

**ORDINANCE NO. 2015-10**

**AN ORDINANCE AUTHORIZING THE ISSUANCE OF A COMBINED UTILITY REVENUE BOND, 2015 SERIES, OF THE CITY OF WAYNE, NEBRASKA, IN THE PRINCIPAL AMOUNT OF ONE MILLION NINE HUNDRED EIGHTY-THREE THOUSAND SIX HUNDRED FIFTY DOLLARS (\$1,983,650), IN THE FORM OF A PROMISSORY NOTE ISSUED TO EVIDENCE INDEBTEDNESS TO THE NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY; APPROVING THE FORM OF SAID BOND (ISSUED AS A SINGLE PROMISSORY NOTE) AND RELATED LOAN AGREEMENT; PLEDGING AND HYPOTHECATING THE REVENUES AND EARNINGS OF THE WATERWORKS PLANT AND WATER SYSTEM AND THE SEWAGE DISPOSAL PLANT AND SANITARY SEWER SYSTEM OWNED BY THE CITY FOR THE PAYMENT OF SAID BOND; PROVIDING FOR THE ISSUANCE AND SALE OF SAID BOND; AUTHORIZING THE DELIVERY OF SAID BOND TO THE NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY; DETERMINING THAT INTEREST ON SAID BOND SHALL NOT BE EXCLUDABLE FROM GROSS INCOME FOR PURPOSES OF FEDERAL INCOME TAXATION; PROVIDING FOR THE DISPOSITION OF THE PROCEEDS OF SAID BOND AND ORDERING THE ORDINANCE PUBLISHED IN PAMPHLET FORM.**

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

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

find and determine as follows:

- A. The City owns and operates its own waterworks plant and water system, which represents a “revenue-producing facility” of the City under the provisions of Sections 18-1803 to 18-1805, R.R.S. Neb. 2007; said plant and system as now existing together with all additional and improvements thereto hereafter acquired or constructed is herein referred to as the “Water System”;
- B. the City owns and operates its own sewage disposal plant and sanitary sewer system, which represents a “revenue-producing facility” of the City under the provisions of Sections 18-1803 to 18-1805, R.R.S. Neb. 2007; said plant and system as now existing together with all additions and improvements thereto hereafter acquired or constructed are herein referred to as the “Sewer System”;
- C. the Water System and the Sewer System, as combined (the “Combined Utility”) further represent a revenue-producing undertaking and facility of the City under the provisions of Sections 18-1803 to 18-1805, R.R.S. Neb. 2007, for which the City is authorized to issue revenue bonds;
- D. the City currently has outstanding no revenue bonds for which the revenues of the Combined Utility have been pledged;
- E. the City currently has outstanding the following revenue bonds for which the revenues of the Combined Utility have been pledged:

Combined Utility Revenue Bond, Series 2010, Date of Issue – December 1, 2009, pursuant to Ordinance No. 2010-2 (the “2010 Ordinance”), in the stated original principal amount of \$1,050,000 (the “Series 2010 Bond”) (issued as a

single promissory note to the Nebraska Department of Environmental Quality (“NDEQ”)); and

Combined Utility Revenue Bond, Series 2010, Date of Issue – October 25, 2010, pursuant to Ordinance No. 2010-22 (the “2010 Ordinance”), in the stated original principal amount of \$7,000,000 (the “Series 2010A Bond”) (issued as a single promissory note to the NDEQ).

Other than the Series 2010 Bond and the Series 2010A Bond, there are no other bonds, notes or other indebtedness for which the revenues of the Combined Utilities have been pledged or made security.

- F. The NDEQ has approved a project of the City for its Sewer System consisting of construction of a Biosolids Treatment and Dewatering Facility at the City’s Wastewater Treatment Works, together with related appurtenant sewer system facilities and improvements, which has been designated as Project No. C317032 (the “2015 NDEQ Contract” or the “2015 NDEQ Project”), which project is more fully described in the 2015 NDEQ Contract and has agreed to lend from monies in NDEQ’s Construction Loan Fund or from other sources in the total principal amount of not to exceed \$1,938,650, the 2015 NDEQ Project being hereinafter sometimes referred to as the “2015 NDEQ Contract”, and in connection with such loan has agreed to accept one or more bonds payable from the revenues of the Combined Utility, and the Mayor and Council do hereby confirm, ratify and approve all prior actions of the City relative to approval and execution of the said 2015 NDEQ Contract;
- G. Any ordinance hereinafter enacted authorizing issuance of combined revenue bonds shall provide that the issuance of such bonds will be on a parity with the issuance of the Combined Utility Revenue Bond, Series 2015, issued to the NDEQ, and that the City shall issue no bonds superior to the lien of the NDEQ as set out in this Ordinance, and shall further provide for the issuance of “Additional Bonds” which may be payable on a parity with the Combined Utility Revenue Bond, Series 2015 and equally and ratably secured therewith under the terms of any ordinance authorizing bonds, provided that:

