

ORDINANCE NO. 2010-2

AN ORDINANCE AUTHORIZING THE ISSUANCE OF A COMBINED UTILITIES REVENUE BOND, SERIES 2010, OF THE CITY OF WAYNE, NEBRASKA, IN THE PRINCIPAL AMOUNT OF ONE MILLION FIFTY THOUSAND DOLLARS (\$1,050,000), 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; DETERMINING THIS ORDINANCE TO BE A MEASURE NECESSARY TO CARRY OUT THE CITY'S CONTRACTUAL OBLIGATIONS; DECLARING AN EMERGENCY AND ORDERING THE ORDINANCE PUBLISHED IN PAMPHLET FORM AND TO TAKE EFFECT IMMEDIATELY UPON PROCLAMATION BY THE MAYOR AND POSTING OF SUCH PAMPHLET.

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 Utilities") 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 with a combined pledging of revenues.

- D. The City currently has outstanding no revenue bonds for which the revenues of the Combined Utilities have been pledged.
- E. The City currently has outstanding its Combined Utility Revenue Bond Anticipation Notes, Series 2009, Dated February 15, 2009, in the principal amount of \$1,070,000, maturing February 15, 2012 and callable for prepayment at the option of the City anytime on or after February 15, 2010 (the "Series 2009 Notes") for which the revenues of the Combined Utilities have been pledged as set forth in Ordinance No. 2009-3 of the City, passed and approved on February 17, 2009 authorizing the Series 2009 Notes (the "Series 2009 Note Ordinance"). In the Series 2009 Note Ordinance, the City has pledged the revenues of the Combined Utilities (referred to in such ordinance as the "Combined Utility System") for the payment of the Series 2009 Notes, both principal and interest as the same fall due and provided that the holders of the Series 2009 Notes shall have a lien upon the revenues of the City's Combined Utilities. It is necessary to provide for the payment of the Series 2009 Notes in order to determine the lien status of the obligations herein confirmed and authorized and such provision is hereby made as set forth in Section 20 of this Ordinance.
- F. The Nebraska Department of Environmental Quality ("NDEQ") has approved a project of the City for its Water System designated as DWSRF Project No. D311519 consisting of construction of a new municipal water well and certain water line replacements and distribution system improvements (the "2010 Project").
- G. The Mayor and Council have by resolution passed and approved on December 1, 2009 (the "2009 Resolution") authorized the execution and delivery of an agreement with NDEQ entitled "Nebraska Drinking Water Facilities Loan Fund Loan Agreement American Recovery and Reinvestment Act" dated as of December 1, 2009 (the "NDEQ Contract") providing for a loan to the City in the maximum amount of \$1,050,000 to pay costs of the 2010 Project. The NDEQ Contract provides for the borrowings under the NDEQ Contract to be evidenced by a promissory note which is intended by the City and by NDEQ to constitute a revenue bond of the City which is authorized under the terms of Sections 18-1803 to 18-1805, R.R.S. Neb. 2007, (the "Act") and which in this Ordinance is referred to as the "NDEQ Note" or the "Series 2010 Bond".
- H. This Ordinance is being passed and approved in order to confirm the status of the NDEQ Contract and the NDEQ Note under the terms of the Act, to provide for payment and redemption of the Series 2009 Notes and to provide for terms under which subsequent revenue bonds of the City of equal lien and standing with the NDEQ Note may be issued in the future to pay costs of improvements to the Combined Utilities.

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:

“Additional Bonds” shall mean any and all bonds hereafter issued by the City pursuant to the terms of this Ordinance which are equal in lien to the Series 2010 Bond, including any such bonds issued pursuant to Section 6 hereof and refunding bonds issued pursuant to Section 7 hereof, as and when such bonds become equal in lien to the Series 2010 Bond, according to their terms and the terms of said Sections 6 and 7.

“Average Annual Debt Service Requirements” shall mean that number computed by adding all the principal and interest which will become due when computed to the absolute maturity of the Series 2010 Bond, as then outstanding and of the Additional Bonds, if any, then outstanding and all of the principal and interest of any Additional Bonds to be issued and dividing such sum total by the number of years remaining that the longest bond of any issue of bonds (including the Additional Bonds to be issued) has to run to maturity. For such purposes any bonds issued as term bonds with scheduled mandatory redemptions shall be treated as maturing in accordance with such schedule of mandatory redemptions. Any amounts due and owing to NDEQ for fees, rather than principal and interest, shall not be included in any such computation as being a part of debt service.

