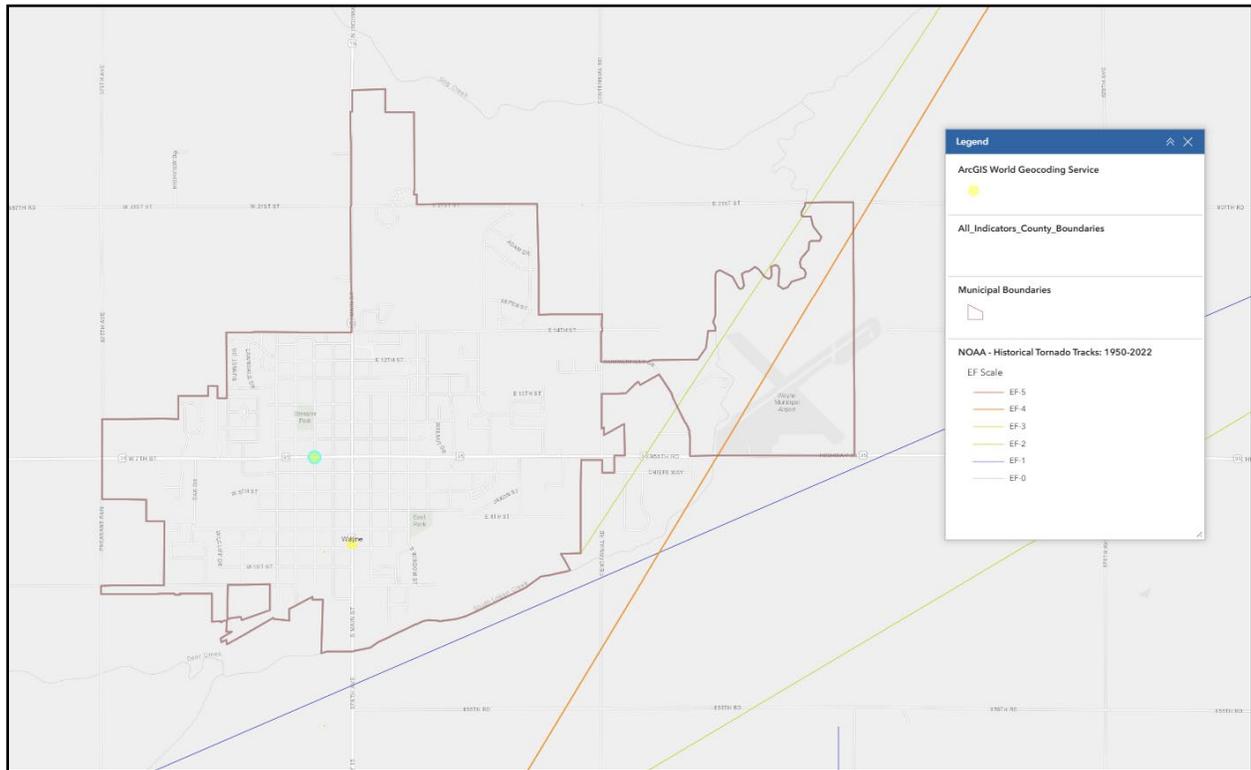
Wayne’s city water supply and agriculture economy are vulnerable to drought. Drought was most recently felt in 2021-2023, and it caused officials to closely monitor its water supply. Locally, the city uses water table depletion and crop loss to define drought conditions. Wayne receives water from three wells drilled around the area and consumption is determined by residential water meters. The city does not have a drought board, drought response plan, water conservation program, or conservation ordinance. Although the water supply is sufficient and does not require an additional water source, a high concentration of nitrates in the drinking water supply has caused issues in the past. The city is currently pursuing a 4th well and is also constructing a man-made lake in a new park. Drought could have an adverse effect on keeping this lake full for recreation purposes.

several mitigation measures to reduce the impacts of thunderstorms. These measures include systematically backing up municipal data, installing backup generators at critical facilities, and trimming dead or dying trees. Currently, there are no weather radios available in city facilities.