Such Additional Bonds shall be issued only pursuant to an ordinance which shall provide for monthly credits into a bond payment account in amounts sufficient to pay, when due, the principal of and interest on the Combined Utility Revenue Bond, Series 2015 and equally and ratably secured therewith and the City covenants and agrees that it will take all steps required to allow it to issue and sell its revenue bonds payable from the revenues of the Combined Utility System or other bonds. The average annual bond requirements for all such parity bonds determined in accordance with the requirements of this Ordinance will not be greater than an amount which will be covered by the revenues of the Combined Utility after deduction of operation and maintenance expenses in the amount of 1.25 times such annual bond requirements, or for any bond issued to the NDEQ, such lesser coverage amount as shall be agreed to by the NDEQ.

Section 2. Unless the context shall clearly indicate otherwise, the following terms

(in addition to any terms herein defined by parentheses) shall have the following meanings when used in this Ordinance:

- (a) the term “Additional Bonds” shall mean any and all bonds including refunding bonds and notes, hereafter authorized and issued by the City pursuant to the terms of this Ordinance which are equal to lien to the Combined Utility Revenue Bond, Series 2015 and equally and ratably secured therewith including any such bonds issued pursuant to Section 11 of this Ordinance.
- (b) the term “Combined Utility” shall mean the Water System and the Sewer System of the City of Wayne.
- (c) the term “revenues” shall mean all the rates, rentals, fees, charges, earnings and other monies from any source whatever derived by the City of Wayne through its ownership and operation of the Combined Utility (including, without limitation, fees and charges for hook ups, taps and capital facilities charges).

Section 3. To provide for the payment of the costs of the Project, there shall be and there is hereby ordered issued the 2015 Bond, in the form of and evidenced by a single promissory note (sometimes referred to in this Ordinance, according to the context, as the “2015 NDEQ Note” and sometimes as the “2015 Bond”) in the principal amount of not to exceed One Million Nine Hundred Thirty-eight Thousand Six Hundred Fifty Dollars (\$1,938,650), with such 2015 NDEQ Note to be substantially in such form and to have such payment terms as are set forth in Exhibit A to this Ordinance, which exhibit is by such reference incorporated herein as if fully set forth. In connection with the issuance of the 2015 NDEQ Note, the City shall also enter into an agreement with NDEQ previously described herein and entitled Loan Contract Between Nebraska Department of Environmental Quality and the City of Wayne, Nebraska, NDEQ Project No. C317032 in substantially the form set forth in Exhibit B to this Ordinance, which exhibit is by such reference incorporated herein as if fully set forth. The terms and conditions of the 2015 NDEQ Note and 2015 NDEQ Project are hereby approved and the Mayor and the City Clerk are hereby authorized to execute and deliver the 2015 NDEQ Note and the NDEQ Contract for and on behalf of the City in substantially the form approved but with such changes from the forms presented and attached hereto as such officers shall deem appropriate for and on behalf of the City.

Section 4. The City hereby pledges and hypothecates the entire revenue and earnings of the Combined Utility (subject only to the payment of reasonable operating expenses of said Combined Utility) to the payment of the 2010 Bond, the Series 2010 Bond, the Series 2010A Bond, and any Additional Bonds issued hereunder.

Section 5. The City will maintain and collect rates and charges for all Combined Utility service furnished from the Combined Utility adequate to produce revenue and earnings sufficient at all times:

- (a) to provide for the payment of interest on and principal of the 2015 Bond, the 2010 Bond, the 2010A Bond, and any Additional Bonds as such interest and principal become due;
- (b) to pay all reasonable costs of operation and maintenance of the Combined Utility, including adequate insurance as provided by this Ordinance and to pay for the necessary and reasonable repairs, replacements and extensions of said Combined Utility.
- (c) To establish and maintain a Combined Utility Bond Reserve Account as hereinafter set forth.