“Deposit Securities” shall mean direct obligations of or obligations the principal and interest of which are unconditionally guaranteed by the United States of America.

“Net Revenues” shall mean the gross revenues derived by the City from the ownership or operation of the Combined Utilities, including investment income, but not including any income from sale or disposition of any property belonging to or forming a part of the Combined Utilities, less the ordinary expenses to the City of operating and maintaining the Combined Utilities payable from the Operation and Maintenance Account described in Section 4 of this Ordinance. Operation and maintenance expenses for purposes of determining “Net Revenues” shall not include depreciation, amortization or interest on any bonds or other indebtedness. Net Revenues for all purposes of this Ordinance shall be shown by an audit for the fiscal year in question as conducted by independent certified public accountants.

Section 3. To provide for the payment of the costs of the 2010 Project, there shall be and there is hereby ordered issued the City’s Combined Utilities Revenue Bond, Series 2010, (being one and the same as the NDEQ Note), in the form of and evidenced by a single promissory note

in the principal amount (maximum drawable amount) of One Million Fifty Thousand Dollars (\$1,050,000), with such NDEQ Note (having been previously delivered to NDEQ along with the NDEQ Contract pursuant to the 2009 Resolution) to be 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 NDEQ Note, the City has also executed and delivered the NDEQ Contract, being in the form set forth in Exhibit B to this Ordinance, which exhibit is by such reference incorporated herein as if fully set forth. In order to harmonize the provisions of the NDEQ Contract with the terms of this Ordinance, it is necessary and advisable for the NDEQ Contract to be amended and there has been prepared for approval by the Mayor and Council an amendment to the NDEQ Contract entitled: “Amendment Number One to Loan Agreement between Nebraska Department of Environmental Quality and City of Wayne, Nebraska, Project No. D311519” (the “Amendment”). The terms and conditions and the execution and delivery of the NDEQ Note and the NDEQ Contract are hereby ratified and confirmed, subject to the changes provided for in the Amendment, and the Mayor is hereby authorized to execute and deliver the Amendment for and on behalf of the City in substantially the form presented as Exhibit C to this Ordinance but with such changes from the form presented as such officer 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 Utilities (subject only to the payment of reasonable operating expenses of said Combined Utilities) to the payment of the Series 2010 Bond and any Additional Bonds and interest on such Series 2010 Bond and any Additional Bonds as the same fall due. The pledge and hypothecation provided for the Series 2010 Bond and any Additional Bonds hereafter issued as provided for in this Ordinance are intended to and shall provide for a first and prior pledge or lien upon and security interest in the revenues of the Combined Utilities superior to any pledge,

lien or security interest made or given with respect to any other indebtedness of the City as to its Combined Utilities and are intended as a full exercise of the powers of the City provided for in the Act, as now or hereafter amended, with respect to the City's Combined Utilities and the revenues and earnings thereof. In connection with such pledge, the City does hereby agree with the holders of said Series 2010 Bond and Additional Bonds that there shall be and there is hereby established a separate fund to be held by the City Treasurer, designated as the "Wayne Combined Utilities Fund" (herein referred to as the "Combined Utilities Fund"), into which all of the revenues of the Combined Utilities are required to be deposited as and when received, provided that the City may in its discretion maintain within the Combined Utilities Fund such separate deposits, credits and accounting for the separate components of the Combined Utilities as the Mayor and Council and the officers of the City, including the Treasurer, shall deem appropriate so long as the funds, investments and accounts related to the Combined Utilities are kept separate and apart from the general funds and accounts of the City. Said Combined Utilities Fund shall be maintained so long as the Series 2010 Bond or any Additional Bonds remain outstanding. Within the Combined Utilities Fund, in accordance with the requirements of this Ordinance, the accounts and sub-accounts shall be maintained as follows:

(a) OPERATION AND MAINTENANCE ACCOUNT - Out of the Combined Utilities Fund there shall be monthly credited into the Operation and Maintenance Account such amounts as the City shall from time to time determine to be necessary to pay the reasonable and necessary expenses of operating and maintaining the Combined Utilities and the City may withdraw funds credited to the Operation and Maintenance Account as necessary from time to time to pay such expenses.