Tornadoes are a recurring hazard for the City of Wayne. As recently as 2013, a tornado impacted the southern and eastern areas of Wayne, damaging the airport and industrial park. Although many structures in Wayne were affected, no vulnerable populations have been significantly harmed by tornadoes to date. Ongoing mitigation efforts in Wayne include routine backups of municipal data on redundant servers, the installation of tornado sirens, and the establishment of FEMA-certified safe rooms in City Hall, East Park, and the Fire Hall. Additional safe rooms are available in local schools and at Wayne State College. In the event of a tornado, the Wayne County Emergency Management Office provides text alerts, and schools conduct tornado drills, especially during tornado awareness week. As a final resort, Wayne maintains mutual aid agreements with 35 communities throughout northeast Nebraska.

Residents in our three mobile home parks lack adequate shelter from severe weather. Additionally, there is an income-eligible community (Villa Wayne) that is built on a slab with no storm shelter. The electric system, with its overhead lines and transformers, is also vulnerable to severe weather.

Figure WYN 4: Historical Tornado Tracks 1950-2022



Extreme Temperatures (Heat Wave, Cold Wave)

Extreme temperature events occur annually in Nebraska, with a higher frequency during the summer and winter months. Heat waves are a regular occurrence, posing a significant risk to critical infrastructure,

particularly the power grid, which can become overloaded. In contrast, winter weather, especially during cold waves, can compromise infrastructure physically.

The extreme temperatures place stress on our electric grid, notably on our single substation. The city has had to implement manual cooling methods for this substation when temperatures soar. While the city has generation capabilities to serve the community, all power must pass through this substation. Vulnerable populations, including an assisted senior living facility and an elderly care center, do not have on-site backup generation.

In the winter of 2021, Wayne faced a winter storm characterized by extremely cold temperatures, which impacted city operations. The city is particularly concerned about compromised power lines, isolation of first responders, and restrictions on travel during winter storms. To mitigate these issues, the city has designated snow routes prioritizing highways and main thoroughfares, and employs snow fences in subdivisions to manage snow accumulation.

Public Works is responsible for snow removal and has a fleet that includes five trucks, two front-end loaders, three pickups, one skid loader, one toolcat, and one blower. Overall, the city rates its snow removal resources as satisfactory.

Jurisdiction-Specific Climate Change Vulnerability and Impacts

The table below outlines if climate change, as assessed by the local planning team, has increased or decreased the municipality’s vulnerability/exposure, and thereby the potential impacts, to each natural hazard over the past five (5) years (**Current Vulnerability**), and the effect of climate change in the future probability of occurrence and impacts (**Future Vulnerability**) from each natural hazard.

Table WYN 5: Climate Impacts

| Hazard | Current Vulnerability | Future Vulnerability |
|----------------------|-----------------------|----------------------|
| Agricultural Disease | Not Applicable | Not Applicable |
| Dam & Levee Failure | Not Applicable | Not Applicable |
| Drought | Increased | Increase |
| Earthquake | Not Applicable | Not Applicable |
| Extreme Temperature | Increased | Increase |
| Flood | Increased | Increase |
| Fire | Remained the Same | Increase |
| Landslide | Not Applicable | Not Applicable |
| Severe Weather | Increased | Increase |

Jurisdiction-Specific Changes (or Expected Changes) in Development Trends in Hazard Prone Areas

The table below outlines if development, as assessed by the local planning team, over the past five (5) years (Current Vulnerability) has increased or decreased the jurisdiction’s vulnerability/exposure, and thereby the potential impacts, to these natural hazards, and the anticipated effects changes in development may have on the future probability of occurrence and impacts (Future Vulnerability) from these natural hazards.

Table WYN 6: Development Trend Impacts

| Hazard | Current Vulnerability | Future Vulnerability |
|----------------------|-----------------------|--------------------------|
| Agricultural Disease | Not Applicable | Increase |
| Dam & Levee Failure | Not Applicable | Not Applicable |
| Drought | Remained the Same | Increase |
| Earthquake | Not Applicable | Not Applicable |
| Extreme Temperature | Remained the Same | No Change is Anticipated |
| Flood | Increased | Increase |
| Fire | Remained the Same | No Change is Anticipated |
| Landslide | Not Applicable | Not Applicable |
| Severe Weather | Remained the Same | No Change is Anticipated |

Our community does anticipate that future major assets will be exposed or vulnerable to any of the natural hazards identified in this Hazard Mitigation Plan. The City plans to install a second electrical substation and additional power generation. While both will help the reliability and resiliency of the electrical system, the built capital will be susceptible to future hazards including severe weather and extreme temperatures.