Section 6. The application and handling of all revenues collected, derived and to be derived by the City from the operation of the Combined Utility shall be governed by the terms of this Ordinance. There has been, and shall be, established a separate fund held by the City Treasurer, designated as the “Wayne Combined Utility Fund” (herein referred to as the “Combined Utility Fund”), into which all of the revenues of the Combined Utility are required to be deposited as and when received. Said Combined Utility are required to be deposited as and when reviewed. Said Combined Utility Fund shall be maintained so long as any of the 2010 Bond, 2010A Bond, 2015 Bond and any Additional Bonds remain outstanding. Within the Combined Utility Fund, in accordance with the requirements of this Ordinance, the accounts and sub-accounts shall be as follows:

- I. OPERATION AND MAINTENANCE ACCOUNT: The City shall set aside in this account each month an amount sufficient for the operation and maintenance of its Combined Utility and the expenses of maintenance and operation of said utilities shall be paid out of this account.
- II. COMBINED UTILITY REVENUE BOND ACCOUNT: Out of the Combined Utility Fund, the City shall pay into the Combined Utility Revenue Bond Account on or before the first day of each calendar month an amount sufficient to meet the payment requirements for each sub-account established therein. Upon the issuance of the 2015 Bond there is hereby ordered established the 2015 Bond Sub-account for purposes of providing the payments on the 2015 Bond as the same falls due. Beginning with the first day of the month which immediately follows the “Initiation of Operation” (as defined in the NDEQ Contracts; and as established in this 2015 Ordinance (hereafter referred to as the “Initiation of Operation”) of the Project, and continuing until and including that June 1 or December 1 (as the case may be with respect to the earliest occurring of such dates) an amount such that if the same amount were credited on the first day of each calendar month from such date of credit until the next payment date upon which any amount falls due on the NDEQ Note, provided, however, that such credits shall be required only as and to the extent that such payments are not

provided from other sources including amounts advanced by NDEQ pursuant to the NDEQ Contracts and the 2015 NDEQ Note and during the period from and including that June 1 or December 1 (as the case may be with respect to the earliest occurring of such dates) which immediately follows the Initiation of Operation until the 2015 NDEQ Note has been paid in full an amount equal to one-sixth of the installment amount (principal and interest) due on the next installment payment date for the 2015 NDEQ Note. In any ordinance authorizing Additional Bonds a separate sub-account in the Combined Utility Revenue Bond Account shall be established for such Additional Bonds. Credits to the sub-accounts in the Combined Utility Revenue Bond Account shall be made at such times and in such amounts to provide sufficient funds in each sub-accounts within the Combined Utility Revenue Bond Account shall be made without preference or priority as between sub-accounts and if amounts available are insufficient to make all credits as required the available funds shall be allocated among the sub-accounts for the 2010 Bond, the 2010A Bond, 2015 Bond, and the various issues of Additional Bonds pro rata in accordance with the respective unpaid principal amounts then outstanding for each issue. Each sub-account in the Combined Utility Revenue Bond Account shall constitute a separate account held in trust by the City Treasurer for the separate benefit of the issue of bonds for which it is established.