(b) BOND PAYMENT ACCOUNT - Out of the Combined Utilities Fund there shall be credited monthly on or before the first day of each month to the Bond Payment Account, starting with the month of March 2010, the following amounts:

- (1) during the period from and including March 1, 2010, until and including that December 1 or June 1 which immediately follows the "Initiation of Operation" (as defined in the NDEQ Contract; in this Ordinance hereafter referred to as the "Initiation of Operation") of the 2010 Project, 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, whether for principal or interest, the amount accumulated by such monthly credits shall equal the amount falling due on such payment date on the NDEQ Note;

- (2) during the period from and including that January 1 or that July 1 which immediately follows the Initiation of Operation until the 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 NDEQ Note;
- (3) During such periods and in such amounts, all such payments are as required under the terms of any ordinance authorizing the issuance of Additional Bonds with respect to the principal and interest on such Additional Bonds.

The City Treasurer is hereby authorized and directed, without further authorization, to withdraw monies credited to the Bond Payment Account, or if the monies in such Account are insufficient, then from the Bond Reserve Account (as and to the extent that amounts are available in a sub-account therein designated in the authorizing ordinance) and next from the Surplus Account, an amount sufficient to pay, when due, the principal of and interest on the Series 2010 Bond or any Additional Bonds and to transfer the appropriate amounts due to the direct payee for the Series 2010 Bond and the respective paying agents or direct payees (as may be applicable) for any Additional Bonds, on or before each principal and interest payment date. Upon the issuance of any Additional Bonds pursuant to this Ordinance, appropriate additional credits to the Bond Payment Account shall be provided for sufficient to pay principal and interest on said Additional Bonds.

(c) **BOND RESERVE ACCOUNT:** The Bond Reserve Account is established as an account in the Combined Utilities Fund for purposes of assuring the timely payment of principal and interest in the event that there are insufficient monies on hand for such purposes in the Bond Payment Account. A separate sub-account within the Bond Reserve Account shall be established for any series of bonds for which any such reserve is determined to be necessary by the Mayor and Council at the time of issuance. The Mayor and Council hereby determine that no such amount is required for the Series 2010 Bond, in view of the provisions of the NDEQ Contract. In the event of the issuance of any Additional Bonds, a separate sub-account for each such issue of Additional Bonds may be established within the Bond Reserve Account, as and to the extent determined appropriate by the Mayor and Council. Monies credited to the Bond Reserve Account may be withdrawn, but only from the designated sub-account for a specific issue, as needed, to provide funds to pay, when due, the principal of and interest on any Additional Bonds issued pursuant to this Ordinance for which a reserve sub-account has been established, if the Bond Payment Account contains insufficient funds for that purpose, and the City Treasurer is hereby authorized and directed to make such withdrawal if and when needed. In the event of a withdrawal from the Bond Reserve Account, there shall be credited to the Bond Reserve Account in the month following such withdrawal all monies in the Combined Utilities Fund remaining after making the payments required to

be made in such month to the Operation and Maintenance Account and Bond Payment Account and each month thereafter all such remaining monies shall be credited to the Bond Reserve Account until such account has been restored to the required balance for each sub-account. Upon the issuance of any Additional Bonds, the amount required to be accumulated and maintained in the Bond Reserve Account, in a separate sub-account for such Additional Bonds, shall be set at an amount determined appropriate by the Mayor and Council in connection with any such issue of Additional Bonds (which may be \$-0-). Any such required accumulation shall be provided for either by credit made from bond proceeds or current funds of the Combined Utilities then available or by equal monthly credits from the Combined Utilities Fund made in such amounts so that the required amount shall be accumulated in a period of not more than thirty-six months. Each sub-account in the Bond Reserve Account shall be held solely for the specific issue for which it is established. In the event of withdrawal from any such sub-account which results in the amount in such sub-account being deficient to meet the required balance, available amounts for restoring sub-account balances shall be credited to each deficient sub-account on a pro rata basis in accordance with the respective outstanding principal amounts for those issues for which the respective sub-accounts are then deficient. When any issue of Additional Bonds for which a sub-account has been established is no longer outstanding, the particular sub-account for such issue shall no longer be required to be maintained. Anything in this subsection 4(c) to the contrary notwithstanding, the amount required to be maintained in the Bond Reserve Account with respect to any issue of Additional Bonds shall not at any time exceed the maximum amount permitted to be invested without yield restriction under Sections 103(b) and 148 of the Internal Revenue Code of 1986, as amended, (the "Code") and applicable regulations of the United States Treasury Department.

(d) SURPLUS ACCOUNT: After providing for the Operation and Maintenance Account and after making the payments as hereinabove required to be made into the Bond Payment Account and the Bond Reserve Account, all remaining funds in the Combined Utilities 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 Series 2010 Bond or any Additional Bonds or for purchasing on the open market Additional Bonds;
- 3) for improvements, replacements, extensions and enlargements to the Combined Utilities; or
- 4) for any other legal municipal purpose of the City.