Any new assets (e.g., new construction in hazard prone areas) will be constructed to adhere to the latest building codes and standards, and mitigation to protect them from identified and anticipated hazards, especially those that are expected to increase due to climate change.

Governance

A community’s governance indicates the number of boards or offices that may be available to help implement hazard mitigation actions. Wayne has a number of offices or departments that may be involved in implementing hazard mitigation initiatives. Wayne has eight city council members and the following offices.

- Mayor
- City Administrator
- City Clerk
- Finance Director
- Electric Superintendent – Production
- Electric Superintendent – Distribution
- Water/Sewer Superintendent
- Street and Planning Director
- Senior Citizen Director
- Economic Development Director
- Wayne Police Department (Police Chief)
- Wayne Volunteer Fire Department (Fire Chief)

Capability Assessment

The capability assessment consisted of a survey completed by the jurisdiction and a review of local existing policies, regulations, plans, and the programs. This survey is used to gather information regarding the

jurisdiction’s planning and regulatory capability; administrative and technical capability; fiscal capability; and educational and outreach capability.

Table WYN 7: Capability Assessment

| Survey Components/Subcomponents | | Yes/No |
|---------------------------------------|---|--------|
| Planning & Regulatory Capability | Comprehensive Plan | Yes |
| | Capital Improvements Plan | Yes |
| | Economic Development Plan | Yes |
| | Emergency Operational Plan | Yes |
| | Floodplain Management Plan | Yes |
| | Storm Water Management Plan | No |
| | Zoning Ordinance | Yes |
| | Subdivision Regulation/Ordinance | Yes |
| | Floodplain Ordinance | Yes |
| | Building Codes | Yes |
| | National Flood Insurance Program | Yes |
| | Community Rating System | No |
| | Other (if any) | - |
| Administrative & Technical Capability | Planning Commission | Yes |
| | Community Redevelopment Authority | Yes |
| | Floodplain Administration | Yes |
| | GIS Capabilities | Yes |
| | Chief Building Official | Yes |
| | Civil Engineering | Yes |
| | Local Staff Who Can Assess Community's Vulnerability to Hazards | Yes |
| | Grant Manager | Yes |
| | Mutual Aid Agreement | Yes |
| | Other (if any) | - |
| | Capital Improvement Plan/ 1- & 6-Year Plan | Yes |
| | Applied for grants in the past | Yes |
| | Awarded a grant in the past | Yes |
| Fiscal Capability | Authority to Levy Taxes for Specific Purposes such as Mitigation Projects | Yes |
| | Gas/Electric Service Fees | Yes |
| | Storm Water Service Fees | Yes |
| | Water/Sewer Service Fees | Yes |
| | Development Impact Fees | Yes |
| | General Obligation Revenue or Special Tax Bonds | Yes |
| | Other (if any) | - |

| Survey Components/Subcomponents | | Yes/No |
|---------------------------------|--|-----------------------------------|
| Education & Outreach Capability | Local citizen groups or non-profit organizations focused on environmental protection, emergency preparedness, access and functional needs populations, etc. Ex. CERT Teams, Red Cross, etc. | Yes, Green Team and Public Health |
| | Ongoing public education or information program (e.g., responsible water use, fire safety, household preparedness, environmental education) | Yes |
| | Natural Disaster or Safety related school programs | Yes |
| | Storm Ready Certification | No |
| | Firewise Communities Certification | No |
| | Tree City USA | Yes |
| | Other (if any) | - |

Table WYN 8: Overall Capability

| Overall Capability | Limited/Moderate/High |
|---|-----------------------|
| Does your community have the financial resources needed to implement mitigation projects? | Limited |
| Does your community have the staff/expertise to implement projects? | Moderate |
| Does your community have the community support to implement projects? | Moderate |
| Does your community staff have the time to devote to hazard mitigation? | Limited |

NFIP Participation Activities

Maintaining compliance under the NFIP is an important component of flood risk reduction. All planning partners that participate in the NFIP have identified actions to maintain their compliance and good standing. The NFIP makes federally-backed flood insurance available to homeowners, renters, and business owners in participating communities.