- III. **COMBINED UTILITY BOND RESERVE ACCOUNT:** The Series 2015 Bonds, under the terms of the NDEQ Contract provided no requirement for establishment of a debt service reserve account. The City may determine and this Ordinance permits that there may be established a separate sub-account for any Additional Bonds issued on a parity with the Series 2015 Bond in such amount as shall be established as allowed by law and the terms of such Additional Bonds. In the event that at any time the amounts credited to such Sub-account are insufficient to make the payments due on Additional Bonds as the same fall due, the City shall apply the monies in the Reserve Account to pay such principal and interest and to prevent any default in payment with respect to such Additional Bonds. If the City shall use any of the monies in any sub-account for such purpose and such use shall reduce the balance of said sub-account below the required balance, the City shall transfer funds next available in each month from the revenues in the Combined Utility Fund, after making all required deposits in each such month to the Operation and Maintenance Account and the Combined Utility Revenue Bond Account until the required balance in the Reserve Sub-account has been restored. In issuing Additional Bonds other separate sub-accounts may be established by the Mayor and City Council. In no event shall the required balance for any such additional sub-account established for Additional Bonds in the Combined Utility Bond Reserve Account exceed an amount the lesser of (a) 1.25 times the average annual bond debt service payment requirement (b) the maximum annual debt service requirement or (c) ten percent of the principal amount of bonds issued, for the issue of Additional Bonds for which such reserve is established, or such lesser amount as may then be allowed under current tax law. The balance in any such additional sub-account may be funded from moneys on hand or from periodic deposits from revenues in the Combined Utilities Fund or from the proceeds of such Additional Bonds. Each sub-account in the Combined Utility Bond Reserve Account shall be of equal standing with each other sub-account in the Combined Utility Bond Reserve Account and available moneys from the Combined Utilities Fund required to be credited to each such sub-account at any time shall be allocated on a pro rata basis between sub-accounts then requiring credits in accordance with the respective unpaid principal amounts then outstanding for each such issue for which there is a

sub-account requiring credits. Each sub-account in the Combined Utility Bond Reserve Account shall constitute a separate account held in trust by the City Treasurer for the separate benefit of the issue of bonds for which it is established.

IV. SURPLUS ACCOUNT: After providing for the Operation and Maintenance Account and after making the payments as hereinabove required to be made into the Combined Utility Revenue Bond Account, and the Combined Utility Bond Reserve Account, all remaining funds in the Combined Utility Fund shall be deposited into the Surplus Account to be used as follows:

- 1) To fill any deficiency in the foregoing accounts.
- 2) For the purpose of calling under their option provisions the 2015 Bond or for purchasing on the open market Additional Bonds.
- 3) For improvements, replacements, extensions and enlargements to the Combined Utility.
- 4) For any other legal municipal purpose provided that money expended for other municipal purposes does not exceed 50% of the amount on hand in the Surplus account as of the time of such expenditure.

Any ordinance authorizing Additional Bonds may provide for the creation of additional accounts, including a debt service reserve account, and sub-accounts in the Surplus Account or other accounts as may be established for such a reserve or other purposes as the Mayor and Council shall deem appropriate. In the event that there is a deficiency in any of the accounts described in the foregoing subsections I and II, all moneys in the Surplus Account shall be applied for the purpose described in (1) above prior to any application to the purposes described in (2), (3) or (4) above.

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

It is understood that the revenues of the Combined Utility are to be credited to the various accounts and sub-accounts hereinabove described and as set out in this Ordinance, the 2010 Ordinance and the 2010A Ordinance in the order in which said account have been listed in this Ordinance, the 2010 Ordinance and the 2010A Ordinance, and if within any period the revenues are insufficient to credit the required amounts in any of the said accounts or sub-accounts, the deficiencies shall be made up the following period or periods after payment into all accounts enjoying a prior claim on the revenues have been made in full.

Section 7. The City of Wayne shall keep proper books of record and account, separate and apart from all other records and accounts, showing complete and correct entries of all transactions relating to the Combined Utility and the holder or holders of the 2015 Bond, and any Additional Bonds or any duly authorized agent or agents of such holders shall have the right at all reasonable times to inspect all records, accounts and data relating thereto and to inspect said Combined Utility and all properties comprising the same. Within sixty days following the close of each fiscal year the City shall cause an audit of such books and accounts to be made by an independent firm of certified public accountants, showing the receipts and disbursements for account of the Combined Utility and such audit will be available for inspection by the holders of any of the aforesaid bonds. Each such audit, in addition to whatever matters may be thought proper by the accountant to be included therein, shall include the following:

1. A statement in detail of the income and expenditures of each component of the Combined Utility for such fiscal year.
2. A balance sheet as of the end of such fiscal year.
3. A list of the insurance policies in force at the end of the fiscal year, setting out as to each policy the amount of the policy and risks covered, the name of the insurer and the expiration date of the policy.
4. The number of properties connected with the systems composing the Combined Utility at the end of the year and the number of Combined Utility customers at the end of the year.