Any ordinance authorizing Additional Bonds may provide for the creation of additional accounts and sub-accounts not having priority over the Operation and Maintenance Account, the Bond Payment Account or the Bond Reserve Account, including sub-accounts in the Surplus Account or other accounts as may be established for such 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 this Section 4, 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 Utilities 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 Mayor and Council. 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 Utilities 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 Utilities 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 Utilities are to be credited to the various accounts and sub-accounts hereinabove described and as set out in this Ordinance in the order in which said accounts and sub-accounts have been listed in this 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.

The provisions of this Section 4 shall require the City to maintain a set of books and records in accordance with such accounting methods and procedures as are generally applicable to municipal utility enterprises, which books and records shall show credits to and expenditures from the several accounts and sub-accounts required by this Section. Monies credited to the Combined Utilities Fund or any of the accounts or sub-accounts therein as established by this

Ordinance shall be deposited or invested separate and apart from other City funds. Except as specified below for the Bond Reserve Account, the City shall not be required to establish separate bank or investment accounts for the accounts or sub-accounts described in Subsections 4(a), 4(b), 4(c) and 4(d). Monies credited to the Bond Reserve Account (or any sub-account therein) shall, if maintained in a demand or time deposit account, be kept in a separate account and not commingled with other Combined Utilities funds or accounts. If invested, monies credited to the Bond Reserve Account (or any sub-account therein) may be commingled with other Combined Utilities funds or accounts so long as the City maintains books and records clearly identifying the specific investments, or portions thereof, which belong to the Bond Reserve Account (or any sub-account therein).

Section 5. The City agrees that it will maintain and collect rates and charges for all services furnished by the Combined Utilities adequate to produce revenue and earnings sufficient at all times:

- (a) to provide for the payment of interest on and principal of Series 2010 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 Utilities, including adequate insurance as provided by this Ordinance and to pay for the necessary and reasonable repairs, replacements and extensions of said Combined Utilities; and
- (c) to establish and maintain the Bond Reserve Account as provided for in this Ordinance.

Section 6. To provide funds for any purpose related to the Combined Utilities, the City may issue Additional Bonds (other than Additional Bonds issued for refunding purposes which are governed by Section 7 of this Ordinance) payable from the revenues of the Combined Utilities having equal priority and on a parity with the Series 2010 Bond and any Additional Bonds previously issued and then outstanding only upon compliance with the following conditions:

(a) Such Additional Bonds shall be issued only pursuant to an ordinance which shall provide for an increase in the monthly credits into the Bond Payment Account in amounts sufficient to pay, when due, the principal of and interest on the Series 2010 Bond and any Additional Bonds then outstanding and the proposed Additional Bonds and for such monthly credits (if any) to the Bond Reserve Account (including any appropriate sub-account determined upon by the Mayor and Council) as may be required under Subsection 4(c).

(b) The City shall have complied with one or the other of the two following requirements:

(1) The Net Revenues derived by the City from its Combined Utilities for the fiscal year next preceding the issuance of the Additional Bonds shall have been at least equal to 1.10 times the Average Annual Debt Service Requirements of the Series 2010 Bond and any Additional Bonds, all as then outstanding, and of the proposed Additional Bonds; or

2) The City shall have received a projection made by a consulting engineer or firm of consulting engineers or certified public accountant or firm of certified public accountants, either of which is recognized as having experience and expertise in municipal utility systems, projecting that the Net Revenues of the Combined Utilities in each of the three full fiscal years after the issuance of such Additional Bonds will be at least equal to 1.25 times the Average Annual Debt Service Requirements of the Series 2010 Bond and any Additional Bonds, all as then outstanding, and of the proposed Additional Bonds. In making such projection, the consulting engineer or certified public accountant shall use as a basis the Net Revenues of the Combined Utilities during the last fiscal year for which an independent audit has been prepared and shall adjust such Net Revenues as follows: (A) to reflect changes in rates which have gone into effect since the beginning of the year for which the audit was made, (B) to reflect such engineer's or accountant's estimate of the net increase over or net decrease under the Net Revenues of the Combined Utilities for the year for which the audit was made by reason of: (i) changes of amounts payable under existing contracts for services; (ii) additional general income from sales to customers under existing rate schedules for various classes of customers or as such schedules may be revised under a program of changes which has been adopted by the Mayor and Council of the City; (iii) projected revisions in costs for labor, wages, salaries, machinery, equipment, supplies and other operational items; (iv) revisions in the amount of service to be supplied and any related administrative or other costs associated with such increases due to increased supply from the acquisition of any new facility; and (v) such other factors affecting the projections of revenues and expenses as the consulting engineer or accountant deems reasonable and proper. Annual debt service on any proposed Additional Bonds to be issued may be estimated by the consulting engineer or accountant in projecting Average Annual Debt Service Requirements, but no Additional Bonds shall be issued requiring any annual

debt service payment in excess of the amount so estimated in a final projection furnished by the consulting engineer or accountant.