The city currently participates in NFIP and their floodplain development regulations meet or exceed FEMA or state minimum requirements. The City enforces local floodplain regulations and monitors compliance and has staff that can provide permit reviews, GIS, inspections and engineering capability.

| National Flood Insurance Program Compliance | |
|---|------------------------------|
| What department is responsible for floodplain management in your jurisdiction? | City Governing Body |
| Who is your jurisdiction’s floodplain administrator? (department/position) | Street and Planning Director |
| Are any certified floodplain managers on staff in your jurisdiction? | No |
| Does your jurisdiction have any outstanding NFIP compliance violations that need to be addressed? If so, please state what they are. | No |
| Do your flood hazard maps adequately address the flood risk within your jurisdiction? (If no, please state why) | Yes |
| Does your floodplain management staff need any assistance or training to support its floodplain management program? If so, what type of assistance/training is needed? | Training is always welcome |
| Does your jurisdiction participate in the Community Rating System (CRS)? If so, is your jurisdiction seeking to improve its CRS Classification? If not, is your jurisdiction interested in joining the CRS program? | No; No |

Substantial Improvement Rule and the Substantial Damage Rule

The NeDNR has developed a model ordinance for floodplain management, which has been adopted by most communities in Nebraska. The ordinance includes the minimum requirements an NFIP participating jurisdiction must adopt and enforce, as well as additional higher regulatory requirements. The optional, higher regulatory standards include a minimum one foot of freeboard above the base flood elevation and cumulative tracking of damage repairs and improvements to establish substantial damage and substantial improvement compliance. Some jurisdictions have chosen to exceed the requirements of the model ordinance and have adopted more restrictive ordinances.

Substantial Damage. Damage of any origin sustained by a structure whereby the cumulative percentage of damage during the life of the building equals or exceeds 50 percent of the market value of the structure before the damage occurred regardless of actual repair work performed. Volunteer labor and materials must be included in this determination. The term includes Repetitive Loss Buildings See Section 15-102, "Repetitive Loss."

Substantial Improvement. Any reconstruction, rehabilitation, addition, or improvement of a structure taking place during the life of the building in which the cumulative percentage of improvements equals or exceeds 50 percent of the market value of the structure before the improvement or repair is started.

1. "Substantial Improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the building. This term includes structures which have incurred repetitive loss or substantial damage, regardless of the actual work done. 2. The term does not, however, include either: a) Any project for improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions, or b) Any alteration of a "historic structure" listed on the National Register of Historic Places or the Nebraska Register of Historic Places, provided that the alteration will not preclude the structure's continued designation as a historic structure.

The City has adopted the substantial improvement rule and the substantial damage rule, which can be found here: [SFP Floodplain District](#).

Opportunities to Expand and Improve Capabilities

The municipality aims to enhance its capabilities by hiring grant writers, training/hiring staff to implement and manage mitigation projects, educating the public on the benefits of mitigation to get public buy-in, and securing additional funding to support all mitigation projects. Additionally, the City plans to prioritize the review and enforcement of building codes.

Plan Integration

Wayne's comprehensive plan was last updated in 2017. Natural hazards discussed in the plan include flooding and climate change. The comprehensive plan contains goals aimed at safe growth, directs development away from the floodplain, chemical storage facilities, and major transportation routes, limits density in hazardous areas, and preserves open space. There are plans to update the comprehensive plan in 2027 and the local planning team indicated that they would like to include emergency shelters in the next update. The city's zoning ordinance was last updated in 2024 and the subdivision regulations were last updated in 2021. The zoning ordinance discourages development in the floodplain, requires more than one foot of elevation above base flood elevation, and prohibits development within the floodway. The subdivision regulations restrict subdivisions of land within or adjacent to the floodplain. Wayne's building code was adopted in 2022 and is based on the 2018 International Building Codes. The code requires mechanical systems to be elevated for structures in the floodplain, outlines proper sump pump installation, requires sewer backflow valves for structures in the floodplain, requires hurricane clips during construction, and requires the use of fire-resistant building materials.