All expenses incurred in the making of the audits required by this section shall be regarded and paid as a maintenance and operation expense. The City of Wayne shall furnish a copy of each such audit to the

original purchaser of the 2015 Bond herein authorized and any series of Additional Bonds, and to the holder of at least twenty-five percent (25%) of any issue of bonds outstanding, upon request, after the close of each fiscal year, and said purchaser or any such holder shall have the right to discuss with the accountant making the audit the contents of the audit and to ask for such additional information as each may require.

Section 8. The City Treasurer and the City Clerk shall be bonded, in addition to their official bond, by an insurance company licensed to do business in Nebraska, in amounts sufficient to cover at all times all the revenues and earnings of the Combined Utility placed in their hands. Any other person employed by the City in the collection or handling of monies derived from the operation of the Combined Utility shall also be bonded in an amount sufficient to cover all monies which may at any time be placed in such person's hands. The amount of such bonds shall be fixed by the Council and the cost thereof shall be paid from the earnings of said Combined Utility, and they shall secure the faithful accounting of all monies.

Section 9. The City will carry adequate insurance on the Combined Utility in such amounts as are normally carried by private companies engaged in similar operations, including, without limiting the generality of the foregoing, fire and windstorm insurance, public liability insurance any insurance covering such risks as shall be recommended by a consulting engineer. The cost of all such insurance shall be regarded and paid as an operation and maintenance expense. All such insurance proceeds except from public liability insurance shall be used in making good the loss or damage in respect of which they were paid either by repairing the property damaged or replacing the property destroyed, and expenditures from said monies shall be made only upon a certificate issued by a consulting engineer and filed with the City Clerk stating that such proceeds, together with any other monies available for such purposes, are sufficient for the repair or replacement of any such properties, and when the City shall have been furnished with a certificate of a consulting engineer stating that the property damaged or destroyed has been fully paid for, the residue if any, of such insurance monies shall be transferred from the Surplus Account to the Combined Utility Revenue Bond Account to make up any deficiency in said Account, if any such deficiency exists. If the proceeds of any insurance shall be insufficient to repair or replace the

property damaged or destroyed, the City may use and shall pay out for such purpose, to the extent of such deficiency, any money remaining in the Surplus Account. If in the opinion of a consulting engineer the proceeds of any insurance, together with any amount then available for that purpose in the Surplus Account shall be insufficient to fully complete and pay for such repairs or replacements and if the City shall fail to supply such deficiency from other sources within a period of six months after receipt by the City of such insurance monies, or if in the opinion of a consulting engineer it is in the best interest of the City not to repair or replace all or any part of the damaged properties and that failure to repair or replace the damaged properties shall not affect the sufficiency of the income and revenue from the remaining properties to properly maintain and operate the same and provide funds for the funds for the Combined Utility Revenue Bond Account, as herein provided for, then such insurance monies to the extent not applied to repair or replace the damaged properties shall be deposited to the Surplus Account. If the holders of sixty per cent (60%) or more in principal amount of the 2015 Bond herein authorized and any Additional Bonds at the time outstanding shall at any time direct the City in writing to do so, then any insurance monies then in the hands of the City may be used for extensions and betterments of said Combined Utility or applied to the pro rata payment of the principal of and accrued interest on all said bonds then outstanding. The proceeds of any and all policies for public liability shall be paid to and be held by the City Treasurer and used in paying the claims on account of which they were received.

Section 10. The City will maintain the Combined Utility in good condition and operate the same in an efficient manner and at a reasonable cost. The City agrees with the holder or holders from time to time of the 2015 Bond that the City will continue to own, free from all liens and encumbrances, except the liens and pledges provided for in this Ordinance and will adequately maintain and efficiently operate said Combined Utility; provided, however, the City may dispose of property which is recommended for disposal by the manager or superintendent of the utilities, or an independent Consulting Engineer and which is determined as a matter of record by the Council to have become obsolete, non-productive or otherwise unusable to the advantage of the City.