If the City shall find it desirable, it shall also have the right when issuing Additional Bonds to combine with the Water System and the Sewer System any other utilities of the City authorized to be combined under Sections 18-1803 through 18-1805, R.R.S. Neb. 2007, as may constitute a revenue producing facility or undertaking, and to cause all of the revenues of such combined utilities systems to be paid into the Combined Utilities Fund and to provide that the Series 2010 Bond 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 utilities systems and shall stand on a parity and in equality as to security and payment, provided, however, no such additional utility shall be combined with the Water System and the Sewer System 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 Utilities (as proposed to be then newly combined) shall satisfy one or the other of the requirements for Additional Bonds provided above in this Section 6. 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.

The City hereby covenants and agrees that so long as any of the Series 2010 Bond and any Additional Bonds are outstanding, it will not issue any bonds or notes payable from the revenues of the Combined Utilities except in accordance with the provisions this Ordinance.

Section 7. The City may issue refunding bonds, which shall qualify as Additional Bonds of equal lien, to refund the Series 2010 Bond or Additional Bonds then outstanding provided that, if the Series 2010 Bond or any Additional Bonds are to remain outstanding after the issuance of such refunding bonds, the aggregate principal payments due in any calendar year in which those bonds which are to remain outstanding mature, or in any calendar year prior thereto, shall not be increased over the aggregate amount of such principal payments due in each such calendar year immediately prior to such refunding. Refunding Bonds issued in accordance with this paragraph of this Section 7 may be issued as Additional Bonds of equal lien without compliance with the conditions set forth in Subsection 6(b) of this Ordinance.

The City may also issue refunding bonds which shall qualify as Additional Bonds of equal lien to refund the Series 2010 Bond or Additional Bonds, then outstanding, provided that, if the Series 2010 Bond or any Additional Bonds then outstanding are to remain outstanding after the application of the proceeds of the refunding bonds to the payment of the bonds which are to be refunded, such issuance must comply with the Net Revenues test set forth in Subsection 6(b)(1) of this Ordinance and, if the proceeds of such refunding bonds are not to be applied immediately to the satisfaction of the bonds which are to be refunded, then such refunding bonds must provide by their terms that they shall be junior in lien to the Series 2010 Bond and any Additional Bonds outstanding at the time of issuance of such refunding bonds until the time of application of their proceeds to the satisfaction of the bonds which are to be refunded. In computing Average Annual Debt Service Requirements to show compliance with said Net Revenues test for such refunding bonds, all payments of principal and interest due on such

refunding bonds from time of their issuance to the time of application of the proceeds of such refunding bonds to the satisfaction of the bonds which are to be refunded shall be excluded from such computation to the extent that such principal and interest are payable from sources other than the revenues of the Combined Utilities, such as bond proceeds or investment earnings on bond proceeds, or from monies in the Surplus Account, and all payments of principal and interest due on the bonds which are to be refunded from and after the time of such application shall also be excluded. For purposes of this paragraph of this Section 7, the time of application of the proceeds of the refunding bonds to the satisfaction of the bonds which are to be refunded shall be the time of deposit with the paying agent for such bonds which are to be refunded pursuant to Section 10-126, R.R.S. Neb, 2007 (or any successor statutory provision thereof) or the time when such bonds which are to be refunded under the terms of their authorizing ordinance or ordinances are no longer deemed to be outstanding, whichever occurs sooner. In the event that refunding bonds are proposed to be issued at a time when the audited financial statements of the City for its Combined Utilities for the most recently completed fiscal year are not yet available, compliance with the test based upon Net Revenues as set forth in Section 6(b)(1) may be determined with reference to the Net Revenues for the most recent fiscal year for which financial statements have been issued and unaudited financial statements for the most recently completed fiscal year as certified by the City Treasurer, provided that compliance shall be determined to be shown for each such fiscal year.