The city's Local Emergency Operations Plan (LEOP) was last updated in 2018 as an annex to the county's plan. Local planning team members indicated that the police department is familiar with the LEOP. The city is part of a Wellhead Protection Plan, developed in 2013 and is part of the Missouri River Northeast Community Wildfire Protection Plan. Objectives in the wildfire protection plan include actively and sustainably managing forests, protecting, and enhancing water quality and quantity, and assisting communities in planning for and reducing wildfire risks. Additionally, in the annual municipal budget, the city has already dedicated a large portion of funds to street improvements and a new water transmission main.

In addition to the plans discussed above, the city also has a 1-&6-Year Plan which was updated in 2024 and floodplain regulations which were updated in 2023. New flood plain regulations should be implemented in 2026.

The hazards, goals, and actions of the Hazard Mitigation Plan will be considered in the next update of the Comprehensive Plan as well as the jurisdiction's land use plans, zoning and subdivision codes.

No other examples of plan integration were identified. There are currently no plans to further integrate existing or future planning mechanisms.

Hazard Risk Ranking

The Hazard Risk Ranking Table below presents the ranking of the hazards of concern.

Table WYN 9: Hazard Risk Ranking

| Rank | Hazard Type |
|------|----------------------|
| 1 | Severe Weather |
| 2 | Flooding |
| 3 | Drought |
| 4 | Extreme Temperature |
| 5 | Fire |
| 6 | Agricultural Disease |
| 7 | Landslide |
| 8 | Earthquake |

Mitigation Strategy

The heart of the mitigation plan is the mitigation strategy, which serves as the long-term blueprint for reducing the potential losses identified in the risk assessment. The mitigation strategy describes how the community will accomplish the overall purpose, or mission, of the planning process. In this section, mitigation actions/projects were updated/amended, identified, evaluated, and prioritized based on those hazards that uniquely impact the municipality. This section is organized as follows:

- **New Mitigation Actions** - New actions identified during this 2024 update process
- **Ongoing Mitigation Actions** - Ongoing actions with no definitive end or that are still in progress. During the 2024 update, these "ongoing" mitigation actions and projects were modified and/or amended, as needed.
- **Completed Mitigation Actions** - An archive of all identified and completed projects.
- **Removed Mitigation Actions** - An archive of all identified and removed projects.

New Mitigation Actions

| Action | Harden Public Structures |
|---------------------|---|
| Description | Strengthen/harden public structures prone to fire, as well as educate the public on fire hazards. |
| Hazard(s) Addressed | Fire, Power Loss |
| Estimated Cost | Medium |
| Potential Funding | Local Budgeted Funds, State Funds, HMGP |
| Timeline | Long Term |
| Priority | Medium |
| Lead Agency | City Administrator, Wayne Fire Department, County Emergency Management, State Fire Resources |
| Status | Not Started, New Action |

| Action | | Channel Stabilization, Improvement and Restoration |
|---------------------|--|---|
| Description | Conduct channel stabilization, improvement, and restoration in the Logan Creek in proximity to the nearby community pedestrian trail to prevent further erosion. This could include grade control structures like sheet-pile/rock weirs. | |
| Hazard(s) Addressed | Flooding | |
| Estimated Cost | High | |
| Potential Funding | State, HMGP, FMA, LENRD | |
| Timeline | Short Term | |
| Priority | Medium | |
| Lead Agency | City Administrator, State of Nebraska, LENRD | |
| Status | Not Started, New Action | |

| Action | | Review and Update Building Codes |
|---------------------|---|---|
| Description | Review and refine existing building codes and local ordinances to produce more resilient structures and appurtenances by ensuring development is protected from hazards with applicable design standards; review and refine zoning ordinances to ensure development is occurring in proper spaces to limit potential hazards. | |
| Hazard(s) Addressed | All Hazards | |
| Estimated Cost | Low | |
| Potential Funding | Local Budgeted Funds, HMGP | |
| Timeline | Ongoing | |
| Priority | Medium | |
| Lead Agency | City Administrator, Building/Inspection Department, Wayne County, State Code Officials | |
| Status | Not Started, New Action | |