Section 11. Nothing in this Ordinance shall be construed in such a manner as to prevent the issuance by the City of Wayne of Additional Bonds payable from the revenues of the Combined Utility,

which Additional Bonds shall be on a parity with the lien of the 2015 Bond, and equally and ratably secured therewith and entitled to the security and benefits of this Ordinance; provided however, that before any such Additional Bonds are actually issued, the revenues of the Combined Utility, for the fiscal year next preceding the date of the authorization of such Additional Bonds, after deducting therefrom all costs of operation and maintenance of said Combined Utility for such fiscal year and before deduction of depreciation or interest as based on a certified public accountant's report shall have been equal to 1.25 times the average annual bond requirements of the 2015 Bond herein authorized and any Additional Bonds then outstanding and the Additional Bonds proposed to be issued, which average annual bond requirements shall be determined by adding all of the principal and interest which will become due when computed to the absolute maturity of the 2015 Bond herein authorized and Additional Bonds, if any, then outstanding and all of the principal and interest of the additional Bonds to be issued, and dividing such total by the number of years remaining that the longest bond of any such issue of bonds (including the Additional Bonds to be issued) has to run to maturity; provided, however, that in the event that the Mayor and Council determine it necessary and advisable for the City to issue Additional Bonds payable from the revenues of the Combined Utility, which bonds are on a parity with the lien of the 2015 Bond herein authorized and equally and ratably secured therewith, and the audit for the fiscal year next preceding the date of authorization of such Additional Bonds is not yet available, the City may issue such Additional Bonds if the audit for the fiscal year immediately preceding such next preceding fiscal year shows that the revenues of the Combined Utility for such fiscal year (so immediately preceding such next fiscal year), after deducting therefrom all costs of operation and maintenance but before deduction of depreciation or interest, shall have been equal to 1.25 times the average annual bond requirements of the 2015 Bond herein authorized, any Additional Bonds then outstanding and any Additional Bonds to be issued, and if the City Treasurer certifies that the unaudited books and records of the Combined Utility for the fiscal year next preceding the date of authorization of such Additional Bonds do not show any variance in operating results which would be sufficient to evidence a reduction in debt service coverage below 1.25 times the average annual bond requirements of the 2015 Bond herein authorized, any Additional Bonds then outstanding and the Additional Bonds proposed to be issued.

In the event any change in the rates, rentals and charges for the use and service of the Combined Utility or any part thereof has been made during the preceding fiscal year or during the interval between the end of such fiscal year and the issuance of such Additional Bonds, or in the event the City shall covenant in the ordinance or resolution authorizing the issuance of such Additional Bonds to impose, effective upon the issuance of such Additional Bonds, higher rates, rentals and charges for such use and service, compliance with the provisions of this Section 11 of this Ordinance may be evidenced by a certificate of an independent Consulting Engineer or firm of engineers or Certified Public Accountant or firm of independent Certified Public Accountants to be filed with the City Clerk prior to the issuance of any such Additional Bonds. Such certificate shall state fully the facts upon which such certificate is based, and if it is a certificate of the Consulting Engineer or firm of Consulting Engineers shall have attached thereto the certified financial statement for the fiscal year next preceding the date of authorization of such Additional Bonds used by the Engineer or firm of Engineers in arriving at the conclusion stated in said certificate. The Consulting Engineer or independent Certified Public Accountant of the City shall, in determining the earnings for such fiscal year, adjust the collections to reflect the result as if such changed rates, rentals and charges, or such higher rates, rentals and charges had been in existence for such entire preceding fiscal year period, and the amount of such net collections and adjusted earnings as aforesaid shall be conclusive evidence and the only evidence required to show compliance with the provisions and requirements of this Section 11 of this Ordinance. A certificate of an independent Consulting Engineer or firm of engineers or Certified Public Accountant or firm of independent Certified Public Accountants contemplated herein shall not be required to evidence compliance with the provisions of this Section 11 if the City Council shall determine the revenues of the Combined Utility for the fiscal year next preceding the date of the authorization of such Additional Bonds, based upon a certified public accountant's report (in accordance with the terms of the paragraph immediately preceding), comply without adjustment with the requirements of this Section 11.

If the City shall find it desirable, it shall also have the right when issuing Additional Bonds to combine with its electric, gas, water and sewer systems any other utilities of the City authorized to be combined under Sections 18-1803 through 18-1805, R.R.S. Neb. 2012, including, but not limited to, a