Section 8. Nothing in this Ordinance 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 Utilities, junior or inferior to the Series 2010 Bond and any Additional Bonds and to the payments to be made into the Operation and Maintenance Account, the Bond Payment Account and the Bond Reserve Account described in

Section 4 of this Ordinance 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 in the Surplus Account.

Section 9. 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 Utilities and the holder of the Series 2010 Bond and holder or holders of 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 Utilities and all properties comprising the same. Within ninety 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 Utilities and such audit will be available for inspection by the holders of any of the aforesaid bonds. 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: (i) to the holder of the Series 2010 Bond, (ii) to the initial purchaser of any series of Additional Bonds and (iii) 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.

Section 10. 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 such amounts as shall be determined by the Mayor and Council to be sufficient to cover at all times all the revenues and earnings of the Combined Utilities 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 Utilities shall also be bonded in an amount determined by the Mayor and Council

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 Mayor and Council and the cost thereof shall be paid from the earnings of said Combined Utilities, and they shall secure the faithful accounting of all monies.

Section 11. The City will carry adequate insurance on the Combined Utilities 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. The proceeds of any and all policies for public liability shall be used in paying the claims on account of which they are paid.

Section 12. The City will maintain the Combined Utilities in good condition and operate the same in an efficient manner and at a reasonable cost. The City agrees with the holder from time to time of the Series 2010 Bond and the holders of any Additional Bonds 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 the Combined Utilities; 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 Mayor and Council to have become obsolete, non-productive or otherwise unusable to the advantage of the City.

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 the Water System and the Sewer System.

Section 14. While the Series 2010 Bond or any Additional Bonds are outstanding, the City will render bills to all customers for services of the Combined Utilities. If bills are not paid within sixty days after due, the portion of service of the Combined Utilities, for which payment is delinquent, shall be discontinued, subject to state and federal laws governing the termination of utility service. The City agrees that it will make appropriate charge for use of all properties of the City connected to the Combined Utilities.

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 Series 2010 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 Series 2010 Bond 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 the Series 2010 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 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 Series 2010 Bond or any Additional Bonds are 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 holders of said bonds, 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 bonds. The holder of the Series 2010 Bond or of any Additional 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 of 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 Utilities, the segregation of the revenues of the Combined Utilities and the application thereof to the respective Fund, Accounts and sub-accounts referred to and described in Section 4 of this Ordinance. Any holder of the Series 2010 Bond or any Additional Bonds shall, after default in payment, have the right to request the appointment of a receiver for the Combined Utilities.

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 Series 2010 Bond or any Additional Bonds shall be fully discharged and satisfied and any 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) 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 Series 2010 Bond or any Additional 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 Series 2010 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 Series 2010 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 Drinking Water Facilities 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 Series 2010 Bond unless the Series 2010 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 Series 2010 Bond shall not be excludable from gross income under the terms of Section 103 of the Code and the City as issuer shall not file any information report with respect to the issuance of the Series 2010 Bond pursuant to Section 149(e) of the Code.

Section 20. The Series 2009 Notes are hereby called for redemption on February 19, 2010 and the City Clerk and City Treasurer (as Paying Agent and Registrar for the Series 2009 Notes) are each hereby authorized and instructed to take all actions necessary or appropriate to effect the calling and redemption of the Series 2009 Notes on such redemption date. Redemption amounts for the Series 2009 Notes may be drawn under the terms of the NDEQ Contract to pay or reimburse amounts required for redemption of the Series 2009 Notes allocable to improvements to the Water System and constituting a part of the 2010 Project. Funds of the City, including but not limited to funds derived from the Sewer System and any unexpended proceeds of the Series 2009 Notes, shall be applied to redemption of the Series 2009 Notes to the extent necessary to effect the redemption in full of the Series 2009 Notes.

Section 21. 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 22. This Ordinance is hereby determined to be a measure necessary to carry out the contractual obligations of the City with respect to the Series 2009 Notes. The Mayor and Council hereby determine that an emergency exists based upon the risk of loss of federal funding related to the NDEQ Note and the NDEQ Contract if certain deadlines are not met and this Ordinance shall be published in pamphlet form, including distribution by posting of such pamphlet in three public places, and take effect immediately upon proclamation by the Mayor as provided for in Section 16-405, R.R.S. Neb. 2007.

PASSED AND APPROVED this 19th day of January, 2010.

Mayor

ATTEST:

City Clerk

[SEAL]

Exhibit "A"

NDEQ Note

Exhibit B

NDEQ Contract

Ehibit C

Amendment Number One

DOCS/951595.3