| Action | | Mutual Aid with Local Jurisdictions |
|---------------------|---|--|
| Description | Work with local jurisdictions to establish mutual aid agreements (fire, police, communications) | |
| Hazard(s) Addressed | All Hazards | |
| Estimated Cost | Low | |
| Potential Funding | Local Budgeted Funds | |
| Timeline | Ongoing | |
| Priority | Low | |
| Lead Agency | City of Wayne, Local Fire Department, State Fire Resources, County Emergency Management | |
| Status | Not Started, New Action. | |

| Action | | Water Conservation |
|---------------------|---|---------------------------|
| Description | Educate residents on water saving techniques; assess vulnerability to drought and identify factors that affect the severity of a drought. | |
| Hazard(s) Addressed | Drought | |
| Estimated Cost | Low | |
| Potential Funding | Local Budgeted Funds. State, HMGP, FMA | |
| Timeline | Ongoing | |
| Priority | Low | |
| Lead Agency | City of Wayne Water / Waste Water Department, NRD, DNR, Rural Water Association | |
| Status | Not Started, New Action. | |

Ongoing Mitigation Actions

| Action | | Comprehensive County Disaster / Emergency Response Plan |
|---------------------|--|--|
| Description | Update County Local Emergency Operations Plan (2018) | |
| Hazard(s) Addressed | Severe Weather (Severe Thunderstorms, Strong Winds, Hail, Tornadoes), Extreme Temperatures (Heat Wave and Cold Wave) | |
| Estimated Cost | \$6,000+ | |
| Potential Funding | City of Wayne Local Budgeted Funds, HMGP, HSGP | |
| Timeline | 5+ Years | |
| Priority | High | |
| Lead Agency | City Administrator, Fire Chief, Emergency Manager | |
| Status | Ongoing. This includes the Local Emergency Operations Plan and exercises. | |

| Action | | Emergency Communications |
|---------------------|---|---------------------------------|
| Description | Update tactical inter-operable communications. | |
| Hazard(s) Addressed | All Hazards | |
| Estimated Cost | \$10,000+ | |
| Potential Funding | Homeland Security, LENRD, Governing County & Local Governing Agency, EMPG, HSGP, NWGS | |
| Timeline | 2-5 Years | |
| Priority | Medium | |
| Lead Agency | Wayne Police Department | |
| Status | Not Started due to shift in priorities. | |

| Action | | Mutual Aid - Utility |
|---------------------|---|-----------------------------|
| Description | Work with other utility providers for Mutual Aid. | |
| Hazard(s) Addressed | All Hazards | |
| Estimated Cost | Staff Time | |
| Potential Funding | General Fund | |
| Timeline | Review as needed | |
| Priority | High | |
| Lead Agency | City Administrator, Wayne County EM, Wayne Fire Department, Northeast Power | |
| Status | Ongoing. The city currently works with the local providers for mutual aid and will continue this into the future. | |

| Action | | Power and Services Lines |
|---------------------|---|---------------------------------|
| Description | Work with local Public Power Districts or electric department to identify vulnerable transmission and distribution lines and plan to bury lines underground or retrofit existing structures to be less vulnerable to storm events. Electrical utilities should be required to use underground construction methods where possible for future installation of power lines. Put in a new transmission water main from the well field. | |
| Hazard(s) Addressed | Severe Thunderstorms, High Winds, Severe Winter Storms, Hail, Tornadoes | |
| Estimated Cost | \$5,000,000 | |
| Potential Funding | General Fund, BRIC, 404/406 HMGP, HMA | |
| Timeline | 5+ Years | |
| Priority | High | |
| Lead Agency | Electrical Superintendent, Utility Provider | |
| Status | Ongoing. In Progress. The city has started converting overhead powerlines to underground. New water transmission line (redundant) is installed. | |

| Action | | Public Awareness |
|---------------------|---|-------------------------|
| Description | Through activities such as outreach projects, distribution of maps, and environmental education increase public awareness of natural hazards to both public and private property owners, renters, businesses, and local officials. Also, educate citizens on water conservation methods, evacuation plans, etc. and purchase equipment such as overhead projectors and laptops. | |
| Hazard(s) Addressed | All Hazards | |
| Estimated Cost | \$0-\$5,000+ | |
| Potential Funding | HMGP, PDM, LENRD, Governing County & Local Governing Agency, EMPG | |
| Timeline | 5+ Year | |
| Priority | Medium | |
| Lead Agency | City Administrator, Wayne County and other governmental offices | |
| Status | Ongoing. This action is undertaken systematically throughout the year to address the most likely, seasonal hazard to populations. | |