solid waste disposal system or such other system as may constitute a revenue producing facility or undertaking, and to cause all of the revenues of such Combined Utility systems to be paid into the Combined Utility Fund, which Fund may be appropriately redesignated, and to provide that the 2015 Bond herein authorized and any Additional Bonds previously issued, all as then outstanding, and the proposed issue of Additional Bonds shall be payable from the revenues of such Combined Utility and shall stand on a parity and in equality as to security and payment, provided, however, no such utility shall be combined with the electric, gas, water and sewer systems as contemplated in this paragraph unless the City is current with all the payments required to be made into the accounts set out in this Ordinance and the revenues of the Combined Utility shall satisfy one or the other of the requirements for Additional Bonds provided above in this Section 11. For purposes of meeting such requirement, the definition of revenues shall be altered to include the gross revenues of the additional utility or utilities and there shall be deducted from such revenues the ordinary expenses of operating and maintaining the additional utility or utilities (not including any deduction for depreciation or interest) and for such purposes any engineer or accountant furnishing projections may take into consideration the factors similar to those described above with respect to such additional utility or utilities. Revenues of the additional utility or utilities shall be based upon the report or reports of independent certified public accountants in the same manner as is required above.

For purposes of this ordinance, refunding bonds, which are issued to take up and pay off any or all of the 2015 Bond herein authorized or Additional Bonds then outstanding, may be issued and shall themselves qualify as Additional Bonds having equal lien and priority as to the revenues of the Combined Utility with any of the 2015 Bond herein authorized or Additional Bonds which are to remain outstanding after the completion of such refunding provided that the following conditions are met:

- (1) if the proceeds of such refunding bonds are not to be applied immediately to the taking up and paying off of the bonds to be refunded from their proceeds, then such refunding bonds must provide by their terms that they shall be junior in lien to the 2015 Bond herein authorized or Additional Bonds, as shall be then outstanding, until the time of application of the proceeds of such refunding bonds to the taking up and paying off of the bonds to be refunded by deposit with the designated paying agent pursuant to Section 10-126, R.R.S. Neb. 2012 (or any successor statutory provision thereto) or until the bonds to be refunded under the terms of their authorizing ordinance or ordinances are no longer deemed to be outstanding,

whichever occurs sooner;

(2) such refunding bonds shall qualify as Additional Bonds under the revenues test described above in this Section, provided that in computing average annual bond requirements, all payments of principal and interest due on such refunding bonds from the time of the issuance to the time of application of the proceeds thereof by deposit with the designated paying agent pursuant to Section 10-126, R.R.S. Neb. 2012 (or any successor statutory provision thereto) or until the bonds to be refunded under the terms of their authorizing ordinance or ordinances are no longer deemed to be outstanding, whichever occurs sooner, shall be excluded from such computation to the extent that such principal or interest are payable from other sources (such as bond proceeds or investment earnings thereon) or from moneys in the Surplus Account, and all payments of principal and interest due on the bonds to be refunded, from and after the time of the deposit with the designated paying agent pursuant to Section 10-126 R.R.S. Neb. 2012 (or any successor statutory provision thereto) or the time when such bonds to be refunded under the terms of their authorizing ordinance or ordinances are no longer deemed to be outstanding, whichever occurs sooner, shall also be excluded from such computation.

Section 12. Nothing herein contained shall prevent the City from issuing bonds, revenue notes, or other forms of indebtedness, the payment of principal and interest of which is a charge upon all or a portion of the revenues of the Combined Utility, junior or inferior to the 2015 Bond herein authorized and to the payments to be made into the Operation and Maintenance Account, Combined Utility Revenue Bond Account described in Section 6 hereof and the City shall have the right to pay interest thereon and the principal thereof as long as no deficiency exists in the payments into such Accounts, from funds available for improvements and enlargements to the Combined Utility or from other funds which are available for such debt service.

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

Section 14. While the 2015 Bond is outstanding, the City will render bills to all customers for its Combined Utility services. If bills are not paid within sixty days after due, such portion of the Combined Utility service for which payment for services is delinquent, will be discontinued subject to state and federal laws governing the termination of utility service. The City agrees that it will order that portion of such Combined Utility service shut off on all properties served by the Combined Utility System where there are delinquent Combined Utility use charges and will make appropriate charge for use of all

properties of the City connected to the Combined Utility systems, all as and to the extent permitted by law.

Section 15. Except for amendments which are required for the correction of language to cure any ambiguity or defective or inconsistent provisions, omission or mistake or manifest error contained herein, no changes additions or alterations of any kind shall be made by the City in the provisions of this Ordinance in any manner; provided, however, that from time to time the holder of the 2015 Bond by an instrument in writing signed by such holder and filed with the City Clerk shall have power to assent to and authorize any modification of the rights and obligations of the City and of the holder of the 2015 Bond and interest thereon and the provisions of this Ordinance that shall be proposed by the City, and any action authorized to be taken with the assent and authority given as aforesaid of the holder of said bond shall be binding upon such holder and upon the City as fully as though such action were specifically and expressly authorized by the terms of this Ordinance. Any modification of the provisions of this Ordinance made as aforesaid shall be set forth in a supplemental ordinance to be adopted by the Mayor and Council of said City.

Section 16. So long as the 2015 Bond is outstanding, each of the obligations, duties, limitations and restraints imposed upon the City by this Ordinance shall be deemed to be a covenant between the City and the holder of said bond, and this Ordinance and every provision and covenant hereof shall constitute a contract of the City with every holder from time to time of said bond. Any holder of the 2015 Bond may by mandamus or other appropriate action or proceeding at law or in equity in any court of competent jurisdiction enforce and compel performance of this Ordinance and every provision and covenant thereof including, without limiting the generality of the foregoing, the enforcement of the performance of all duties required by the City by this Ordinance and the applicable laws of the State of Nebraska, including in such duties the making and collecting of sufficient rates, rentals, fees or charges for the use and service of the Combined Utility, the segregation of the revenues of the Combined Utility and the application thereof to the respective Fund, Accounts and sub-accounts referred to and described in Section 6 of this Ordinance. Any holder of the 2015 Bond herein authorized or Additional Bonds shall, after default in payment, have the right to request the appointment of a receiver for the Combined Utility.

Section 17. The City's obligations under this Ordinance and the liens, pledges, covenants and agreements of the City herein made or provided for with respect to the 2015 Bond, shall be fully discharged and satisfied and such bond shall no longer be deemed outstanding hereunder if such bond shall have been purchased and cancelled by the City or when payment of the principal of and interest thereon to the respective date of maturity or redemption (a) shall have been made or caused to be made in accordance with the terms thereof, or (b) shall have been provided for by depositing with a national or state bank having trust powers or trust company, in trust solely for such payment, (i) sufficient money to make such payment and/or (ii) direct general obligations of the United States government or obligations guaranteed by the United States government ("Deposit Securities") in such amount and bearing interest payable and maturing or redeemable at stated fixed prices at the option of the holder as to principal, at such time or times, as will ensure the availability of sufficient money to make such payment; provided, however, that, with respect to the 2015 Bond if it is to be paid prior to maturity, the City shall have duly given notice of redemption of such bond as provided by law or made irrevocable provisions for the giving of such notice. Any such money so deposited with a bank or trust company may be invested and reinvested in Deposit Securities and all interest and income from such Deposit Securities in the hands of such bank or trust company, in excess of the amount required to pay principal of and interest on the bond for which such monies were deposited, shall be paid over to the City as and when collected. With respect to any deposit made for purposes of satisfying the 2015 Bond under this Section 17, there shall be furnished to NDEQ and the Nebraska Investment Finance Authority ("NIFA") an opinion of nationally recognized bond counsel that such deposit for payment of the 2015 Bond will not adversely affect the exclusion for interest from gross income for federal tax purposes on any bonds issued by NIFA to provide funds for deposit into the Nebraska Wastewater Facilities Construction Loan Fund and the furnishing of such opinion shall be a condition required to be satisfied prior to the making of any such deposit in trust for payment and satisfaction with respect to the 2015 Bond unless the 2015 Bond is to be prepaid and

redeemed within 60 days from the time of such deposit.

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

Section 19. The Mayor and Council hereby expressly declare the intent and understanding that interest on the 2015 Bond shall not be excludable from gross income under the terms of Section 103 of the Internal Revenue Code of 1986, as amended, and the City as issuer shall not file any information report with respect to the issuance of the 2015 Bond pursuant to Section 149(e) of said Code.

Section 20. All ordinances, resolutions or orders or parts thereof in conflict with the provisions of this Ordinance are to the extent of such conflict hereby repealed.

Section 21. This Ordinance shall be published in pamphlet form and take effect as provided by law.

PASSED AND APPROVED this 17<sup>th</sup> day of February, 2015.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

[SEAL]

Exhibit "A"

NDEQ Note

Exhibit "B"

NDEQ Loan Contract