| Action | | River/Stream Bank Stabilization |
|---------------------|---|--|
| Description | Stabilize banks along streams and rivers. This may include, but is not limited to reducing bank slope, addition of riprap, installation of erosion control materials/fabrics. | |
| Hazard(s) Addressed | Flooding | |
| Estimated Cost | \$100,000+ | |
| Potential Funding | City of Wayne, grant funding | |
| Timeline | 2-5 Years | |
| Priority | Low | |
| Lead Agency | City of Wayne | |
| Status | New Action | |

Completed Mitigation Actions

| Action | | Tree City USA – Tree Maintenance Programs |
|---------------------|--|--|
| Hazard(s) Addressed | Severe Weather (Severe Thunderstorms, Strong Winds, Hail, Tornadoes), Extreme Temperatures (Heat Wave and Cold Wave) | |
| Status | Completed and ongoing. The city is currently part of the Tree City USA (33 years) program and plans to continue the designation. | |

| Action | | Grade Control Structures |
|---------------------|--|---------------------------------|
| Analysis | Stream bed degradation can occur along many rivers and creeks. Grade control structures include sheet-pile weirs, rock weirs, ponds, road dams, etc. Can be implemented to maintain the channel bed. | |
| Hazard(s) Addressed | Flooding | |
| Status | Completed | |

Removed Mitigation Actions

| Action | |
|--|---|
| Develop a Drought Management Plan | |
| Description | Work with relevant stakeholders to develop a drought management plan. The drought management plan would identify water monitoring protocols, outline drought responses, identify opportunities to reduce water consumption, and establish the jurisdictional management procedures. |
| Hazard(s) Addressed | Drought |
| Status | Suspended |
| Action | |
| Weather Radios | |
| Description | Conduct an inventory of weather radios at schools and other critical facilities and provide new radios as needed. |
| Hazard(s) Addressed | All Hazards |
| Status | Due to enhanced technology and the saturation of weather applications of cellular devices, the City of Wayne would like to remove this action from future efforts. |
| Action | |
| Community Continuity Plan | |
| Description | Develop continuity plans for critical community services. |
| Hazard(s) Addressed | All Hazards |
| Status | Due to the use of engineers planning for the delivery of critical services the City of Wayne would like to remove this action from future efforts. |

RESOLUTION NO. 2025-52

A RESOLUTION MAINTAINING UNIFORM SERVICE SURCHARGE FOR ENHANCED EMERGENCY E911 TELEPHONE COMMUNICATION SYSTEM.

WHEREAS, the City of Wayne, Nebraska has determined it to be in the best interest of public safety and that the health, safety, and general welfare of citizens is promoted by continuing to provide an Emergency Enhanced 911 telephone communications system for its territorial boundaries within the City of Wayne and Wayne County, Nebraska; and

WHEREAS, the emergency E911 telephone communications system which consists of the telephone exchange boundaries within all of Wayne County, Nebraska, which include, but are not limited to telephone prefixes of: 375, 833, 287, 385, 286, 565, 329, 337, and 585; and

WHEREAS, pursuant to Nebraska Revised Statutes 86-420 through 86-441 et. seq. authorizes the governing body providing 911 services to impose a uniform service surcharge in an amount not to exceed \$1.00 on each local exchange access line physically terminating within the governing body's 911 service area.

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and Council of the City of Wayne, Nebraska, pursuant to N.R.S. 86-420 through 86-441, as the same may be amended from time to time, that the present Emergency Enhanced 911 Telephone service surcharge on each local exchange access line which physically terminates within the City of Wayne and Wayne County's designated E911 service area in the amount of \$1.00 per month shall be continued through December 31, 2026.

PASSED AND APPROVED this 2nd day of September.

THE CITY OF WAYNE, NEBRASKA

By _____

Mayor

ATTEST:

City Clerk